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# Animal Protection in Environmental Law *

## Introduction

Animals, from a different perspective, have long been the subject of legal regulation. They are also the subject of interest in legal philosophy and doctrine.[1] The current law, both international and domestic, indicates a variety of normative contexts in which animals occur. The protective context dominates, manifesting itself in particular in: 1) keeping the animal as a valuable element and resource of the natural environment, 2) treating the animal as a sentient being, also suffering – and in this sense requiring care and respect, 3) protecting man against the animal, above all, all dangerous.

Protection is guided by natural (environmental) motives related to treating the animal as a component of nature and a fragment of biological diversity, economic motives – treating animals as a certain economic resource, also important for human biological existence, sanitary considerations (aimed at protecting man and other animals against [animal-borne] diseases), and "humanitarian" motives arising from the development of human culture, civilization, and, perhaps paradoxically, a certain departure from anthropocentrism by recognizing that some principles of human

* The paper is a scientific result of the research project "Natura 2000 Areas in Polish, Czech and Slovak Law. Comparative Analysis", financed by the National Science Center (No. UMO-2014/13/B/HS5/01318).

1 See, e.g., *Prawna ochrona zwierząt*, red. M. Mozgawa, Lublin 2002; J. Białocerkiewicz, *Status prawny zwierząt. Prawa zwierząt czy prawna ochrona zwierząt*, Toruń 2005; *Status zwierzęcia. Zagadnienia filozoficzne i prawne*, red. T. Gardocka, A. Gruszczyńska, Toruń 2012.

behavior should be transferred to human behavior towards animals. The motives indicated are not mutually exclusive.

It seems that more specific areas of regulation are emerging on the foundation of this protective orientation of animal law. For example, regulations governing trade in animals, regulations on the transport of animals, veterinary and sanitary regulations, provisions indicating the conditions to be maintained at the place of residence of the animals, provisions on the slaughter of animals, provisions on obtaining animals (e.g. fishing, hunting), provisions governing the handling of endangered species, provisions on animals used for scientific and experimental purposes. Often, there is a difference between legal regulations that apply to animals living under the direct care of man (especially farm animals, domestic animals) and the regulations dealing with animals living "in the wild", in forms of nature protection, or – more broadly – in the natural environment. Levels of regulation – both at national and supranational level – overlap these divisions and classifications. As for the methods of regulation, there are administrative, criminal or civil law instruments.

In this perspective, the question arises whether animal law (legal protection of animals) can and should be classified as environmental law, and what the consequences may be. It cannot be denied that some of the above provisions are part of environmental law. However, it is necessary to consider whether the broadly understood legal protection of animals can be contained within the scope of environmental law.

## Concept, subject, directions and motives of environmental law

In foreign literature, especially the one related to international and EU law, the term "environmental law" is exposed at least in the definition layer. This is the most accurate way to translate this term. Take, for example, the work of Philippe Sands[2] (he defines international environmental law as material, procedural and organizational regulations of international law whose primary purpose is environmental protection), as well as other items.[3] The term "environmental law" also holds primacy in EU environmental (protection) law. Such a convention was adopted in particular by Ludwig Kramer,[4] Jan Jans and Hans Vedder,[5] or Martin Hedemann-Robinson.[6]

The subject of environmental law is very extensive. It is the environment understood as all natural elements, including those transformed as a result of human activity, in particular the surface of the earth, minerals, water, air, landscape, climate and other

[2] P. Sands, *Principles of International Environmental Law*, Cambridge 2003, p. 15.

[3] D. Bodansky, J. Brunnee, E. Hey, *The Oxford Handbook of International Environmental Law*, New York 2010.

[4] L. Kramer, *EU Environmental Law*, London 2012, p. 4.

[5] J.H. Jans, H.H.B. Vedder, *European Environmental Law*, Groningen 2008, p. 3.

