Articles

Studia Iuridica Lublinensia vol. XXX, 3, 2021
DOI: 10.17951/sil.2021.30.3.119-131

Emil Kruk
Maria Curie-Skłodowska University in Lublin, Poland
ORCID: 0000-0002-7954-0303
emil.kruk@umcs.pl

Legal Status of Animals in Poland*

Status prawny zwierząt w Polsce

ABSTRACT

The article is of a scientific and research nature and it is aimed primarily at outlining the legal status of animals and to what extent legal regulations governing this status determine the level of humane protection of animals in Poland. To achieve this goal, first of all, the concept of "animal" needed to be made more specific, the principle of dereification discussed and its normative scope outlined, and the characteristics of an animal as a specific tangible good needed to be presented. The need to address the issue is determined primarily by the awareness that the way of human life and human attitude to animals has been changing with the development of civilisation. In any case, the changes that have taken place in this area in recent decades make the title issue topical and conducive to verify previous findings. It is assumed that the research carried out will contribute to the development of an optimal model of legal protection of animals and to the development of legal science. The very dissemination of the results is to raise the social awareness of the legal status of animals, which is one of the conditions of further progress of civilisation.

Keywords: animal; tangible good; legal status; dereification; humane protection; legal protection; Poland

CORRESPONDENCE ADDRESS: Emil Kruk, PhD, Assistant Professor, Maria Curie-Skłodowska University (Lublin), Faculty of Law and Administration, Institute of Law, Plac Marii Curie-Skłodowskiej 5, 20-031 Lublin, Poland.

* Publication has been prepared as part of the research project entitled "The Administrative Law Model of Animal Protection", covered by the application registered with the Funding Stream Support system administered by the National Information Processing Institute, as no. 2016/23/D/HS5/01820 and accepted for financing as part of the competition SONATA 12 held by the National Science Centre, Poland, under the decision of the Director of the National Science Centre in Kraków of 16 May 2017 (decision no. DEC-2016/23/D/HS5/01820, agreement no. UMO-2016/23/D/HS5/01820).

INTRODUCTION

The main aim of this article is to answer the questions of what legal status animals have in Poland and what influence the legal regulations defining this status have on the degree of humane protection of animals. The achievement of the presented research goal requires first of all to define the concept of "animal", discuss the principle of dereification and to outline its normative range, as well as to present the characteristics of an animal as a specific tangible good. These issues, in the order given above, are the subject of further discussion. The research was carried out with the use of the method prevailing in the methodology of legal research, i.e. the legal dogmatic method, and it consisted in the analysis of the legal regulations in force as well as the previous achievements of judicature and legal scholars in the subject of the legal status of an animal. The findings made in this way allowed us, with the use of deductive reasoning, to formulate generalising statements. The research is supposed to contribute to the development of an optimal model of legal protection of animals and the development of legal science. The very dissemination of the results is to lead to raise the level of social awareness of the legal status of animals, which is one of the conditions of further progress of civilisation.

The need to address the title issue was determined primarily by the awareness that along with the development of civilization, the way of human life and human attitude to animals is changing.[1] Today we can speak of a certain paradox, manifested by the diametrically opposed treatment of pets, stray animals,[2] farm animals, laboratory animals, animals used for special purposes and, finally, free-living animals. This is reflected in the legal system, which on the one hand carries out so-called dereification and prohibits the cruel treatment of animals, and on the other allows them to be slaughtered according to specific methods required by religious rites. The situation described above prompts us to undertake research whose fundamental aim is to analyse the legal regulations which define the legal status of an animal as a biological entity (a living being capable of suffering), an essential component of the natural heritage of humanity and a good having a character of property asset.

[1] B. Grabowska, *Zmiany relacji człowiek–zwierzę, czyli cena postępu*, "Kultura i Wartości" 2014, no. 2, pp. 105–120 and the literature referred to therein.

[2] E. Kruk, *Polish and Estonian Regulations on Homeless (Stray) Animals*, "Studia Iuridica Lublinensia" 2021, vol. 30(1), pp. 145–162.

