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# Legal Protection of Homeless Animals and Prevention of Homelessness of Animals as a Mandatory Own Task for the Commune Self-Government

## Introduction

The subject of this study is the analysis of the commune's task within the scope of care for homeless animals and prevention of homelessness of animals, as well as legal instruments for its performance. It should be pointed out that it was not until 1997, the year in which the Animal Protection Act entered into force, when the animals were dereified.<sup>1</sup> The legislator granted animals the status of objects for which a special legal regime is in force, resulting from the obligations of a human, as well as public administration bodies towards them in terms of respect and care. Special care should be given to homeless animals and, because of the scale of the phenomenon, it has become a mandatory own task for communes.

On the one hand, it can be indicated that in the Polish law there are legal instruments for the proper performance of the task in the form of care for homeless animals

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<sup>1</sup> A. Nałęcz, *Ochrona zwierząt a postęp cywilizacyjny*, [in:] *Wpływ przemian cywilizacyjnych na prawo administracyjne i administrację publiczną*, red. P. Suwaj, J. Zimmermann, Warszawa 2013, p. 674; J. Białocerkiewicz, *Status prawny zwierząt. Prawa zwierząt czy prawna ochrona zwierząt*, Toruń 2005, p. 56.

and prevention of homelessness of animals, while on the other hand, communes in Poland still are not able to cope with the problem of homelessness of animals. Therefore, it should be considered whether legal regulations have been correctly shaped, or whether the problems related to homelessness of animals result from financial aspects and lack of social responsibility for the protection of animal rights and prevention of their homelessness.

The problem of homelessness of animals has usually been pushed to the margins of public discussion. Meanwhile, the problem in question is still alive. In Europe, we can distinguish countries that have successfully managed the issue of homelessness of animals (e.g. the Netherlands, Norway, or Sweden) and those that are still struggling with the problem of overcrowded shelters, like Bulgaria, Greece, Italy, Romania, or Poland.<sup>2</sup> What is more, shelters often do not meet the minimum standards, and therefore they can be called a certain kind of dying facilities.<sup>3</sup> This makes it necessary to analyse legal regulations defining the obligations of communes regarding care for homeless animals and prevention of their homelessness.

### **A programme of care for homeless animals and prevention of homelessness of animals as a form of performance of the commune's task within the scope of care for animals**

The obligation to provide care and protection for homeless animals is the own task of a commune. It was imposed on the commune pursuant to Art. 7 clause 2 of the Act of 8 March 1990 on Commune Self-Government (hereinafter referred to as CSA)<sup>4</sup> and Art. 11 clause 1 of the Act of 21 August 1997 on Animal Protection (hereinafter referred to as APA).<sup>5</sup> Pursuant to Art. 7 clause 2 of CSA, the issue of assigning a specific own task to a group of mandatory or voluntary tasks of a commune is resolved on the basis of substantive law. The ground-breaking change in the law for the issue of care for homeless animals took place on 1 January 2012, when the provision of Art. 11a of APA came into force in a new wording, which was given to it by Art. 1 point 9 of the Act of 16 September 2011, amending the Animal Protection Act and the Tidiness and Order Act.<sup>6</sup> In the provision of Art. 11a, the legislator indicated *expressis verbis* the obligation of the commune council to determine, by way of a resolution (annually by March 31), programmes of care for homeless animals and prevention of homelessness

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<sup>2</sup> K. Fiszdon, A. Boruta, *Problem bezdomności zwierząt*, „Przegląd Hodowlany” 2014, Nr 82, p. 34.

<sup>3</sup> Annual report on auditing shelters for 2017, <https://www.wetgiw.gov.pl/nadzorzweterynaryjny/schroniska-dla-bezdomnych-zwierzat> [access: 25.09.2019].

<sup>4</sup> Act of 8 March 1990 on Commune Self-Government (consolidated text, Journal of Laws of 2019, item 506).

<sup>5</sup> Act of 21 August 1997 on Animal Protection (consolidated text, Journal of Laws of 2019, item 122).