[6] M. Hedemann-Robinson, *Enforcement of European Union Environmental Law*, London 2007, p. 10.

elements of biodiversity, as well as the interaction between these elements (Art. 3 point 39 of the Environmental Protection Law of 27 April 2001[7]). According to Art. 5 point 20 of the Act on Nature Protection of 16 April 2004,[8] the natural environment is a landscape together with inanimate nature creations and natural and transformed natural habitats with plants, animals and fungi occurring on them. The animals fall within the environmental definitions cited. Environmental protection is often equated with the protection of biodiversity, which the Convention on Protection of Biological Diversity defines as the diversity of all living organisms from all sources including, among others, terrestrial, marine and other aquatic ecosystems and ecological assemblies of which they are part (Art. 2).

Maria Kenig-Witkowska, analyzing the concept of the environment in EU law, states the general nature of the definition of the natural environment including everything that is universally and intuitively included in this formulation.[9] This wide range of the concept of environment sometimes leads to the conclusion that the concept of environmental law is useless; what a lawyer specializing in water protection has in common with a lawyer dealing with regulations regarding endangered plant species.[10] Following such a comprehensive subject, there are directions of environmental law regulation, among which the following are traditionally indicated: 1) regulating the protection against pollution (emission law), 2) regulating the protection of naturally valuable phenomena (nature protection law), 3) regulating the use of natural resources, 4) regulating procedural and organizational issues, 5) regulating product control from the point of view of environmental protection requirements.[11]

Individual elements of the environment are also an impulse to create fields or sub-disciplines under broadly understood environmental law. Based on this principle, for example, water law, geological and mining law, nature protection law or recently climate protection law stand out. Some environmental impacts of human existence and economic activity also serve to create disciplines within environmental law – I will illustrate this with the waste law. Legal regulations determining the principles of shaping space are also included in the scope of environmental law. I am thinking here in particular of landscape law (after all, landscape is a normative element of nature and the foundation of the natural environment) together with the provisions on spatial development.

Obviously, some definitions, divisions or classifications can be discussed, showing their imprecision, and some views of the science of law may also be questioned. Certainly,

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[7] Journal of Laws of 2019, item 1396.

[8] Journal of Laws of 2018, item 1614.

[9] M.M. Kenig-Witkowska, *Prawo środowiska Unii Europejskiej. Zagadnienia systemowe*, Warszawa 2005, p. 10.

[10] *Environmental Law and Policy. Nature, Law and Society*, eds. Z. Plater, R. Abrams, W. Goldfarb, R. Graham, L. Heinzerling, D. Wirth, New York 2004, p. 5.

[11] J. Sommer, *Efektywność prawa ochrony środowiska i jej uwarunkowania – problemy udatności jego struktury*, Wrocław 2005, pp. 39–40.

however, the scope of the term "environment" is huge, and, thus, the legal regulation is also devoted to it. There is no doubt that environmental issues are becoming more "media" and are gaining political significance, both internationally and nationally.

There are two basic motives in the legal regulation of the environment and its protection. The first is expressed by these legal provisions, which are intended primarily to protect, preserve, not deteriorate, i.e. what was formerly called conservation of natural resources and creations.[12] In the Act on nature protection, the literal confirmation of this idea is the very title of the Act, but also the content of the legal regulation, in which the emphasis is much more on protection than on use. In particular, the objectives of nature protection indicated in Art. 2(2) are primarily conservative (protective). Chapter 9 of the Act is entitled "Management of nature resources and components", but the provisions that make it up clearly show that this is about the management oriented towards ensuring sustainability, optimal number, protection of genetic diversity (Art. 117 section 1), or about such management of inanimate nature, which will provide the protection of other resources, creations and components of nature, preservation of particularly valuable inanimate creations, as well as efficient use of space (Art. 121(1) of the Nature Conservation Act). The second motive is related to the use of the environment, i.e. prudent, sustainable and rational use of its resources. It can be argued that the latter idea aptly corresponds to the term "sustainable development". It seems that the latter motive plays a leading role in the Environmental Protection Law. I read it in such a way that, although it explicitly refers to environmental protection in linguistic terms, the "first fiddle" is played by regulations specifying the use of the environment and its resources, while the protective aspect is "somewhat" in the background. In other words, using environmental resources should be rational, sustainable, and organized in such a way as to eliminate, or at least reduce, negative effects on the environment. This convention includes provisions, for example, on the use of the environment (which is obvious but may be subject to certain conditions).