DEFINITION OF ANIMAL

It is significant that the basic Polish legal act in this field, i.e. the Act of 21 August 1997 on the protection of animals[3] does not contain a definition of "animal". This situation prompted to a linguistic interpretation by establishing what meaning this term has in everyday language. For example, according to the Polish dictionary *Słownik języka polskiego PWN*, an animal is "every living creature except a man".[4] On the other hand, *Wielki słownik języka polskiego* points out that, in the colloquial sense, an animal is "a living creature that is neither a plant, man, bird nor insect".[5] Nonetheless, the presented understanding raises a number of doubts. They concern about its compliance (or lack thereof) with the current state of scientific knowledge. In modern animal science (zoology), the term "animal" is used to define heterotrophic, multicellular, organisms with eukaryotic cells (genetic material is contained in an organised cell nucleus), enclosed in a thin cell membrane. Moreover, all animals respond to stimuli from the external environment, and most of them have the ability of locomotion.[6] Thus, from a scientific point of view, there is no reason to exclude insects, birds or even humans from the animal world, as is often the case on the linguistic level.[7] For this reason alone, the above-mentioned dictionary explanations cannot be treated as sufficient for the purposes of the interpretation herein. As in any such case, teleological arguments must be referred to. This is so because the question arises whether the legislature also uses the term "animal" to denote any living creature except man? It seems that such a thesis would be unreasonable. This is evidenced primarily by the current wording of Article 2 (1) APA, according to which the law in question regulates the handling of vertebrate animals. To ensure that this statement is of sufficient explanatory value, it should be recalled that vertebrates are a subtype of animals characterised by an internal skeleton composed of bones and teeth made of mineralized bone tissue or cartilage tissue. Traditionally, vertebrates are divided into six groups: agnatha,

[3] Consolidated text, Journal of Laws 2020, item 638, hereinafter: APA.

[4] *Zwierzę*, [in:] *Słownik języka polskiego PWN*, https://sjp.pwn.pl/sjp/zwierze;2547682.html [access: 19.04.2021].

[5] *Zwierzę*, [in:] *Wielki słownik języka polskiego*, https://wsjp.pl/index.php?id_hasla=12128&id_znaczenia=4610116&l=26 [access: 19.04.2021].

[6] *Zwierzę*, [in:] *Encyklopedia PWN*, https://encyklopedia.pwn.pl/haslo/zwierze;4002515.html [access: 19.04.2021]. Por. J. Dzik, *Zoologia. Różnorodność i pokrewieństwa zwierząt*, Warszawa 2015, p. 10 ff.

[7] On linguistic perception and recognition of the animal world, see M. Walczak, *Czy owad to zwierzę?*, "Zoophilologica. Polish Journal of Animal Studies" 2015, no. 1, pp. 265–271; R. Tokarski, *Konceptualizacja zwierząt w potocznej świadomości językowej*, [in:] *Prawna ochrona zwierząt*, ed. M. Mozgawa, Lublin 2002, pp. 11–17.

fish, amphibians, reptiles, birds and mammals.[8] The objective scope of the Animal Protection Act was only limited on 12 June 2009 by adding a reference to vertebrate animals. Originally, the provision of Article 2 APA contained only a list of individual categories of animals to which the Act was to be applied (pets, livestock, animals used for entertainment, shows, film, sports and special purposes, animals used for experiments, kept in zoos, free-living animals – wild, alien to native fauna). The aforementioned list, however, lacked any major normative significance, which was mainly due to the fact that its individual elements were not disjunctive, and the enumeration itself was not complete.[9]

The legal definition of animal was contained in the Decree of the President of the Republic of Poland of 22 March 1928 on the protection of animals.[10] It is worth noting, as a side note, that this was the first Polish legislation which provided for the humane protection of animals. According to Article 1 of this Decree (in its original form), the abuse of animals was "forbidden" and the term "animal" should be understood as "all domestic and domesticated animals and birds and captured animals and wildfowl, as well as fish, amphibians, insects, etc.". It was only under Article 1 (1) of the Act of 25 February 1932 on the amendment of the Decree of the President of the Republic of 22 March 1928 on the protection of animals,[11] which entered into force on 22 April 1932, when the concept of "animal" was extended to cover all wild animals and birds, and not, as was previously the case, only those "captured". Apart from the distinction in the above-mentioned definition between "animals" and "birds", which is currently not justified, it should be noted that the legislature did not limit the scope of the concept in question, and therefore also the scope of the legal protection introduced, to vertebrates, but covered all animals – in the common sense of the word, and thus excluding humans. This understanding of animal was valid until the entry into force of the Animal Protection Act.

PRINCIPLE OF DEREIFICATION AND ITS NORMATIVE RANGE

The date when the Animal Protection Act became effective, i.e. 24 October 1997, constitutes a turning point in the shaping of the legal position of animals in Poland. Until then, animals kept under human authority (regardless of their type) were treated as movable property, being the subject of ownership and other rights

[8] *Kręgowce*, [in:] *Encyklopedia PWN*, https://encyklopedia.pwn.pl/haslo/kregowce;3927415.html [access: 19.04.2021]. Cf. P. Kąkol, *Biologia. Kompendium*, Warszawa 2010, p. 822 ff.

[9] More on this topic, see W. Radecki, *Ustawy o ochronie zwierząt. Komentarz*, Warszawa 2015, p. 55 ff.

[10] Consolidated text, Journal of Laws 1932, no. 42, item 417.