<sup>6</sup> Journal of Laws of 2011, No. 230, item 1373.

of animals, and also it indicated an open catalogue of elements of such a programme. This task was of a different nature according to the regulations in force until the end of 2011, when the activities undertaken by the commune in order to ensure protection of homeless animals were the commune's own task, but not its obligation.<sup>7</sup>

By introducing the amendment of 2011, the legislator aimed to enforce the obligations of the commune in order to care for and catch homeless animals. This task is inextricably linked to the duty of communes to ensure tidiness and order in their areas and to create the conditions necessary for maintaining them.<sup>8</sup> The performance of this obligation was not supported by the low effectiveness of preventing homelessness of animals, absence of catching them or leaving sick individuals without help on the streets. The justification for the amending bill showed that the legislator's objective was to prevent the extermination of sick animals that were caught too late, to improve the quality of conditions in shelters, and to strengthen the self-government's responsibility for generating homelessness of animals by the inhabitants.<sup>9</sup> After more than 7 years from the entry into force of the amendment, it is worth analysing the functioning of legal regulations, especially in terms of their effectiveness and efficiency, the reduction of the population of homeless dogs and cats, as well as improving the living conditions of homeless animals in shelters. It is also necessary to evaluate the social and organizational activities carried out in the form of tutoring and education of inhabitants in the field of popularization and expanding knowledge about humane way of treating animals.

The provision of Art. 11a of APA was initially an enumerative indication of the objective elements of the resolution constituting the programme. Then, the legislator, under the Act of 6 January 2017,<sup>10</sup> changed the nature of the enumeration included in Art. 11a clause 2 of APA to a non-exhaustive list while maintaining mandatory elements so as to give some flexibility to communes depending on the needs of a given self-government unit and its financial capabilities. Moreover, the amendment – under Art. 11 clause 3a of APA – made it possible to finance by the self-government the tasks consisting in sterilisation or castration of animals having owners. This competence, expressed *expressis verbis* in the provision, enables the lawful distribution of public funds by the self-government unit. This is an important element of protection against excessive reproduction of animals being *de facto* without care.

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<sup>7</sup> Also judicature: the decision of the Supreme Administrative Court of 13 March 2012, II OSK 564/12, LEX No. 1138204; the decision of the Provincial Administrative Court in Warsaw of 27 December 2011, IV SA/Wa 1703/11, LEX No. 1160578, and the doctrine: K. Właźlak, *Funkcja planowania gminy na przykładzie programu opieki nad zwierzętami bezdomnymi oraz zapobiegania bezdomności zwierząt*, „Przegląd Prawa Publicznego” 2015, Nr 4, p. 36.

<sup>8</sup> Art. 3 clause 2 point 14 of the Act of 13 September 1996 on Tidiness and Order (consolidated text, Journal of Laws of 2018, item 1454).

<sup>9</sup> Justification for the parliamentary bill amending the Animal Protection Act and the Tidiness and Order Act (Sejm paper No. 4257), Warsaw, 12 May 2011, [www.sejm.gov.pl](http://www.sejm.gov.pl) [access: 25.09.2019], pp. 8–9.

<sup>10</sup> Act of 15 November 2016 amending the Animal Protection Act (Journal of Laws of 2016, item 2102).

An unquestionable shortcoming of the regulation, however, is the lack of definition of the legal consequences of failure to adopt the programme by a commune's legislative body. Failure to adopt the programme in a given year is significant in terms of its impact, and causes substantial difficulties in the performance of these animal protection tasks, and some of them may even prove impossible to attain, particularly catching homeless animals.

Before the amendment of 2011, the problem of homeless animals was dealt with in general by about 61% of communes, and even less, 25% of communes, passed resolutions in this respect.<sup>11</sup> The Supreme Audit Office report for 2016 shows that although communes generally adopt programmes, they are not very effective as they do not contain many necessary provisions. The most important measures preventing homelessness of animals include their permanent marking and registration as well as castration or sterilisation, however, the majority of communes did not include such measures in the programmes of care for homeless animals and prevention of their homelessness. As many as 9 out of 11 audited communes did not take advantage of the possibility to introduce a plan of marking all animals in the commune. As a result, in case of loss of an animal, and even more so in case of abandoning it, it was difficult to find the current owner, and such an animal became homeless. Only when animals are marked, it is possible to effectively care for and distinguish homeless cats, i.e. cats that have escaped, strayed or been abandoned by people from free-living cats, a concept not defined by law, by commune services and city guards.<sup>12</sup>

