Man's Exploitation of Animals and the Law

Hana Müllerová

Introduction

The livestock farm is a prime example of the human approach to the exploitation of animals. It is a typical model of the activity one does to satisfy one's own needs for one's own benefit. Hence it comprehensively determines the living conditions of the kept animals: from influencing everything from their birth to their living space, the handling of the animals, their nutrition, feeding and their various needs right up to the ends of their lives. At the same time, the beast of prey is not understood as an individual, but as a representative of a specific mass or type. There is no perception of the individual, but rather of the flock or herd etc. in which the individual is simply considered as a small percentage of the total size, weight, age, productivity or breed.

In recent decades, the law has extensively and in unprecedented fashion historically speaking, influenced the regulation of mans' methods of dealing with animals. Of course, technical issues related to the external manifestation of livestock breeding have influenced the large-scale farming model described: the law prohibits certain types of treatment of animals which it claims are abusive, sets so-called minimum standards of breeding in its various aspects (space, feeding, etc.), animal transport rules, rules regarding slaughter etc. But the law does not have the tools to oblige a fundamental change in the understanding of the relationship between man and animal, that is, a change in what can be termed the recognition of the moral status of animals. It is true that the law in, let's say, 'the western part of the world' at present, at various levels (international, European and national), declares the need for animals to be recognised as living, sentient creatures who deserve man's care and respect. In this text, I want to show some examples of this rhetoric that verbally reinforce the increasing moral status of animals and its concrete manifestations in legal regulations. I will then consider whether it is likely that this tendency in law shall continue to move towards the recognition of the legal status of animals as entities. I will also outline contradictory legislative trends and consider who creates the law and for whom, and whether this type of rhetoric in law is not merely a pretext (or alibism).

The Law Changing in Favour of Animals

It is indisputable that in recent decades there has been a gradual increase in sensitivity to the suffering of animals in society. People's perception of problems usually translates into law via the creation of new or alteration of existing legal provisions, prohibitions and regulations after a certain period of time, especially when the human behaviour desired cannot be achieved by other means (enlightenment, awareness, affirmation of new rules as moral rules etc). Increasing sensitivity to animals already has profound repercussions in the law. By creating legal norms to protect animals from arbitrary treatment by man, society responds both to modern scientific research, which demonstrates abilities and qualities of animals previously unknown to mankind (especially their ability to experience suffering, pain or joy as much as man), and also to the dismal living conditions of many species of animals in human care, especially farm animals in intensive farms. The shift in legal protection of animals as the law develops reflects the idea that the initial approach based on the protection of a person's property rights as the owner of the animal, or on the protection of man's 'feeling' due to an animal's suffering should be replaced by the approach of

improving the living conditions of the animal itself as a living being, according to the needs of the species and in order to satisfy its physiological and ethological needs.

There are provisions in law that express or proclaim the high value of animals and the need to protect and care for them. In particular, Article 13 of the Treaty on the Functioning of the European Union (EU TFEU), i.e. the highest one in terms of EU law, should be included in European Union law, at a 'constitutional' level.

> In formulating and implementing the Union's agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals . . .

In Czech law the protection of animals is not in the Constitution, but we might consider the reasoning behind the Act on the Protection of Animals Against Cruelty:

> Animals, like humans, are living beings and are capable of experiencing various degrees of pain and suffering, and hence they deserve attention, care and protection by man.

Furthermore, it is necessary to cite the provisions of Section 494 of the Civil Code, which in Czech law performs the so-called de-reification of animals (i.e. stipulates that an animal is not a thing):

> A living animal has a special significance and value as a living creature endowed with senses. A living animal is not a thing, and the provisions on things apply, by analogy, to a living animal only to the extent in which they are not contrary to its nature.

In addition to the introduction of the aforementioned proclamations to the law, there are a number of specific rules for the protection of animals, which clearly lead to an improvement and strengthening of the legal position of animals. In some states (Germany, Luxembourg, Switzerland), the principle of animal protection has even been enshrined at the highest possible legal level: in the Constitution. It is already the case in many countries, including the Czech Republic, that it is now stated in the Civil Code that a living animal is not a thing. Legislation against cruelty to animals, including its punishment as a criminal offence, is also common. The statement of certain undesirable behaviour as criminally punishable (i.e. as constituting a criminal offence) is considered to place a very high value on the interest thus protected by the threat of a criminal penalty. Interests considered to be lower-ranked are usually protected by 'merely' administrative sanctions (as infringements, delinquency punishable by fines, etc). Therefore, it can definitely be emphasized that the Czech Criminal Code also contains cruelty to animals (Section 302) and lack of caring for an animal through negligence (Section 303) as criminal offences. What we mean by cruelty to animals is regulated in the Czech Republic by the Act on the Protection of Animals against Cruelty.