[11] Journal of Laws 1932, no. 29, item 287.

in rem.[12] This also applied to free-living (wild) animals taken into autonomous possession.[13] At this point, it should be stressed that already at that time scholars in the field used to express doubts concerning the legal nature of animals resulting from their biological nature. Due to their ability to move and feel (especially pain and fear), animals were perceived as "peculiar objects of civil-law relations". There were also postulates for the protection of animals "within reasonable limits"[14] and for their dereification.[15] These postulates were reflected in the provisions of the Animal Protection Act, which in Article 1 (1) determines that "an animal, as a living being capable of suffering, is not a thing". As can be seen, this legal qualification of animals is supported primarily by humanitarian (emotional) considerations, although the very phrase referring to the ability to feel suffering does not have a normative character, and its usefulness in determining the objective scope of dereification is limited. For it would be difficult to assume that the legislature has simply assumed that all animals have such an ability. It is also difficult, even in the current state of scientific knowledge, to unambiguously decide which of them do not possess such a feature.[16] Additionally, this issue is complicated by the current wording of Article 2 APA, which defines its objective scope, indicating that the Act regulates the handling of vertebrate animals,[17] which has already been mentioned above.

As far as the delimitation of the normative scope of the principle of dereification is concerned, it should be pointed out that Article 1 (1) APA refers to the entire

[12] Within the meaning of Article 45 of the Act of 23 April 1964 – Civil Code (consolidated text, Journal of Laws 2020, item 1740), hereinafter: CC, "properties may only be tangible objects". It follows from that definition that the things within the meaning of civil law are material parts of nature in their original or processed state, so distinct (naturally or artificially) that in socio-economic relations they can be regarded as an inherent good. See E. Skowrońska-Bocian, M. Warciński, *Komentarz do art. 45*, [in:] *Kodeks cywilny*, vol. 1: *Komentarz. Art. 1–449[10]*, ed. K. Pietrzykowski, Legalis 2020.

[13] The case-law has perpetuated the view that freely living animals which are not property but tangible objects not owned by anyone, become the property and objects of property rights by taking possession of them. After the entry into force of the APA, this view has basically remained valid, except that since capturing a free-living animal becomes the object of ownership, but it does not become a property. This does not change the fact that in matters not regulated in the APA, the rules on property should be applied *mutatis mutandis* to such animals. See ruling of the Supreme Court of 9 March 1973, I CR 58/73, LEX no. 2711470; resolution of the Supreme Court of 12 April 1988, III CZP 22/88, LEX no. 3474.

[14] M. Pazdan, *Pozycja prawna zwierząt*, [in:] *System Prawa Prywatnego*, vol. 1: *Prawo cywilne – część ogólna*, ed. M. Safjan, Legalis 2012 and the literature referred to therein.

[15] E. Łętowska, *Dwa cywilnoprawne aspekty praw zwierząt: dereifikacja i personifikacja*, [in:] *Studia z prawa prywatnego. Księga pamiątkowa ku czci Profesor Biruty Lewaszkiewicz-Petrykowskiej*, ed. A. Szpunar, Łódź 1997, pp. 71–92.

[16] W. Radecki, *op. cit.*, p. 46.

[17] Cf. remarks of M. Goettel (*Sytuacja zwierzęcia w prawie cywilnym*, Warszawa 2013, p. 46), who is of the opinion that regardless of the current wording of Article 2 APA, the legislature does not limit the "dereification mechanism" to vertebrates.

system of law, which is confirmed by the content of Article 1 (2) APA, according to which in matters not regulated by the Animal Protection Act the provisions concerning things shall apply *mutatis mutandis* to animals. This means that when interpreting any provisions (irrespective of their affiliation to any branch of law) referring to animals, it is necessary to take into account the fact that animals are living beings capable of suffering and humans owe them respect, protection and care. In any case, the provisions on property contained in such legislation can only find application *mutatis mutandis*. Consequently, the dereification of animals must be regarded as a principle of the whole legal system and not merely as a principle of a particular branch of law.[18] We are talking here about a directive principle that has a real impact on both the processes of law-making and applying the law, as it sets out the directions for legislation and also constitutes an important guideline for interpretation.

ANIMAL AS AN ASSET

A simple consequence of the dereification policy described above is the exclusion of animals from the class of objects.[19] This does not mean, however, contrary to some opinions,[20] that the animals lose in this way their attribute of being an asset. It is true that property within the meaning of Article 45 CC are only tangible objects. However, we cannot equate the concept of property and the concept of material object, which includes both inanimate and animate matter (plants, animals). Thus, M. Goettel rightly states that "the criteria (features), which, according to the concept adopted by the legislature, determine the impossibility of treating an animal as a thing (a living entity, capable of suffering), undoubtedly point to the special nature of the material asset, which is an animal".[21]

In view of the findings made above, the animal properties that determine their legal status may be presented. This will enable, at least to some extent, the location of animals as part of material assets classification and determining what regulations concerning property can be applied to them.[22] Regardless of the doubts that relate to free-living species (see further), it should be pointed out that animals are of an

[18] *Ibidem*, p. 48 ff.