According to Art. 11a clause 3a of APA, the programme may or may not include a plan for sterilisation or castration of animals in a commune, or a plan for their marking. It is therefore up to the commune to decide whether such a plan will be implemented at all. In addition, it is free to shape its provisions, to develop the terms and conditions according to which the above-mentioned actions will be carried out.<sup>13</sup>

It should therefore be noted that the inclusion of programme elements such as: a plan for marking animals in the commune and a plan for sterilisation or castration of animals in the commune, as optional raises doubts. These elements concern preventive measures, however, they are essential for the proper protection of animals and prevention of homelessness. However, one should agree with the freedom of shaping the procedures related thereto by the commune. This view is also reinforced by the standpoint of the Supreme Audit Office contained in the audit report, which indicates

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<sup>11</sup> Statistics for 2007 quoted in the justification for the parliamentary bill amending the Animal Protection Act and the Tidiness and Order Act (Sejm paper No. 4257), Warsaw, 12 May 2011, [www.sejm.gov.pl](http://www.sejm.gov.pl) [access: 25.09.2019], pp. 8–9.

<sup>12</sup> M. Rudy, *Program opieki nad zwierzętami bezdomnymi oraz zapobiegania bezdomności zwierząt*, [www.prawoweterynaryjne.pl/artykuly/program-opieki-nad-zwierzetami-bezdomnymi-oraz-zapobiegania-bezdomnosc-zwierzat/](http://www.prawoweterynaryjne.pl/artykuly/program-opieki-nad-zwierzetami-bezdomnymi-oraz-zapobiegania-bezdomnosc-zwierzat/) [access: 25.09.2019], p. 2.

<sup>13</sup> See judgment of the Provincial Administrative Court in Bydgoszcz of 20 March 2019, II SA/Bd 1351/18, LEX No. 2696736.

as a basic recommendation for executive bodies of self-governments the introduction of effective and comprehensive prevention limiting uncontrolled breeding of animals and promoting adoption.<sup>14</sup> Therefore, only the implementation of the animal marking plans and sterilisation or castration plans, indicated as optional in Art. 11a clause 3 and 3a of APA, may affect the effectiveness of commune's actions. What is more, the Supreme Audit Office report shows that communes did not carry out any information campaigns for animal owners or any real incentives to castrate or sterilize animals.<sup>15</sup>

However, on the website of the General Veterinary Inspectorate we can read statistics related to shelter audits. The latest published report from 2017 shows that in 2017, the number of dogs in shelters fell by 2.45% and the number of cats increased by 8.86% in comparison with 2016. The number of animals admitted to shelters was higher than in the previous reference period. In 2017, 74,765 dogs were admitted, as compared to 73,314 in 2016, and 27,205 cats were admitted in 2017 as compared to 25,367 in 2016. Data on the number of animals in shelters show that this number remains high all the time. It is worrying that despite measures taken to combat animal homelessness, the number of dogs staying in shelters in 2017 was comparable to previous years, and the number of cats in shelters increased significantly.<sup>16</sup>

In view of the above, it should be pointed out that legal regulations allowing for financing the castration of animals staying in shelters in accordance with Art. 11a of the Animal Protection Act, and promotion of such procedures among animal owners, also at the expense of the commune, are used ineffectively.

Audits of animal shelters have also been carried out. During the audits conducted in 545 animal shelters by district veterinarians, in 68 of them irregularities have been revealed, such as: deficiencies in infrastructure, inconvenient living conditions for animals, deficiencies in medical and veterinary care.<sup>17</sup> The still unsatisfactory condition of shelters in communes is a consequence of communes' mistakes in establishing rules and determining the precise amount of financial resources spent on entities responsible for providing care to homeless animals and cats living freely in the commune, including in the area of medical and veterinary services.<sup>18</sup> Pursuant to Art. 11a clause 5 of APA, the indication of the manner of spending financial resources allocated to the implementation of particular elements of the programme constitutes its mandatory element. Its omission or misapplication renders the local law absolutely

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<sup>14</sup> The Supreme Audit Office report for 2016, <https://www.nik.gov.pl/aktualnosci/nik-o-zapobieganiu-bezdomnosci-zwierzat.html> [access: 25.09.2019].

<sup>15</sup> *Ibidem*.