## Directions of legal protection of animals

Most often, legal literature on the subject suggests that there are three directions of legal protection of animals.[13] First of all, it is traditionally understood environmental law, including nature protection law, where we deal primarily with conservative protection, especially with species protection, restoration of animal population, limitation on the possibility of obtaining wild animals, generally ensuring continuity of existence of animal species as a legal goal of nature protection. The second (classic) direction of regulation

[12] W. Radecki, *Zarys dziejów prawnej ochrony przyrody i środowiska w Polsce*, Kraków 1990, pp. 35–37.

[13] L. Jastrzębski, *Prawo ochrony środowiska w Polsce*, Warszawa 1990, p. 106ff.; W. Radecki, *Ustawy o ochronie zwierząt. Komentarz*, Warszawa 2015, p. 15.

appears on the edge of the conservative protection, namely preservation of use value. It is also included in nature protection, and its specificity is sometimes expressed by the term "nature protection *sensu largo*". This is primarily the Hunting Act of 1995, the Inland Fisheries Act of 1985 or the Fisheries Act of 2014. What connects them is that they capture a given activity as environmental protection, and, at the same time, regulate the principles of obtaining or using animals for economic, recreational or cultivation purposes. This aptly reflects the legal terms of a sustainable economy, for example, in hunting, fishing, agriculture or forestry. The third direction is best reflected in the Act on the Protection of Animals of 1997[14] and the Act on the Protection of Animals Used for Scientific or Educational Purposes of 2015.[15] These acts create a framework for protecting animals against suffering, taking into account the needs of the animal – in legal terms this is called "humane treatment of animals". The Act on Animal Health Care Facilities of 2003[16] can also be included here. Usually, the scope of interest in environmental law includes the above-mentioned first and second directions of legal protection of animals. If we look at Polish legal literature, especially in the field of environmental law, then the fundamental positions treat these three directions of legal regulation of animal protection quite unanimously, and, thus, include them in the scope of environmental law.

## Animals in international and EU environmental law

The doctrine of international environmental law emphasizes the transition from the protection of specific species to the protection of biodiversity. The evolution of international nature protection has progressed from the protection of individual species to the protection of ecosystems and further – the protection of biodiversity. Biodiversity is a broad concept, and covers not only wild species, but also domesticated as well as breeding ones. Discussing the Convention on Biological Diversity, Anna Przyborowska-Klimczak pointed out that its feature is that the protection of species refers not only to wild animals, but also to domesticated or breeding species that were influenced by humans to meet their needs.[17] Therefore, also in the acts of international environmental law we find arguments allowing to combine different directions of animal protection. I take the Convention on Biological Diversity (Rio de Janeiro, 1992) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Washington, 1973) as the flagship examples of international environmental law. It would be trivial to mention EU legislation on the environment and its protection, so I will indicate only two less known items. First, a fragment of

[14] Journal of Laws of 2019, item 122.

[15] Journal of Laws of 2019, item 1392.

[16] Journal of Laws of 2017, item 188.

[17] A. Przyborowska-Klimczak, *Ochrona przyrody. Studium prawnomiędzynarodowe*, Lublin 2004, p. 130.

the Community plan adopted in 2006 for the protection and welfare of animals. The European Parliament emphasized that animal protection is an expression of humanity and a challenge for European civilization and culture.