[19] Dereification concerns live animals. On the other hand, animal products (e.g. milk, sheep's wool, etc.) and dead animals and parts of their bodies are material objects. See Z. Zaporowska, *Odpowiedzialność za zwierzę jako produkt niebezpieczny*, "Rejent" 2009, no. 1, p. 144.

[20] In the opinion expressed by M. Nazar (*Normatywna dereifikacja zwierząt – aspekty cywilnoprawne*, [in:] *Prawna…*, pp. 133–134), "Not only is an animal a thing in a technical and legal sense, but it is not a material object – as a living being capable of suffering". Similarly M. Pazdan, *op. cit*.

[21] M. Goettel, *op. cit.*, p. 50.

[22] *Ibidem*, p. 51.

independent nature. An exception in this is animals living in the aquatic environment. In any case, under the current legislation, it is assumed that fish and other organisms living in water are natural fruits from the body of water.[23] It is worth noting that this term is not very precise, as we may speak of natural fruits only when they are obtained. Until then, "they are (depending on the legal situation of a specific body of water) part of the real estate on which the body of water is located (in the case of standing surface waters) or part (but not component) of a body of water (in the case of surface flowing water and marine waters)".[24] At this point, it should also be noted that an animal may be classified, in accordance with the provision of Article 53 § 1 CC and Article 54 CC, as natural fruits from the property (e.g., fish fished out from a pond) or as civil fruits (e.g., hunting rights).[25] Natural fruits include also, after their separation, some components of the animal body (e.g., wool, milk, eggs, offspring). Certain animals are not capable of self-existence outside the group of individuals of the same species. In such cases, the concept of composite objects is applicable. As pointed out in the literature, an example of a composite tangible asset, which is the equivalent of composite property, is the swarm of bees, although it is also classified as a set of objects (*universitas rerum*).[26] Of course, animals are movable goods and are indivisible. In addition, irrespective of individual characteristics, animals can be treated as items identifiable individually or items identifiable collectively.

It should be emphasised that the legal status of individual categories of animals has been regulated differently. Thus, with regard to pets or, for instance, farm animals, there is no doubt that they may be an object of ownership and other rights in rem as well as an object of transactions.[27] This results clearly from the content of

[23] See Article 263 (1) of the Act of 20 July 2017 – Water Law (consolidated text, Journal of Laws 2020, item 310, as amended); Article 1 (3) of the Act of 18 April 1985 on inland fishing (consolidated text, Journal of Laws 2019, item 2168).

[24] M. Goettel, *op. cit.*, p. 40 and the literature referred to therein. See also K. Gruszecki, *Rybactwo śródlądowe. Komentarz*, Warszawa 2020, p. 31.

[25] W. Pawlak, *Komentarz do art. 53 i 54*, [in:] *Kodeks cywilny. Część ogólna. Komentarz do wybranych przepisów*, ed. J. Gudowski, LEX/el. 2018.

[26] J. Gudowski, J. Rudnicka, G. Rudnicki, S. Rudnicki, *Komentarz do art. 182*, [in:] *Kodeks cywilny. Komentarz*, vol. 3: *Własność i inne prawa rzeczowe*, ed. J. Gudowski, Warszawa 2016, p. 365.

[27] E. Gniewek, *Komentarz do art. 45*, [in:] *Kodeks cywilny. Komentarz*, eds. E. Gniewek, P. Machnikowski, Legalis 2019; E. Niezbecka, *Komentarz do art. 45*, [in:] *Kodeks cywilny. Komentarz*, vol. 1: *Część ogólna*, ed. A. Kidyba, LEX/el. 2012. Under the legislation currently in force, there are certain restrictions in this area. An example may be the prohibition of marketing dogs and cats outside the place of their rearing or breeding and the requirement of holding a licence for keeping a dog of a breed considered aggressive. On this topic, see E. Niemiec, M. Nowakowska, *Hodowla rasowych psów i kotów a ochrona zwierząt – analiza polskich rozwiązań prawnych*, "Przegląd Prawa i Administracji" 2017, vol. 108, pp. 87–101; M. Duraj, *Rasy niebezpieczne psów w prawie polskim i w prawie niektórych landów niemieckich*, "Przegląd Prawa Publicznego" 2012, no. 11, pp. 32–46.

Article 1 (2) APA, according to which in matters not regulated in this Act the provisions concerning property shall apply *mutatis mutandis* to animals. The situation is different for non-domesticated animals living in conditions beyond human control (free-living, wild animals). It is worth starting from the fact that the handling of this category of animals is regulated by the Animal Protection Act. However, this Act does not define their situation in terms of property law. The legislation applicable in this respect includes the provisions of the Act of 13 October 1995 – Hunting Law,[28] which regulates the ownership of free-roaming game.[29] Pursuant to Article 2 HL, such animals, as national property, constitute the property of the State Treasury. However, it is not ownership within the meaning of Article 140 CC, but a special *erga omnes* property right. As the Supreme Court noted in its resolution of 12 April 1988:[30] "This right expires when the animal crosses the borders of the state, while free-living animals which are not game are not the object of any subjective right. They are material objects, but not things. They are nobody's property. Free-living animals, not being things but material objects that are nobody's property, become a property by taking possession of them (alive or dead) and taking them into one's autonomous possession, and become objects of property rights". This view remains valid after the entry into force of the Animal Protection Act, with the reservation, however, that as soon as a free-living animal is captured, it becomes an object of ownership, but does not become a thing.[31] Of course, this does not change the fact that in the situation described above, in matters not regulated by the Animal Protection Act, the provisions concerning property (Article 1 (2) APA) should be applied *mutatis mutandis* to such an animal.

