

Differences between the Italian and Slovak legal systems with respect to animal protection

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ABSTRACT: This paper provides a comparative analysis of the legal content of animal protection legislation in the Slovak Republic with that of Italian legislation. Firstly, we compare the legal systems in the Slovak Republic and Italy with respect to the animal protection laws, especially criminal law in both countries. This comparison of the two different legislations allows detection of identical or different characteristics in the area of animal protection, which could be used later as an inspiration for lawmakers in both countries.

Keywords: animal protection; Italian legislation; Slovak legislation; criminal code; cruelty to animals

Both Slovak and Italian legal systems are constitutional democracies. They belong to the European continental law system, and have their historical basis in ancient Roman law. In addition, nowadays, both are influenced by the common European Union legislation. However, there are still differences, some small and some larger, between Italian and Slovak legislation. The goal of this paper is to identify some specific differences between legislation on animal protection in the Slovak Republic and in Italy.

Animal protection legislation

As constitutional democracies, the fundamental source of law in both states and the most powerful legal act is the constitution, which can be changed only by constitutional amendments. However, the constitution is only a general framework for other legislation, e.g., legal acts, whose content may not be in conflict with the constitution. In the Slovak Republic as well as in Italy, there are several acts spread among different legal sectors, which set duties or prohibit actions with the aim of safe-

guarding animal protection. Animal protection is also provided for by criminal law, civil law and administrative law. The main legal acts that regulate the protection of animals are as follows: (A) in the Slovak Republic – Act No. 300/2005 Coll. criminal act (criminal law act), Act No. 39/2007 Coll. on veterinary care (administrative law act) and Act No. 40/1964 Coll. civil code (civil law act); (B) in Italy – Criminal (Penal) Code (“Codice Penale – Testo coordinato ed aggiornato del Regio Decreto 19 ottobre 1930, No. 1398”) (criminal law act) and Civil Code (“Codice Civile – Regio Decreto 16 marzo 1942, No. 262”) (civil law act).

Besides that, in the Slovak Republic special Act No. 115/1995 Coll. on animal protection was previously in force, before being unfortunately cancelled in 2002 by Act No. 488/2002 Coll. That act contained the definition of an animal. According to article 1, point 2 of Act No. 115/1995 Coll. on animal protection: “Animals for the purpose of this Act shall mean any vertebrate animal except man.”

Nowadays, a specific legal definition of an animal is missing in Slovak legislation. The situation is the same in Italy. According to civil law (the Slovak Civil Code and Italian Civil Code), animals are

<https://doi.org/10.17221/4/2018-VETMED>

considered merely as in both countries (“hnutelné veci” resp. “beni mobili.”). Both countries still do not accept animals as sentient beings and they did not define them in their civil law legislation, as for instance in the new civil code in the Czech Republic. As a consequence, in cases when an animal is killed (damage to someone else’s property), such “movable object” animals will have smaller value than animals accepted as sentient beings, and courts have no other option than to set a lower punishment (reflecting only the real value of the animal). This act of interference in the possessions of another party then creates relationships of responsibility between the owner and the offender as secondary law relations.

In Table 1 we compare the legal definitions of animals in selected countries.

Subordinate legislation

Animal protection can also be provided by subordinate legislation, such as decrees and measures of government ministries. In connection with animal protection in Slovakia, subordinate legislation may be provided by the Ministry of Agriculture and Rural Development of the Slovak Republic. In Italy, veterinary administration is spread between the

Ministry of Health and the Ministry of Agriculture, Foodstuff and Forestry Policies. Meanwhile, the Italian Ministry of Health has competencies in the field of animal health, food and feed safety and animal welfare, while the Italian Ministry of Agriculture, Foodstuff and Forestry Policies has competencies in the field of food and feed traceability.

Animal protection can also be provided for on the municipal level. In the Slovak Republic, it is possible to adopt and issue generally binding municipal regulations. Unlike other generally binding laws, the generally binding municipal regulation is valid only within the area of the municipality which has issued it. An example from the Slovak Republic is the generally binding regulation from the village of Diviaky nad Nitricou No. 1/2016 on the breeding and keeping of animals in the territory of Diviaky nad Nitricou. This regulation regulates the breeding, protection and keeping of animals in the territory of the village and defines the rights and obligations of breeders, animal owners and municipal authorities. Similar generally binding regulations on the breeding and keeping of animals have also been issued by other Slovak villages.