Secondly, the Protocol on the protection and good treatment of animals, which is an annex to the Amsterdam Treaty. Additionally, in foreign literature on environmental law and nature protection, various directions of animal protection are part of the environmental protection bracket. And so in one of the German comments on the Act on nature protection there is a position that the general idea of nature protection is developing in various areas of law, including the Act on the protection of animals providing for ethical protection of animals. Also in the Czech Republic, as I mention after Wojciech Radecki, the issue of protecting animals against bullying is one of the provisions in the field of nature protection.

## Animals as the subject of standardization of the Environmental Protection Law and the Nature Conservation Act

In the Environmental Protection Act, animals are mentioned in the following provisions:

- Art. 73 section 2 point 2: Design of communication lines, pipelines and other line objects in a way that ensures the movement of wild animals,
- Art. 81 section 4 point 1: Detailed rules for the protection of animals threatened with extinction are set out in the provisions of the Act on nature protection,
- Art. 81 section 4 point 3: Detailed rules for the protection of wild animals – references to the Fisheries Act, the Nature Conservation Act, Hunting Law Act,
- Art. 81 section 4 point 4: Detailed rules for the protection of farm and domestic animals are set out in the provisions of the Act on the protection of animals.

Section VIII of the Environmental Protection Act, entitled "Animal and plant protection", is entirely devoted to animal protection, which consists of:

- Art. 127 section 1 indicating the directions of animal (and plants) protection:
  1) preserving valuable ecosystems, biodiversity and maintaining natural balance,
  2) creating conditions for the proper development and optimal fulfillment of biological function by the animals in the environment,
  3) preventing or limiting negative impacts on the environment that could adversely affect the resources and condition of animals,
  4) preventing threats to natural complexes and creations of nature,
- Art. 127 section 2, indicating examples of instruments with the help of which animal protection is carried out. The Art. covers, among others, protecting natural valuable areas and objects, establishing species protection, limiting the possibilities of obtaining wild animals, restoring animal populations and ensuring reproduction of wild animals, protecting forests against pollution and fires,

- Art. 128: Protection of animals in training areas, for example, by placing proving grounds in areas of low nature value or marking breeding places for animals,
- Art. 400a section 1 point 28 including financing of environmental protection projects related to the protection and restoration of protected animal species.

In turn, in the Act on Nature Protection, the following provisions apply directly to animals:

- Art. 2 section 2 of the Act on Nature Protection, expressing its meaning and defining the subject, provides for the preservation, sustainable use and renewal of resources, creations and components of nature such as wild animals, animals under species protection, and migratory animals,
- Art. 2 section 2: among the objectives of nature protection one may find ensuring continuity of animal species, including their habitats, by maintaining or restoring them to their proper conservation status,
- Art. 5 point 11: a zoo as a place of keeping and displaying live animals of wild species,
- Art. 5 point 12: a refuge as a place with favorable conditions for the existence of endangered animals or rare species,
- Art. 5 point 13: animal rehabilitation center as a place where treatment and rehabilitation of wild animals that require periodic human care in order to restore them to the natural environment are carried out,
- Art. 5 point 15a: wild animal is a non-breeding animal as well as an animal introduced into the natural environment for the purpose of rebuilding or feeding the population,
- Art. 5 point 18: the habitat of animals is the area of their occurrence during the whole life or at any stage of the animal's development,
- Art. 5 point 20: an animal as part of the natural environment, also created by natural habitats in which animals occur,
- Art. 6 clause 1 point 10: an animal as an object of species protection understood as a form of nature protection,
- Art. 15 section 1 point 3: an animal as a subject of protection in a national park, covered by appropriate prohibitions,
- Art. 47: an animal of a species threatened with extinction in the natural environment as an object of *ex situ* protection in a zoo, aimed at restoring individuals of these species to the natural environment,
- Art. 57 section 1: an animal as an object of protection in the program of protection of endangered species of animals developed by the General Directorate for Environmental Protection,
- Art. 64 section 1: animals of species listed in the Annexes to Council Regulation 338/97 on the protection of species of wild fauna and flora by regulating trade therein in the context of the obligation of their holder to register,
- Art. 117 section 1: an indication of the management directions of wild animals to ensure their sustainability, optimal numbers and protection of genetic diversity,

- Art. 119: prohibition to erect near the sea, lakes and other water reservoirs, rivers and canals of building objects preventing or obstructing wild animals access to water,
- Art. 125: indication of situations justifying the killing of animals (and destruction of animal habitats) not covered by forms of nature protection,
- Art. 126 section 1: legal effects of protection in the context of compensation for damage caused by certain animals (for example, wolf–livestock conflict).