The provisions of Article 1 (1) and (2) lead in fact to restricting the exercise of ownership rights to animals. The content of this right consists of the right to use the animal (including the right to take natural fruits) and the right to dispose of the animal. It must be borne in mind, however, that the handling of the animal must be in line with the requirements of humane treatment (Article 5 APA), i.e. the treatment which takes into account the needs of the animal and ensures the care and protection of the animal (Article 4 (2) APA). There is nothing extraordinary about

[28] Consolidated text, Journal of Laws 2020, item 1683, hereinafter: HL. See regulation of the Minister of Environment of 11 March 2005 on defining the list of game species (Journal of Laws 2005, no. 45, item 433).

[29] According to A. Pązik (*Komentarz do art. 2*, [in:] A. Pązik, M. Słomski, *Prawo łowieckie. Komentarz*, LEX/el. 2015), the concept of free-living animals should be understood broader than the concept of wildlife, referred to in Article 5 (15a) of the Act of 16 April 2004 on the protection of nature (consolidated text, Journal of Laws 2020, item 55, as amended). According to this author, this concept should cover "all beings which are not actually controlled by specific individuals, legal persons or other entities".

[30] III CZP 22/88, LEX no. 3474.

[31] Cf. W. Daniłowicz, *Prawo polowania*, Warszawa 2018, p. 279 ff.

this. After all, the owner of any property is subject to various restrictions on the use and disposal of it. The owner may use the property within the limits laid down by the laws and principles of social coexistence and according to the socio-economic purpose of his right (Article 140 CC). Limitations on animal owners are imposed primarily by the Animal Protection Act, which differentiates them according to the category of animals. In general, however, every animal needs to be treated humanely and man must respect them and provide animals with protection and care (Article 1 (1) second sentence and Article 5 APA). This requirement is manifested in the form of various orders and prohibitions (e.g., general prohibition of killing animals). Their infringement is sanctioned and may result in, e.g., a court-ordered forfeiture of an animal or a ban on the possession of any animal.[32]

CONCLUSION

Concluding the findings presented above, it should be stressed that dereification of animals does not mean their personification with resulting empowerment.[33] Consequently, animals do not have legal capacity. The legislature can change that, since legal subjectivity is a normative property. However, for obvious reasons, granting animals the ability to acquire and have rights would result in the need to appoint a guardian for them, which would entail numerous and very serious practical complications. It is, therefore, worth stressing that the protection of animals does not entail the need to grant them subjective rights. This goal can be achieved by requiring appropriate behaviour of humans towards animals and effectively enforcing the resulting obligations. In any event, the construct of subjective right is not the only instrument by which animal welfare can be effectively protected.[34]

In view of the above, the postulates of legal personification of animals, sometimes put forward by animal protection activists should be rejected as unnecessary,

[32] For more on the topic, see W. Jedlecka, *Z problematyki własności zwierząt*, [in:] *Własność w prawie i gospodarce*, ed. U. Kalina-Prasznic, Wrocław 2017, pp. 145–157; K. Piernik-Wierzbowska, *Systematyka i zagadnienie własności zwierząt oraz ich statusu prawnego w kontekście problematyki odpowiedzialności za szkody przez nie wyrządzane*, "Studia Iuridica Toruniensia" 2015, vol. 16, pp. 225–233; E. Niemiec, *Status zwierzęcia w polskim prawie cywilnym a ochrona humanitarna zwierząt – wybrane przykłady nieadekwatności*, [in:] *Prawo zwierząt do ochrony przed cierpieniem. Wybrane problemy*, eds. J. Helios, W. Jedlecka, Toruń 2019, pp. 113–131.

[33] As M. Nazar (*op. cit.*, p. 138) rightly noted, "A subjective right, *ex definitionae*, can only be associated with an entity and not with an object that has no legal subjectivity (personality) in a normative sense. Something that is not a thing does not become *ipso iure* a subject to legal relationship. The matter of a civil-law relationship may contain not only tangible assets […], and legal subjectivity is a normative characteristic granted by a legal norm".