Another demonstration of the law improving animal welfare is constituted by the stricter rules on livestock and other types of breeding, which are intended to provide animals with decent living conditions corresponding to their biological and ethological needs. Also, the so-called minimum standards and regulations concerning the management of animals in large-scale breeding. The clarification of conditions for managing and raising animals is in fact a kind of self-limitation (for breeders, and especially for profit-seeking economic agents) in favour of better animal welfare. In other words, the law seeks to prevent the livelihoods of livestock in intensive farms being regulated according to the most advantageous possible ratio between maintaining animal productivity and profit (i.e. maximizing yield for the lowest possible cost to the farm owner).

The fundamental question is how might this trend of strengthening the position of animals develop? The previously described manifestations still leave the animal in the imaginary position of 'the protected object'. An animal, for the purposes of the law, is not an entity equivalent to a human being. The subject here is only the human being - a human or natural person who, by virtue of this, has the right and duty to act in legal relations and demonstrate his legally relevant will. The animal, however, continues to be an 'object' albeit one with the right to be declared worthy of special protection.

The Development of the Moral Status of Animals

Recognition of moral status is considered to be a prerequisite for the entity's legal status. Moral status is a philosophical rather than a legal category. To have moral status means to be an entity, i.e. an independent, individual being, which manifests its will in the outside world in the same way as other beings who are equally situated, and other actors must take it, as well as its needs and interests, into account. The concept of the animal’s moral status has changed down history.

René Descartes did not attribute any moral status to animals at all, ranking them as 'matter' within the outside world. According to Immanuel Kant, who acknowledged at least implicit responsibilities of man towards animals, animals (as *well as things) have only indirect moral status, which means that we never relate to them with direct "duty", b*ut only as the means of achieving ends. Very widespread and close to contemporary law is the view combining earlier philosophical approaches, including the teachings of Thomas Aquinas and Christian morality, according to which only members of the Homo sapiens species, i.e. not animals, have moral status: all people, regardless of their mental abilities and age, deserve moral consideration. According to Peter Singer, all sentient creatures whose primary concern is to avoid suffering have moral status, including all sentient animals. According to Singer, sensitivity is the condition for recognising moral status. Albert Schweitzer took this recognition of the moral status of animals a stage further: according to him, a sufficient condition for attributing full moral status is life, therefore, all living organisms have a moral status, and all have it to an equal, full extent. Tom Regan, one of the founders of the Animal Rights Movement, operates on the concept of *subject-of-a-life*, which can be both human or animal, but the allocation of this subjectivity of life is determined by other abilities demonstrated: the ability to perceive and remember; to have desires, beliefs and preferences; to act deliberately to fulfill goals and wishes; the sensitivity and ability to have an emotional life; the persistence of psychological identity; the individual experience of well-being, independent of usefulness to others. Thus, to attribute moral status, Regan requires certain mental and behavioural abilities of the individual (not the species!). In *Animal Rights, Human Wrongs*, he claims that these abilities are present at the very least in all mentally normal mammals over one year old.

From the above approaches and theories of influential authors, can be seen a gradual tendency to extend the possession of moral status to other entities besides people. However, the question is to what extent thinkers' thoughts, though influential, are reflected in the attitudes of ordinary society. In fact, the law does not respond to the views of individual philosophers on moral issues, but it changes under the pressure of affirmation of a certain attitude by the majority in society. Here, however, general recognition of the moral status of animals is not one of the conditions for animals to be recognized as subjects by law.

Animals as Legal Entities?

The starting point of the legal term person (subject) has historically been the human. When considering the conditions of his/her legal status as a subject, emphasis was primarily placed on certain attributes of the individual: reason, will, autonomy, freedom, self-awareness and responsibility for his/her actions. However, the assignment of these generic characteristics to man in history did not at first mean automatic recognition of legal individuality to all people; on the contrary, certain groups of people, such as slaves or foreigners. were a priori deprived the status of legal subject. The hierarchical structure of society was such that it was the social status of a person which determined his/her rights and responsibilities for centuries. The basis of the modern concept of the subject was given by Kant, who for the first time presented the image of man as being 'oneself', i.e. not a tool for achieving someone else's purpose. Kant metaphysically justified the value and dignity of each individual and thus the equality of people under the law. The next phase was the recognition of artificially created 'persons' - legal entities - as subjects of law in the 19th century. Then, in the 20th century, a certain finality regarding the definition of the term 'person' in law prevailed: the right to determine a group of entities to which subjectivity is granted is understood as the right of the legislator. It is therefore a concept according to which it is in essence a matter for the legislator to declare which entities are to be subjects of law and which are not.