In Italy, regions can issue their own regional legal acts, which are also generally binding only within

Table 1. Comparison of the legal definitions of animals

Country	Law area	Law	Definiton
No special definition of animals.			
Slovak Republic	civil law	Act No. 40/1964 Coll. civil code	In the Slovak civil code entities are defined only as: “movable or immovable.” The act then defines what entities are immovable, while the other things are movable (including animals).
No special definition of the animals.			
Italy	civil law	civil code	In the Italian civil code entities are defined only as: “movable or immovable.” The act then defines what entities are immovable, while the other things are movable (including animals).
Czech Republic	civil law	Act No. 89/2012 Coll. civil code	“The living animal has a special meaning and value as a living creature gifted with senses. A living animal is not a thing, and the provision of things applies to a living animal similarly only to the extent that it does not contradict its nature.”
No special definition of animals.			
Slovak Republic	criminal law	Act No. 300/2005 Coll. criminal act	For the purposes of this act is meant any movable or immovable thing, residential or non-residential space, <u>an animal</u> , unless different provisions of this Act establish something else.
Italy	criminal law	criminal code	No special definition of animals.
No special definition of animals.			
Slovak Republic	administrative law	Act No. 39/2007 Coll. on veterinary care	Protection according to this act is provided only to vertebrates.

the area of the region. Such a regional act is for instance the regional act of Tuscany No. 59 from October 20th, 2009, on the rules for the protection of animals. The Tuscany region supports and regulates the protection of the animals by this act, condemns acts of cruelty towards animals and their abandonment, and supports education aimed at providing information about respect for animals and the proper coexistence between animals and humans.

Legal responsibility

The law should protect animals, and the existence of such laws is, of course, important. However, what should be done when the law is broken? Breaking the law creates legal responsibility as a secondary legal relationship. As we have mentioned above, laws regarding animal protection are spread among several legal sectors (areas). This means that different responsibilities can apply under the law. For instance, the application of civil law responsibility does not preclude other kinds of responsibility under the law. An unlawful act may lead to the violation of several laws at once. This may also depend both on the type and stage of unlawful conduct.

Unlawful conduct and legal responsibility represents one of the biggest difference between Italy and the Slovak Republic. For instance, while certain conducts are considered just as offences according to administrative law in Slovakia, the same conduct could be considered as a crime according to Italian criminal law.

For instance, Art. 544.4 of the Italian penal code prohibits the organisation or promotion of shows or exhibitions involving torture or torment to animals. Breaking of this article shall be punished by imprisonment of four months to two years and the fine ranges from 3000 to 15 000 EUR. One who promotes animal torture in Slovakia does not commit a crime according to the Slovak penal code, because the Slovak penal code does not prohibit such conduct in any of its articles. The promotion of animal torture can only be an administrative offence by the breaking of Art. 22, point 3, letter g) of Act No. 39/2007 Coll. on veterinary care in the Slovak Republic. In the Slovak Republic, the offender cannot be imprisoned for this unlawful conduct, only fined. The possible range of fines is different in Slovakia, as well. According to Act

No. 39/2007 Coll. on veterinary care, a natural person can be fined from 400 EUR to 1000 EUR and a businessman or legal person can be fined from 1750 EUR to 20 000 EUR.

Criminal law protection

The strongest protection of animals should be provided by criminal law in every country. If we take this as a standard for evaluation of animal protection regulations in both compared states, we can say that, in general, the regulation of animal protection is stronger in Italy. It is possible to see this in the number of crimes connected to animal protection stated in the penal codes of both states. In the following section, we compare all conducts against animals that are considered as crimes in the Slovak Republic and in Italy.

The Italian penal code lists offences against animals in part IX BIS. According to Art. No. 544.2 of the Italian penal code: “Whoever tortures or without need causes the death of an animal, shall be punished by imprisonment from three months to eighteen months”. However, the term “without need” is not defined and, likewise, the meaning of “causes the death without need” is not explicit. It is difficult to define all potential conducts under this term, but at least a rough explanation would be helpful.