<sup>16</sup> Annual report of the Chief Veterinary Officer on the audits of animal shelters in 2017, <https://www.wetgiw.gov.pl/nadzor-weterynaryjny/schroniska-dla-bezdomnych-zwierzat> [access: 25.09.2019].

<sup>17</sup> *Ibidem*.

<sup>18</sup> Judgment of the Provincial Administrative Court in Cracow of 3 December 2013, II SA/Kr 852/13, LEX No. 1493112.

invalid.<sup>19</sup> By determining the means of spending, the provision of Art. 11a clause 5 of APA constitutes an obligation to indicate specific forms of using them, but also to point out the manner of acting in respect of their allocation aimed at achieving the objectives of the programme.<sup>20</sup> Only by linking the adopted amount of financial resources allocated to the implementation of the programme to a specific way of spending it, can one assume that it is not a fiction and it enables the actual performance of particular tasks, which are numerous, in accordance with the priorities adopted in the resolution. Moreover, expenditures related to the programme should be foreseen already at the stage of adopting the annual budget of the commune.

The performance of this task must, however, be connected with the possession of sufficient financial resources by communes. However, the proposed solution completely ignores the financial aspect of the implementation of new mandatory tasks by communes related to the care for homeless animals and prevention of their homelessness. Measures such as the actions in the Żukowice commune, where the programme ensures that a person who adopts a dog caught in the commune area will receive one-off reimbursement amounting to partial costs of its upkeep, meet with the approval.<sup>21</sup> Such incentives are intended to *de facto* reduce, over a longer period of time, the expenditure of communes on upkeep of animals in shelters.

Performance of the obligation to provide care for homeless animals must take into account the budgetary possibilities of the commune. The doctrine even allowed for the possibility of killing caught homeless animals if the commune is not able to provide proper care and it does not have a social organization that would undertake to run a shelter.<sup>22</sup> However, even serious financial problems of the commune cannot lead to passing the obligation to provide care for homeless animals in the commune onto its inhabitants.

### **Programme of care for homeless animals and prevention of homelessness of animals as a legal form of administration actions**

The basic forms of public administration action include: administrative acts and normative acts. In the doctrine, the subject of the legal nature of the programme of care for homeless animals and prevention of homelessness of animals is discussed quite

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<sup>19</sup> Judgment of the Provincial Administrative Court in Warsaw of 8 May 2019, VIII SA/Wa 10/19, LEX No. 2681624.

<sup>20</sup> Judgments of the Provincial Administrative Court in Warsaw of: 13 March 2019, VIII SA/Wa 7/19, LEX No. 2641285, 14 March 2019, VIII SA/Wa 86/19, LEX No. 2639390.

<sup>21</sup> Resolution No. IV/43/2019 of Żukowice Commune Council of 1 March 2019, on the adoption of a programme of care for homeless animals and prevention of homelessness of animals in the Żukowice commune in 2019, <http://bip.zukowice.pl/uchwala-nr-iv-43-2019> [access: 25.09.2019].

<sup>22</sup> W. Radecki, *Obowiązki gminy w zakresie ochrony zwierząt*, „Nowe Zeszyty Samorządowe” 2000, Nr 6, p. 34; K. Włażlak, *op. cit.*, p. 43.

often.<sup>23</sup> Pursuant to Art. 87 clause 2 of the Constitution of the Republic of Poland,<sup>24</sup> local laws are the sources of universally binding law of the Republic of Poland within the area of operation of the bodies that established them.

Art. 94 of the Constitution of the Republic of Poland states, in turn, that local self-government bodies and local government administration bodies, on the basis of and within the limits of authorisations contained in the statute, shall establish local laws binding in the area of operations of these bodies. The terms and procedure for issuing local laws have been defined in the statute. The above-mentioned constitutional principle has been reflected in Art. 40 clause 1 of CSA, according to which – on the basis of statutory authorizations – the commune has the right to issue local laws. The commune has the power to adopt local laws regulating specific areas of life of the local community within the subject which boundaries are strictly defined by law. The matter regulated by a normative act issued by a body is to result from a statutory authorisation and cannot exceed the scope thereof. This is confirmed by the content of para. 143 in connection with para. 115 of the Principles of Legislative Technique,<sup>25</sup> which states that the local law shall contain only provisions regulating the matters to be submitted for regulation in the authorising provision (statutory authorisation).