Of course, it would not be logical if the legislator, at will, declared to be entities those which lack the characteristics considered to be functional prerequisites of legal subjects: self-awareness and the capacity of being differentiated from other individuals, the will and ability to express oneself in a legally relevant manner and to be responsible for one's own actions. It has to be admitted that animals are totally or almost completely lacking in these attributes, and they lack them in their entirety and by nature, not as 'exceptions' (in the way a disabled person might). Thus, the legislators may theoretically declare the subjects who lack these features to be legal subjects, but they will do so only 'on paper' without the possibility of the entity actually realising its subjectivity.

According to biology, anthropology, psychology and other disciplines, self-awareness is the essential property which distinguishes the human species from other animal species which lack it. For law, the distinction between the ability to answer, inherent in humans, and the ability to react, inherent in animals, is a substantial distinction. The ability to answer implies the subject's self-awareness and will, and the capacity to choose between options and be responsible for that choice. Self-awareness is related to the differentiation of the subject from other subjects. The legal system can only attribute rights and obligations to a subject that can be identified and distinguished from other entities. For example, microchips that

are already used today to identify dogs and other animal species could be used to identify animals.

A greater problem for animals as potential subjects seems to be the question of recognition of their will, the manifesting of it by their actions and their accountability for these latter. Responsibility for one's actions is based on the principle that the one who acts is responsible for his/her actions. Animals cannot be held accountable for their actions; an animal cannot be bound by obligation in the legal sense of the word, nor can it be sanctioned for violating obligations. There is a link between free will and responsibility: action that is not associated with free will is not generally attributed (to man): where there is no free will, there can be no responsibility either (e.g. acting while suffering from a mental disorder). Similarly, it would of course be unacceptable to attribute the immediate responsibility for the behaviour of an animal to its potential guardian, a person who would be in the position of 'animal agent'.

I assume that the current nature of legal status, based on its determination by the legislator for a purpose, is in favour of recognizing the legal status of animals only superficially or resulting in formal recognition. Even this form does not allow the meaningful and functional legal subjectivity of animals.

Legal Alibism in Animal Management

The proclamations in legal provisions mentioned above on animals being sentient beings, could lead to the conclusion that the moral status of animals as recognized by society is gradually improving. But now I will show examples of legal provisions that are not at all proclamatory yet they have clear legal implications and act in the opposite sense than those which value animals.

Again, the first examples are from EU law: in terms of the European domestic market and free trade legislation, animals are 'goods'. The TFEU contains a prohibition on quantitative restrictions on the import of goods (Article 34), with justifications for exceptions being inter alia "protection of the health and life of humans and animals." However, in the field of animal protection, the EU Court of Justice has repeatedly stated in the past that these exceptions must be interpreted restrictively; to put it simply, by prohibiting or restricting imports of products from less favourable types of farming, it is not possible to 'push' for improvement in animal welfare on farms in other Member States. For example, in Case C-219/07 Nationale Raad van Dierenkwekers and Liefhebbers Andibel, a Belgian edict on the Protection and Welfare of Animals, which set out a list of the only animals that could be kept in a controlled environment in the care of humans, was challenged. The edict prohibited the importation of species not mentioned on the list from other EU Member States to Belgium. The EU Court of Justice stated that such an edict was contrary to EU law.

Regulation (EU) No 1143/2014 of the European Parliament and of the Council on the prevention and control of the introduction or establishment and spread of invasive alien species states so-called *eradication* as one of the methods of this prevention or control. Eradication is defined in Article 3 (13) of the Regulation as

> complete and permanent removal of a population of invasive alien species by lethal[1] or non-lethal means . . .

It is therefore de facto the systematic killing of individuals of certain species which have been assessed as particularly undesirable due their invasive nature. I do not want to go into details and list these species, but to draw attention to the principle behind the legislation: it is man who determines the key according to which some animals are judged desirable and others undesirable (in this case, in the invasiveness of the species), thus justifying their liquidation. The Regulation adds, in the same breath, that this eradication must be carried out in a "humane" way (which I can no longer describe by any other word than alibism). According to point 25 in the reasoning for the Regulation:

> Eradicating and managing some animal invasive alien species, while necessary in some cases, may induce pain, distress, fear or other forms of suffering to the animals, even when using the best available technical means. For that reason, Member States and any operator involved in the eradication, control or containment of invasive alien species should take the necessary measures to spare avoidable pain, distress and suffering of animals during the process, taking into account as far as possible the best practices in the field, for example the Guiding Principles on Animal Welfare developed by the World Organisation for Animal Health.