Cited provisions of both laws rather indisputably point to such shaping of the subject of environmental law, where the most important are species of wild animals, threatened with extinction, for various reasons requiring protection. Of course, one can point to the arguments for the acceptance that all animals, not just wild or protected species, fall under the scope of interest in environmental law. For example, the wording of Art. 125 of the Nature Conservation Act indicates a closed catalog of situations where animals can be killed, regardless of whether they are covered by any special protection, including a form of nature protection. The content of Art. 2(1) of the Nature Conservation Act states that the regulation provides for nature conservation within the meaning of the Act. And although it does not refer to animals, or greenery in cities and villages, it is by adding the phrase "within the meaning of the Act" that the legislator enables to assume that beyond this Act, animal protection is included in nature and environmental protection. This makes sense when we agree that nature protection is not covered only by the Nature Conservation Act. When Ewa Symonides writes about historical and religious motives of protection, she refers to all "creatures", not only to wild or covered by some form of special legal protection.[18] In addition, the question may be asked, what is the difference between the legal protection of trees, regardless of whether they occur in the forest, on a private plot or in a national park – indisputably included in environmental law (although regulated by other legal acts) and the legal protection of animals.

## The importance of placing animal protection provisions

The question arises as to the consequences of placing all animal protection provisions, especially in the context of appropriate (humanitarian) treatment under environmental law. Is it a purely theoretical, academic dispute, or is it of greater practical significance? In other words, does assigning these provisions to legal regulation of environmental protection strengthen the legal protection of animals? There is a view that such an attribution enables the transfer of what has been worked out or interpreted from environmental law, including nature protection law, to the plane of animal protection in general. In this sense, it is possible to stave off possible interpretation problems and

[18] E. Symonides, *Ochrona przyrody*, Warszawa 2007, p. 67.

to "fill" some places in the animal protection acts.[19] One can raise the argument that everything depends on whether domestic and farm animals are included in the natural environment, biodiversity. If so, they thus fall under the scope of environmental law, because the provisions of environmental law relate to the protection of biodiversity. If not, this will exclude these animals from the legal interest in environmental protection. On the other hand, it is worth considering whether in environmental protection, and especially in the protection of animals, for example, endangered, rare or protected species, it is the same as in the postulate of such treatment of animals to spare them unnecessary suffering. I think that attempts to include all animal protection provisions in the scope of environmental law may raise doubts. Of course, I do not undermine the fact that all animals create biodiversity, and thus, the environment. Some statements of the doctrine go in this direction, as well as there are legal, international and domestic regulations. However, it is not that every animal protection law belongs to environmental law. It seems that some abuse is the attempt to include in the scope of environmental law provisions regulating humanitarian protection of animals, i.e. provisions that make up the third of the previously mentioned directions of animal protection. In environmental law, we do not perceive the animal as a single, individual being, capable of feeling. We treat them more as a representative of a larger whole (e.g. endangered species). In the area of Natura 2000, i.e. the European and national form of nature protection, it is not about the welfare of a particular animal but about ensuring the species and habitat such conditions that they constitute value from the point of view of European natural environment. Of course, instruments of environmental law, in particular bans against forms of nature protection, cover individual animal specimens. However, this is done in the light of the species' behavior and the impact of this species on an even greater whole – biodiversity. In humane or ethical protection of animals, the natural (environmental) value of the animal, the number of its species, or the fact that this species is threatened with extinction is of no importance. What matters is the animal itself, its welfare, the animal's experiences related to the feeling of pain or suffering. In other words, the basic difference lies in other protection motives. In environmental law, animals are treated as one of the elements of the natural environment (biodiversity) and function as part of a wider whole. The provisions on humane animal protection are not about the animal's suitability for the environment, but about its status. The legal regulations that state that an animal is not a thing, and the statements of some lawyers who give the animal something like legal subjectivity and even speak about animal rights seem to go in this direction. Although animals do not fit into the classic definition of the subjects of law, it is not entirely clear what they are from a legal point of view, since they are not things. However, the provisions regarding things apply to them, in matters not regulated by law.