In order to assess whether an act has a character of local law, it needs to be examined. It is necessary to verify who the addressee of the norm of conduct is and what the basis for the adoption of the act was. The character of a legal act is determined by the legal basis and the matter regulated therein. At the same time, the act of local law must be abstract and have general characteristics. However, such an act does not have to be addressed to all residents. The point is that it should be addressed at least to a specific group of addressees.

There were no disputes related to the legal nature of the programme which was considered as the planning act<sup>26</sup> under the Animal Protection Act in the wording in force before 1 January 2012. It is a forecast, a plan; but it did not create obligations and rights of citizens, however, after the amendment of 2011, a dilemma arose which was not ended by the amendment of 2016.

Doctrine, as well as judicature is not uniform with regard to the classification of programmes for the care of homeless animals and the prevention of homelessness of animals. It should be borne in mind that this act has a differentiated normative character as it contains norms of a mixed nature, i.e. abstract and concrete. On the one

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<sup>23</sup> K. Właźlak, *op. cit.*, pp. 36–38; E. Kruk, *Ewolucja i charakter prawny gminnych programów opieki nad zwierzętami bezdomnymi oraz zapobiegania bezdomności zwierząt*, „Studia Prawnicze i Administracyjne” 2018, Vol. 25(3), p. 43.

<sup>24</sup> The Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, No. 78, item 483).

<sup>25</sup> The Ordinance of the Prime Minister of 20 June 2002 on “Principles of Legislative Technique” (consolidated text, Journal of Laws of 2016, item 283).

<sup>26</sup> K. Właźlak, *op. cit.*, p. 37.

hand, such a resolution as a programme must be classified for planning acts, which means that its nature, as a universally binding act, may be debatable. On the other hand, such a programme may impose rights and obligations for the inhabitants of the commune who own animals, e.g. with regard to the procedure of declaring sterilization and co-financing of its costs with the commune.

Some administrative courts, especially before the amendment of Art. 11a of APA of 2016, indicated that resolutions adopted by commune councils on the basis of Art. 11a clause 1 of APA do not constitute acts of local law within the meaning of Art. 87 clause 2 of the Constitution of the Republic of Poland and Art. 40 of CSA.<sup>27</sup>

Currently, more and more often opposite judgements are being issued, recognising the programmes as acts of local law. A clear view on the inclusion of resolutions on the adoption of the programme to the acts of local law means that they must be published in the provincial official journal and *vacatio legis* must be also observed. The Supreme Administrative Court – pointing out that the programme is of great informative importance for the inhabitants, who can find out from it who – in a commune – runs a shelter, a farm, or is an entity obliged to provide 24-hour veterinary care in case of road accidents involving animals – stated that it is an act of local law.<sup>28</sup>

In its most recent judgement of 30 July 2019, the Supreme Administrative Court indicated that the resolution of the commune council – the programme of care for homeless animals and prevention of homelessness of animals – is an act of local law. The programme first of all concretizes the methods of operation of the commune in order to properly fulfil its obligations resulting from the Animal Protection Act. The contents of the programme therefore constitute plans, forecasts and rules of conduct in specific situations, the implementation of which constitutes own tasks of the commune. However, the important feature of the programme is that apart from individual and concrete provisions, it contains general and abstract regulations. The fact that the programme of care for homeless animals and prevention of homelessness of animals adopted by the commune council contains individual and specific provisions does not deprive it of legal force of universally binding law.<sup>29</sup>

The standpoint of the doctrine is also divided. Katarzyna Wlzlak points out that it is difficult to derive at least one norm characterizing local law (general and abstract)

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<sup>27</sup> Judgment of the Provincial Administrative Court in Lublin of 7 August 2012, III SA/Lu 463/12, LEX No. 1227904; judgment of the Provincial Administrative Court in Wroclaw of 12 November 2014, II SA/Wr 603/14, CBOSA; judgment of the Provincial Administrative Court in Poznań of 12 September 2014, II SA/Po 593/14.

<sup>28</sup> This standpoint is also presented, among others, in the following judgments of the Supreme Administrative Court: of 13 March 2013, case ref. II OSK 37/13, ONSAiWSA 2014, No. 6, item 100; of 2 February 2016, case ref. II OSK 3051/15, LEX No. 2037496; of 30 March 2016, case ref. II OSK 221/16, LEX No. 2066405; of 12 October 2016, case ref. II OSK 3245/14, LEX No. 2199460; of 24 May 2017, case ref. II OSK 725/17, LEX No. 2334602; or of 17 October 2017, case ref. II OSK 268/16, LEX No. 2406444.