On the other hand, according to Art. No. 378 of the Slovak Penal Code, killing an animal is considered as a crime only when the offender tortures the animal to death. Killing an animal in the Slovak Republic shall otherwise be considered only as an administrative offence. For instance, Art. 20, point 3, letter i) of Act No. 39/2007 Coll. on veterinary care prohibits killing an animal without good reason. Breaking this article creates only administrative legal responsibility and the offender can only be fined. Unlike the Italian penal code, this article defines the term “good reason” for killing an animal in Art. 20, point 4 of Act No. 39/2007 Coll. on veterinary care as follows: (1) in cases of necessary self-defence and extreme necessity; (2) killing an animal during slaughter or other animals used for obtaining products of animal origin; (3) killing an animal within the approved procedures; (4) painless killing of an animal because of its terminal illness, severe or widespread injury or its age, if its further survival is associated with continuous pain or suf-

<https://doi.org/10.17221/4/2018-VETMED>

fering; painless killing of an animal after previously rendering it unconscious can be carried out only by a veterinarian except when ending an animal's suffering in urgent cases, if it is impossible to acquire the help of the veterinarian; (5) the slaughter of an animal by the eradication, control, prevention and diagnosis of diseases and rat control; (6) the killing of unwanted animals, if it is not possible to provide alternative care for them; this does not apply to service animals; (7) hunting animals in a legal manner; (8) the killing of invasive non-native animal species according to special regulations.

Only two crimes are directly connected to animals in the Slovak Republic. The first is mentioned above in Art. No. 378 of the Slovak penal code ("Cruelty to animals") and the second is Art. No. 378b of the Slovak penal code ("Neglecting the care of animals").

According to Art. No. 378 of the Slovak Penal Code, whoever abuses an animal, after being cited for a similar offence in the previous 12 months or after conviction for the same offence in the previous 24 months, whoever abuses an animal in a particularly cruel and brutal manner, or whoever overtires an animal, shall be punished by imprisonment for up to two years. The offender shall be punished by imprisonment of one to five years, if he/she commits the above-mentioned offence: (1) on more than one animal; (2) publicly or in a place accessible to the public; (3) on an animal specifically protected by law, or (4) in a more cruel manner.

According to Art. No. 378b of the Slovak penal code, whoever causes death or permanent injuries to the health of more than one animal, of which he/she is the owner or of which he/she is obliged to take care of, by neglecting the necessary care of those animals, shall be punished by imprisonment of up to two years.

It is also possible to indirectly punish the offender for other crimes against animals. For example, in the case of killing an animal, the offender could be found guilty of the crime of damage of someone else's property according to Art. No. 245 and following articles of the Slovak penal code. The sentence depends on the value of the animal. For instance, in the case of small damage, the offender could be punished by imprisonment for up to one year. If the offender causes considerable damage, he/she could be punished by imprisonment ranging from three up to eight years. Small damage is considered to range from 266 EUR to 2660 EUR and

considerable damage is considered to range from 26 600 EUR to 133 000 EUR. This article can apply because animals are considered as things according to the Slovak penal code (see above-mentioned definitions).

The Italian penal code explicitly contains provisions punishing the killing or damage of other people's animals. According to Art. 638 of the Italian penal code, anyone who without need kills or renders useless or otherwise damages animals belonging to someone else, shall be punished, unless the act constitutes a more serious crime to the injured party, by imprisonment for up to one year or a fine of up to 309 EUR. A punishment of imprisonment ranging from six months to four years shall apply if the act is committed to three or more animals in the flock or herd, or to bovine or equine animals, even if they are not a part of a herd. There is an exception to this act. Whosoever commits acts against birds caught on the lands in his possession, even if he/she causes damage, will not be punished and this act is not considered as a crime.

Except for the above mentioned Art. No. 544.2. and Art. No. 544.4, the Italian Penal Code also contains Art. No. 544.3 that stipulates that "Whoever, cruelly or without need, causes an injury to an animal or submits it to torture or overworks an animal for its ecological features shall be punished by imprisonment from three months to one year or by a fine from 3000 EUR to 15 000 EUR". The same penalty is applied to anyone who administers drugs to animals or submits them to treatments causing harm to their health. The punishment will increase if the conduct stated in the first paragraph causes death.

According to Art. No. 544.5 of the Italian penal code, "Anyone who promotes, organises or directs fights or unauthorised competitions between animals that can endanger their physical integrity, shall be punished by imprisonment from one to three years and a fine ranging from 50 000 EUR to 160 000 EUR".

The punishment could increase by one third to one half: (1) if such activities are performed in competition with minors or armed persons; (2) if such activities are promoted by using video or materials of any kind containing scenes or images of fights or competitions; (3) if the offender records any form of combat or competitions.