The legal concept of dereification, i.e. the normative statement that an animal is not a thing, has its origin in Jeremy Bentham's treatise *An Introduction to the Principles of*

[19] W. Radecki, *Ustawy*…, pp. 34–35.

*Morals and Legislation*, published at the end of the 18th century. According to this lawyer and philosopher, the source of mistreatment of animals is treating them as things, which is derived from Roman law. Meanwhile, as Bentham pointed out, animals do suffer. Although its legal effects of dereification are considered to be quite doubtful, Ewa Łętowska rightly pointed out that the sense of the whole operation depended on whether law-enforcement bodies, including courts, would be willing and able to draw practical conclusions from dereification, translating them into improvement of animal welfare.[20] Mirosław Nazar accurately noted that normative dereification does not mean automatic impersonation.[21] Art. 5, ordering animals to be treated in a humane manner, has its legal definition. It seems that the proposals to include all animal protection provisions, including humanitarian protection, in environmental law may be missed for one more reason. Namely, humanitarian protection under the Animal Protection Act is *lex generalis* and applies to all animals. The Animal Protection Act is a general law that applies to matters not covered by specific provisions. Since the Hunting Law allows hunting and specifies its conditions, it cannot be assumed that killing an animal while hunting is contrary to the Animal Protection Act. This is indicated by the provision of Art. 6(1) item 6 of the Animal Protection Act, which prohibits killing animals, but with the exception of hunting. In the same way, the legislator treated fishing in accordance with the (inland) Fisheries and (maritime) Fisheries Acts. If it is allowed to obtain fish – pursuant to the Inland Fisheries Act, there are special provisions derogating from the prohibition of inflicting pain (due to the use of fishing tackle) resulting from the Act on the protection of animals. This is confirmed by the provision of Art. 6(1) point 2 referring to inland fisheries and maritime fisheries regulations.

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[20] E. Łętowska, *Dwa cywilnoprawne aspekty praw zwierząt: dereifikacja i personifikacja*, [in:] *Studia z prawa prywatnego. Księga pamiątkowa ku czci profesor Biruty Lewaszkiewicz-Petrykowskiej*, red. A. Szpunar, Łódź 1997, p. 86.

[21] M. Nazar, *Normatywna dereifikacja zwierząt – aspekty cywilnoprawne*, [in:] *Prawna ochrona zwierząt*, red. M. Mozgawa, Lublin 2002, p. 134.

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**Abstract:** The animal has become not only the subject of legal regulation, but also a kind of subject of law. It is treated legally as a living being, capable of suffering, requiring humane treatment. Animals are also an element of the natural environment. In the classic approach to environmental protection, the protection of animals was basically limited to wild species, or for example, those subjected to species protection. In the meantime, the question arises whether the scope of environmental law, including nature protection law, covers the protection of animals in general. This is done in the doctrine of international environmental law emphasizing the transition from the protection of specific species to the protection of biodiversity. The question arises whether treating each animal as a fragment of the natural environment contributes to strengthening its legal protection. The paper aims to answer the question of whether this approach is appropriate, and, thus, to confront the subject of environmental law with animals – without limiting them to protected species or those whose acquisition is legally regulated, for example, for economic reasons. It seems that attributing humane animal protection to environmental law is not justified.

**Keywords:** legal protection of animals; environmental law; dereification; nature conservation; biodiversity