[34] Cf. remarks concerning the so-called legal reflexes: Z. Radwański, *Koncepcja praw podmiotowych osobistych*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1988, no. 2, p. 15.

unrealistic and undermining the "stable and rational order of the legal system".[35] They are usually justified by ethical considerations, emotional motives and numerous, often very drastic, cases of animal abuse. The latter, however, shows the weakness of the state apparatus and not the need to grant animal rights. Therefore, it is more important (even more important than the normative procedure of dereification of animals itself) to increase the effectiveness of enforcement of the rules already in force aimed at protecting animals. Also worthy of support are the proposals *de lege ferenda* ("for the law as it should stand"), which include: prohibition of the use of certain technologies currently used in animal production; phasing out of certain animal production; strengthening the financial and human resources of the Veterinary Inspectorate; as well as the extension of the powers of social organizations responsible for animal protection. Furthermore, efforts should be made to raise public awareness in this area.[36] There is no doubt that more good for improving the fate of animals and the environment, in general, is now done through actions promoting a vegan diet than pushing for new legal solutions.

As regards the opinions in which the view presented herein is considered anachronistic, these can be easily falsified. Most of them are based on general slogans that add little to the legal discourse. Usually, they do not contain proposals of specific legislative solutions or a discussion of their possible implications for the functioning of the entire legal system and social relations. Most often, the authors of such opinions demand the empowerment of animals without a simultaneous, precise indication of which specific groups of animals would be covered by this procedure and what specific rights they would obtain.[37] Moreover, these opinions are only seemingly progressive, as they do not provide for any qualitative difference

[35] See M. Nazar, *op. cit.*, p. 139. Similarly E. Łętowska, *op. cit.*, pp. 86–92; R. Kmiecik, *„Dereifikacja" zwierząt czy antropomorfizm prawniczy?*, [in:] *Prawna…*, pp. 185–187; G. Rejman, *Ochrona prawna zwierząt*, "Studia Iuridica" 2006, vol. 46, p. 256; A. Ławniczak, *Ideologia praw zwierząt*, "Studia Erasmiana Wratislaviensia" 2010, no. 4, pp. 450–454; H. Izdebski, *Prawa zwierząt czy prawo zwierząt?*, [in:] *Status zwierzęcia. Zagadnienia filozoficzne i prawne*, eds. T. Gardocka, A. Gruszczyńska, Toruń 2012, pp. 31–42; M. Goettel, *op. cit.*, p. 47; A. Nałęcz, *Ochrona zwierząt a postęp cywilizacyjny*, [in:] *Wpływ przemian cywilizacyjnych na prawo administracyjne i administrację publiczną*, eds. J. Zimmermann, P.J. Suwaj, Warszawa 2013, p. 676; W. Radecki, *op. cit.*, pp. 53–54.

[36] M. Stefaniuk, *Environmental Awareness in Polish Society with Respect to Natural Resources and Their Protection (Overview of Survey Research)*, "Studia Iuridica Lublinensia" 2021, vol. 30(2), pp. 357–375.

[37] For example, see J. Białocerkiewicz, *Status prawny zwierząt. Prawa zwierząt czy prawna ochrona zwierząt*, Toruń 2005, pp. 264–267; A. Breczko, *Od rzeczy do podmiotu. Praktyczne implikacje etyki ochrony zwierząt*, "Białostockie Studia Prawnicze" 2013, no. 14, pp. 17–28; A. Elżanowski, T. Pietrzykowski, *Zwierzęta jako nieosobowe podmioty prawa*, "Forum Prawnicze" 2013, no. 1, pp. 24–27; T. Pietrzykowski, *Problem podmiotowości prawnej zwierząt z perspektywy filozofii prawa*, "Przegląd Filozoficzny – Nowa Seria" 2015, no. 2, pp. 253–258; D. Probucka, *Prawa zwierząt*, Kraków 2015, pp. 305–311; M. Janowski, *Status prawny zwierząt a ich kategoryzacja biologiczna*, "Archiwum Filozofii Prawa i Filozofii Społecznej" 2020, no. 4, pp. 36–41.

in animal protection. This is best evidenced by the fact that they allow the maintenance of "culturally established forms of animal exploitation" (such as breeding and killing for food, scientific experiments, keeping in zoos), which means that in the case of animal empowerment, the scope of their humane protection would still be determined by human needs just like it is today.

REFERENCES

Literature

Białocerkiewicz J., *Status prawny zwierząt. Prawa zwierząt czy prawna ochrona zwierząt*, Toruń 2005.

Breczko A., *Od rzeczy do podmiotu. Praktyczne implikacje etyki ochrony zwierząt*, "Białostockie Studia Prawnicze" 2013, no. 14, **DOI: https://doi.org/10.15290/bsp.2013.14.01**.

Daniłowicz W., *Prawo polowania*, Warszawa 2018.

Duraj M., *Rasy niebezpieczne psów w prawie polskim i w prawie niektórych landów niemieckich*, "Przegląd Prawa Publicznego" 2012, no. 11.

Dzik J., *Zoologia. Różnorodność i pokrewieństwa zwierząt*, Warszawa 2015.