Whoever, apart from cases of complicity in a crime, breeds or trains animals in any form and

also through third parties for their participation in fighting as it is stated in the first paragraph, will be punished by imprisonment ranging from three months to up to two years and with a fine ranging from 5000 EUR to 30 000 EUR. The same penalty shall also apply to owners or holders of animals used in the fights and competitions referred to in the first paragraph, if they give their consent.

Anyone who organises or makes bets on the fights and the competition described in the first paragraph, even if he/she is not present at the crime scene, will be punished by imprisonment ranging from three months to up to two years and a fine of 5000 EUR to 30 000 EUR.

The Italian penal code also directly establishes the confiscation of animals and ancillary penalties, in the case of conviction, or application of the penalty at the request of the affected parties. The confiscation of the animal is always mandatory, unless it belongs to a person unrelated to the crime. Confiscated animals are entrusted to associations or entities identified by the Minister of Health of Italy, in agreement with the Interior Minister.

For those who perform the aforementioned activities, the Italian penal code also establishes the sanction of the suspension (prohibition) of activities such as transport, trade or animal husbandry. The suspension could be imposed for a period from three months to up to three years.

Abandonment of animals is also a crime in Italy, according to Art. 727 of the Italian penal code. Anyone who abandons pets or animals in captivity will be punished by imprisonment for up to one year or a fine of 1000 EUR to 10 000 EUR. The same punishment could be imposed on anyone who keep animals in conditions that are incompatible with their nature and expose them to great suffering. In other words, this prohibition directly punishes breaking one of the animal welfare freedoms, which ensure the protection of the most natural living conditions of animals and their protection from suffering.

A special place in the Italian penal code is reserved for the prohibition of the use of the skins and furs of dogs (*Canis familiaris*) and cats (*Felis catus*) for commercial purposes such as for the production or packaging of leather, fur, clothing and leather goods consisting of or produced in whole or in part, from the skins or furs thereof, as well as trading or introducing the same in the territory of Italy. Violation of this provision could be punished

by imprisonment ranging from three months up to one year or by a fine of 5000 EUR to 100 000 EUR. In case of the guilty verdict, the material shall be confiscated and destroyed.

For breaking the above mentioned articles of the Italian penal code or the Slovak penal code, it is possible to punish the offender by imprisonment or by the penalty of a fine, even if this is not specifically stated in the Slovak penal code. All fines in Slovakia as well as in Italy represent an income of the state. An interesting difference between Slovakia and Italy lies in the use of this income. While in Slovakia the income becomes part of the entire state budget which is divided up by the government, in Italy this income is reallocated by the Ministry of Health and is redistributed to associations or bodies referred to in the Art. No. 19.4 of the Italian penal code. The revenue-sharing criteria are determined on a case-by-case basis and according to number of animals entrusted to each institution or association. The Italian Minister of Health defines every year the programme of action for the implementation of this act and for the allocation of money. In other words, the money collected from fines is in Italy used explicitly to further the same interests protected by the law that has been violated. This targeted allocation looks like a clever way to support organisations which further support and provide protection to animals.

Conclusions

According to civil law, there are no special differences between Italian and Slovak legislation. In both countries, a special legal definition of animals is missing for civil law purposes. For animal protection, it would be better to define animals in the civil code as has been done in other European Union countries, e.g., in the Czech Republic. The civil code represents a fundamental source of civil law. A definition of an animal in certain special laws might not be enough, because it could be used only for the purposes of this special act.

Differences are apparent in public law, specifically in administrative and criminal law. Italian criminal law establishes more crimes and a wider range of acts which are considered as crimes against animals. Offenders according to criminal law may be imprisoned and fear of imprisonment should help prevent criminal conduct. For that reason alone,

<https://doi.org/10.17221/4/2018-VETMED>

animal protection legislation could be considered stronger in Italy.

This does not mean that legislation safeguarding animal protection is perfect in Italy. For example, Art. No. 544.2 of the Italian penal code contains the general term “without need”, but does not define anywhere what this term means. Generally worded provisions might seem like a good strategy to include as many unlawful actions as possible but can also lead to problems in practical application. It would be useful to at least roughly define which actions may or may not be considered as “without need”.

On the other hand, Slovak legislators should consider extending the range of unlawful actions which should be considered as crimes against animals. For example, it would be useful to identify the promotion, organisation or direction of fights or unauthorised competitions between animals as a crime and to set stricter punishments for convicted offenders. This could also help to solve the current illegal dog fighting problem in Slovakia, which has developed over the last few months.

Received: January 8, 2018

Accepted after correction: April 24, 2018