Furthermore, Czech law on the protection of animals against cruelty, says something similar. Section 5 sets out a list of reasons why an animal can be killed. This list is final, i.e. killing an animal for reasons other than those mentioned here is contrary to law. Czech legislation is evaluated positively in this respect, given that many other states allow the animal to be killed for any reason, or the reasons are so vague that it has almost the same effect as had there been no condition stated. In the first place, of course, we find the slaughter of farm animals in paragraph 2 (a):

> The reason for killing it is the use of the products of an animal bred or kept for the production of food, wool, leather or other produce.

Furthermore, killing animals for the purpose of regulating the population of animals in the care of humans or wild animals, rodent control and measures to combat pests and depopulation is justified (points g, h and j). Thus, once again, man decides which animals need to be disposed of and why (e.g. feral[2] pigeons, cats, crop-damaging rodents, etc).

In my opinion, however, the word alibism could also be used to describe what the new Civil Code states in § 494, especially in its second sentence:

> A living animal is not a thing, and the provisions on things apply, by analogy, to a living animal only to the extent in which they are not contrary to its nature.

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[1] Lethal means resulting in death (author's note).

[2] Feral species are wild forms of originally domestic species.

While the first part of the provision cited above gives a clear ethical message, which formulates a desirable attitude of society towards animals, the second part *de facto* states that the animal affairs provisions will continue to be applied in almost full scope, since the use of the word 'accordingly' in law means that the relevant provisions apply *in full*[3] to the specified (other) legal relationships. The only exception is in the case where the application of the clause would contradict the nature of the animal as a living creature, i.e. if it would cause pain or suffering (physical or psychological) to the animal. As an example of such a case, the explanatory memorandum to the Civil Code uses the case of a dog used as collateral when the dog is devoted to its master, with the dog being handed over to the creditor, who is a stranger and thus the dog is exposed to stress. The main practical sense of the preceding status of the animal as an object in the legal sense, which consisted in the animal having the status of property, remains, and the change is rather a change in how it is named.

Conclusion

It is evident that legal approach to animals is not uniform and is essentially characterized by some schizophrenia. On the one hand, there are a number of provisions highlighting the value of animals and the need for their ethical treatment, and there is a considerable amount of legislation for their protection, but on the other hand, there are provisions that justify interventions against animals after they have been killed because of the need for their products for human beings or because of their causing harm to man. The noble theorems about animals as sentient beings having value regardless of the usefulness for man, are in this light a little different: one recognizes the value of animals just as long as they do not harm or threaten one (a reason for the legal killing of animal is, pursuant to Section 5 (1) (c) of the Act on the Protection of Animals against Cruelty, the "immediate threat posed to man by an animal") or until one needs their products. In my opinion, however, it is a very natural principle that at the moment of truth, man prioritises his own species and its gain. Each species naturally favours itself and the opposite behaviour would be completely unnatural. People clearly express this ‘priority’ in the legal system, which is a human product designed to regulate human society. What matters, however, is the extent and form of this ‘priority’, which appears to be animal abuse in some aspects of activities such as farming or animal experimentation. In my opinion, to imagine that the law can recognize animals as subjects of law (in the true and functional meaning of the word, not only formally) and to grant them rights that would stop their abuse by man, is illusory. However, where there is certainly an opening for change in the law, is regarding the regulation of animal welfare, for a move towards significantly more favourable conditions in their lives if they are in human care. However, examples from European legislation and case law show that such changes would have to take place not only at national but at EU level. There are significant possibilities also in the enforcement of protective legislation, involving ensuring that the applicable regulations are actually respected.

In conclusion, I would also add that current efforts to resolve the urgent problem of the impacts of climate change, in which livestock farming (and hence the extremely high and historically unprecedented consumption of meat and animal products in society) is one of the major causes of CO2 emissions, are in clear synergy with striving for the improvement of

[3] This statement is a part of art. 41 para. 1 of the Rules of Procedure of the Government. It concerns the difference from the word ‘reasonably’ (the Czech word, ‘přiměřeně’), which by contrast expresses a freer relationship between the applicable adaptation and the provision in question.

animal welfare. I am not sure whether or not the law will have the tools to instruct consumers to consume less animal products or reduce the quantitative range of farms, but raising people's awareness of both issues will most likely lead to such a result.