<sup>29</sup> Judgment of the Supreme Administrative Court of 30 July 2019, II OSK 1754/18, LEX No. 2706464.



from the content of Art. 11a of APA. Despite the undoubtedly existing similarity of the programme to the sources of generally applicable law, the resolution on this matter does not meet the characteristics of local law. It does not directly determine the rights and obligations of entities remaining outside the structure of commune self-government, thus it does not shape and change their legal situation.<sup>30</sup> On the other hand, Michał Rudy emphasizes that since the resolutions adopting programmes of care for homeless animals and prevention of homelessness of animals contain abstract and general norms, and including the fact that the resolutions should be addressed to an unspecified group of addressees performing tasks related to the care for animals and prevention of homelessness of animals, thus, they have effects beyond the internal sphere of self-government administration in a commune, and one should support the standpoint recognising such resolutions as acts of local law.<sup>31</sup>

Emil Kruk presented a new approach and pointed out that due to the fact that in the current legal status, and more specifically after adding clause 3a to Art. 11a of APA which enables financing of tasks consisting in sterilisation or castration of animals having owners, programmes may contain abstract and general norms addressed to entities outside the organisational structure of commune authorities, it is a condition for including them in acts of local law.<sup>32</sup> Due to the fact that this is an element of the programme designated as an optional plan, only selected programmes will be the acts of local law.

Undoubtedly, the classification of a given act as a universally applicable law requires, on a case-by-case basis, the establishment of the norms contained therein. Many programmes contain norms addressed to the inhabitants of the commune, then they should be the acts of local law. In the jurisprudence of administrative courts, the standpoint is consolidated that it is sufficient for at least one norm of a resolution to have a general and abstract character, so that the whole act has the status of an act of local law. Taking into account the subject matter of the programme, addressed to an unspecified circle of recipients performing tasks related to the care for homeless animals, also to the inhabitants of the commune, such a resolution constitutes an act of local law because it determines *erga omnes* about the rights and obligations of entities forming a self-government community. Undoubtedly, if the programme constitutes norms addressed to the inhabitants of the self-government community, it would be correct to qualify it as an act of local law. Depending on the assumption whether a particular act is a local law or an internal law, this has numerous consequences for the addressees. Depending on the classification of the act in question, different rules shall apply in order to appeal against them to the administrative courts, regarding the

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<sup>30</sup> K. Właźlak, *op. cit.*, p. 38.

<sup>31</sup> M. Rudy, *Program opieki nad zwierzętami bezdomnymi oraz zapobiegania bezdomności zwierząt jako podstawowa forma realizacji zadania gminy z zakresu opieki nad zwierzętami*, „Samorząd Terytorialny” 2018, Nr 9, p. 33.

<sup>32</sup> E. Kruk, *op. cit.*, p. 43.

manner of publication and entry into force, the possibility of supervision measures and the possibility of suspending their enforcement if appealed.<sup>33</sup> Therefore, it should be postulated to the legislator to directly decide that the programme is an act of local law.

### Procedure for establishing the programme

The legislative procedure is initiated by the development of a draft programme by the executive body of the commune. By February 1 at the latest, the commune head (mayor, president of the city) shall submit the draft programme for opinion to the competent district veterinarian, to social organizations operating in the commune's area whose statutory objective is to protect animals, and lessees or managers of hunting districts operating in the commune's area (Art. 11a clause 7 of APA). The requirement of cooperation of public administration bodies should be assessed positively with reference to the establishment of the programme of care for homeless animals and prevention of homelessness of animals in order to protect animal rights better. Such broad cooperation, also with non-governmental organizations, is aimed at improving the flow of information and creating opportunities to undertake the fullest and best, with regard to the needs of the commune area, programme for the protection of homeless animals. However, the opinion is not binding for the addressee. The executive body of the commune should familiarise itself with the content of the opinion and take it into account in further activities, however, it is not obliged to implement it. In practice, consultations are conducted in order to learn about the opinions of non-governmental organisations and entities listed in Art. 3 clause 3 of the Act of 24 April 2003 on Public Benefit Activity and Volunteerism. Undoubtedly, more comprehensive idea of cooperation is agreeing because it seeks to reach a common standpoint, thus being binding for the addressee. It must take into consideration the standpoint of the cooperating entity.<sup>34</sup> Therefore, for cooperation in the establishment of the programme with the entities listed in Art. 11a clause 7 of APA it is also necessary to postulate the adoption in a form of agreeing. On the other hand, the use of the institution of tacit cooperation should be assessed positively. Art. 11a clause 8 of APA indicates that the cooperating entities shall issue their opinion within 21 days of receipt of the draft programme, whereas failure to give their opinion within this time limit shall be considered as acceptance of the submitted programme.<sup>35</sup>