Elżanowski A., Pietrzykowski T., *Zwierzęta jako nieosobowe podmioty prawa*, "Forum Prawnicze" 2013, no. 1.

Gniewek E., *Komentarz do art. 45*, [in:] *Kodeks cywilny. Komentarz*, eds. E. Gniewek, P. Machnikowski, Legalis 2019.

Goettel M., *Sytuacja zwierzęcia w prawie cywilnym*, Warszawa 2013.

Grabowska B., *Zmiany relacji człowiek–zwierzę, czyli cena postępu*, "Kultura i Wartości" 2014, no. 2.

Gruszecki K., *Rybactwo śródlądowe. Komentarz*, Warszawa 2020.

Gudowski J., Rudnicka J., Rudnicki G., Rudnicki S., *Komentarz do art. 182*, [in:] *Kodeks cywilny. Komentarz*, vol. 3: *Własność i inne prawa rzeczowe*, ed. J. Gudowski, Warszawa 2016.

Izdebski H., *Prawa zwierząt czy prawo zwierząt?*, [in:] *Status zwierzęcia. Zagadnienia filozoficzne i prawne*, eds. T. Gardocka, A. Gruszczyńska, Toruń 2012.

Janowski M., *Status prawny zwierząt a ich kategoryzacja biologiczna*, "Archiwum Filozofii Prawa i Filozofii Społecznej" 2020, no. 4, **DOI: https://doi.org/10.36280/AFPiFS.2020.4.29**.

Jedlecka W., *Z problematyki własności zwierząt*, [in:] *Własność w prawie i gospodarce*, ed. U. Kalina-Prasznic, Wrocław 2017.

Kąkol P., *Biologia. Kompendium*, Warszawa 2010.

Kmiecik R., *„Dereifikacja" zwierząt czy antropomorfizm prawniczy?*, [in:] *Prawna ochrona zwierząt*, ed. M. Mozgawa, Lublin 2002.

Kruk E., *Polish and Estonian Regulations on Homeless (Stray) Animals*, "Studia Iuridica Lublinensia" 2021, vol. 30(1), **DOI: http://dx.doi.org/10.17951/sil.2021.30.1.145-166**.

Ławniczak A., *Ideologia praw zwierząt*, "Studia Erasmiana Wratislaviensia" 2010, no. 4.

Łętowska E., *Dwa cywilnoprawne aspekty praw zwierząt: dereifikacja i personifikacja*, [in:] *Studia z prawa prywatnego. Księga pamiątkowa ku czci Profesor Biruty Lewaszkiewicz-Petrykowskiej*, ed. A. Szpunar, Łódź 1997.

Nałęcz A., *Ochrona zwierząt a postęp cywilizacyjny*, [in:] *Wpływ przemian cywilizacyjnych na prawo administracyjne i administrację publiczną*, eds. J. Zimmermann, P.J. Suwaj, Warszawa 2013.

Nazar M., *Normatywna dereifikacja zwierząt – aspekty cywilnoprawne*, [in:] *Prawna ochrona zwierząt*, ed. M. Mozgawa, Lublin 2002.

Niemiec E., *Status zwierzęcia w polskim prawie cywilnym a ochrona humanitarna zwierząt – wybrane przykłady nieadekwatności*, [in:] *Prawo zwierząt do ochrony przed cierpieniem. Wybrane problemy*, eds. J. Helios, W. Jedlecka, Toruń 2019.

Niemiec E., Nowakowska M., *Hodowla rasowych psów i kotów a ochrona zwierząt – analiza polskich rozwiązań prawnych*, "Przegląd Prawa i Administracji" 2017, vol. 108, **DOI: https://doi.org/10.19195/0137-1134.108.7**.

Niezbecka E., *Komentarz do art. 45*, [in:] *Kodeks cywilny. Komentarz*, vol. 1: *Część ogólna*, ed. A. Kidyba, LEX/el. 2012.

Pawlak W., *Komentarz do art. 53 i 54*, [in:] *Kodeks cywilny. Część ogólna. Komentarz do wybranych przepisów*, ed. J. Gudowski, LEX/el. 2018.

Pazdan M., *Pozycja prawna zwierząt*, [in:] *System Prawa Prywatnego*, vol. 1: *Prawo cywilne – część ogólna*, ed. M. Safjan, Legalis 2012.

Pązik A., *Komentarz do art. 2*, [in:] A. Pązik, M. Słomski, *Prawo łowieckie. Komentarz*, LEX/el. 2015.

Piernik-Wierzbowska K., *Systematyka i zagadnienie własności zwierząt oraz ich statusu prawnego w kontekście problematyki odpowiedzialności za szkody przez nie wyrządzane*, "Studia Iuridica Toruniensia" 2015, vol. 16.

Pietrzykowski T., *Problem podmiotowości prawnej zwierząt z perspektywy filozofii prawa*, "Przegląd Filozoficzny – Nowa Seria" 2015, no. 2.

Probucka D., *Prawa zwierząt*, Kraków 2015.

Radecki W., *Ustawy o ochronie zwierząt. Komentarz*, Warszawa 2015.

Radwański Z., *Koncepcja praw podmiotowych osobistych*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1988, no. 2.

Rejman G., *Ochrona prawna zwierząt*, "Studia Iuridica" 2006, vol. 46.

Skowrońska-Bocian E., Warciński M., *Komentarz do art. 45*, [in:] *Kodeks cywilny*, vol. 1: *Komentarz. Art. 1–449[10]*, ed. K. Pietrzykowski, Legalis 2020.

Stefaniuk M., *Environmental Awareness in Polish Society with Respect to Natural Resources and Their Protection (Overview of Survey Research)*, "Studia Iuridica Lublinensia" 2021, vol. 30(2), **DOI: DOI: http://dx.doi.org/10.17951/sil.2021.30.2.357-379**.

Tokarski R., *Konceptualizacja zwierząt w potocznej świadomości językowej*, [in:] *Prawna ochrona zwierząt*, ed. M. Mozgawa, Lublin 2002.

Walczak M., *Czy owad to zwierzę?*, "Zoophilologica. Polish Journal of Animal Studies" 2015, no. 1.

Zaporowska Z., *Odpowiedzialność za zwierzę jako produkt niebezpieczny*, "Rejent" 2009, no. 1.

Online sources

Kręgowce, [in:] *Encyklopedia PWN*, https://encyklopedia.pwn.pl/haslo/kregowce;3927415.html [access: 19.04.2021].

Zwierzę, [in:] *Encyklopedia PWN*, https://encyklopedia.pwn.pl/haslo/zwierze;4002515.html [access: 19.04.2021].

Zwierzę, [in:] *Słownik języka polskiego PWN*, https://sjp.pwn.pl/sjp/zwierze;2547682.html [access: 19.04.2021].

Zwierzę, [in:] *Wielki słownik języka polskiego*, https://wsjp.pl/index.php?id_hasla=12128&id_znaczenia=4610116&l=26 [access: 19.04.2021].

Legal acts

Act of 25 February 1932 on the amendment of the Regulation of the President of the Republic of 22 March 1928 on the protection of animals (Journal of Laws 1932, no. 29, item 287).

Act of 23 April 1964 – Civil Code (consolidated text, Journal of Laws 2020, item 1740).

Act of 18 April 1985 on inland fishing (consolidated text, Journal of Laws 2019, item 2168).
Act of 13 October 1995 – Hunting Law (consolidated text, Journal of Laws 2020, item 1683, as amended).
Act of 21 August 1997 on the protection of animals (consolidated text, Journal of Laws 2020, item 638).
Act of 16 April 2004 on the protection of nature (consolidated text, Journal of Laws 2020, item 55, as amended).
Act of 20 July 2017 – Water Law (consolidated text, Journal of Laws 2020, item 310, as amended).
Regulation of the President of the Republic of Poland of 22 March 1928 on the protection of animals (consolidated text, Journal of Laws 1932, no. 42, item 417).
Regulation of the Minister of Environment of 11 March 2005 on defining the list of game species (Journal of Laws 2005, no. 45, item 433).

Case law

Resolution of the Supreme Court of 12 April 1988, III CZP 22/88, LEX no. 3474.
Ruling of the Supreme Court of 9 March 1973, I CR 58/73, LEX no. 2711470.

ABSTRAKT

Artykuł ma charakter naukowo-badawczy, a jego zasadniczym celem jest określenie statusu prawnego zwierząt oraz ustalenie, w jakim stopniu normujące go regulacje prawne wpływają na poziom ochrony humanitarnej zwierząt w Polsce. Realizacja tego zadania badawczego wymagała przede wszystkim dookreślenia pojęcia „zwierzę", omówienia zasady dereifikacji i nakreślenia jej zasięgu normatywnego, a także przedstawienia charakterystyki zwierzęcia jako szczególnego dobra materialnego. Potrzebę podjęcia tytułowego zagadnienia determinuje szczególnie świadomość, że wraz z rozwojem cywilizacyjnym zmienia się sposób życia człowieka i jego stosunek do zwierząt. W każdym razie dokonujące się w ostatnich dziesięcioleciach przemiany w tym obszarze czynią aktualnym tytułowe zagadnienie i skłaniają do weryfikacji wcześniejszych ustaleń. Z założenia przeprowadzone badania mają przyczynić się do wypracowania optymalnego modelu prawnej ochrony zwierząt i rozwoju nauki prawa. Samo zaś upowszechnienie otrzymanych wyników ma prowadzić do podniesienia poziomu świadomości społecznej w przedmiocie statusu prawnego zwierzęcia, co jest jednym z warunków dalszego postępu cywilizacyjnego.

Słowa kluczowe: zwierzę; dobro materialne; status prawny; dereifikacja; ochrona humanitarna; prawna ochrona zwierząt; Polska