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<sup>33</sup> K. Ziemiński, *Granice prawa miejscowego*, [in:] *Prawo administracyjne dziś i jutro*, red. J. Jagielski, M. Wierzbowski, Warszawa 2018, p. 597.

<sup>34</sup> S. Biernat, *Działania wspólne w administracji państwowej*, Warszawa 1979, p. 34.

<sup>35</sup> S. Pawłowski, L. Staniszevska, *Konstrukcja milczącego współdziałania między organami administracji publicznej w świetle przepisów prawa materialnego*, [in:] *Milczące załatwienie sprawy przez organ administracji publicznej*, red. Z. Kmiecik, M. Gajda-Durlik, Warszawa 2018, p. 374.

Subsequently, the draft programme is submitted to the commune council, which is responsible for the adoption of a resolution on the matter in question by March 31 each year. The determination of the deadline for the adoption of this resolution may be treated by the legislator as disciplinary measures for the commune authorities in order to start works on the creation of the programme. In view of these intentions of the legislator, it should be postulated that in justified cases of failure to adopt the programme within the statutory deadline one should be allowed by the law to adopt the programme at a later date.<sup>36</sup> The purpose of the regulation is to take over by the communes the absolute obligation to provide care for the homeless animals and to catch them. In the absence of a programme, such an obligation to maintain homeless dogs or cats would have to be passed onto residents or non-governmental organizations, which contradicts the assumptions of the legislator. The date of adopting the programme should therefore be understood as an instructional date, so that its subsequent adoption would be effective and the objectives of the law would not be illusory. Failure to meet the deadline for undertaking the programme constitutes a breach of the law, however, it cannot lead to the abandonment of the performance of a mandatory task by the communes.

### Conclusions

To sum up, it should be pointed out that the current regulation of Art. 11a of APA raises numerous doubts, causing the legal nature of the programme of care for homeless animals and prevention of homelessness of animals to be unclear. Currently, the legislator does not express any opinion on the legal essence of the programme. There is also no statutory requirement to publish it in the provincial official journal.

There are also problems with the lack of inclusion of optional elements of the programme such as animal marking plans, sterilisation or castration. This is often due to a lack of sufficient financial resources by the communes. Without sufficient money for this purpose, even the best programme can only prove to be a postulate on paper. Unfortunately, the legislator has forgotten about it, imposing these important but very expensive tasks on communes, not fully realizing that many communes in Poland do not have sufficient funds for their implementation. Therefore, a well-planned budget is an extremely important element of the programme, which should take into account the needs and capabilities of the local self-government unit. Also, the very procedure of developing the plan is questionable, and thus it should be advocated in favour of its sensible development. In addition, the programme should be monitored and controlled on an ongoing basis during its implementation and, if necessary, adapted to local conditions and possibilities. Moreover, it is very important to implement social

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<sup>36</sup> See K. Właźlak, *op. cit.*, p. 40.

and organizational activities among the inhabitants of the communes, especially information campaigns and those encouraging the adoption of homeless animals.

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**Abstract:** The legislator imposed on the communes a mandatory own task in the form of an obligation to provide homeless animals with adequate care and protection. A legal instrument for this purpose are programmes of care for homeless animals and prevention of homelessness of animals. However, the provisions constituting this legal instrument raise doubts as to the nature of these acts, moreover, there are numerous problems with the practice of their application and especially with the financing of this task by communes. All this shows that Poland is one of the EU Member States which still lacks effective means of combating animal homelessness.

**Keywords:** care for homeless animals; prevention of homelessness; own tasks of the commune; planning acts; local law