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Legal and Illegal Breeders - the Difficulties of Legal Assessment in Hungarian Law

"Tenyésztők" és "szaporítók" - a jogi értékelés nehézségei a magyar jogban

ABSTRACT

In the case of farm animals, animal breeding is regulated, while in the case of pets it is more difficult to distinguish between legal and illegal breeding behaviour, and public opinion often demands stricter protection and more severe penalties for breeders. Sanctioning breeders who engage in unlawful conduct is an expected and important, but difficult task, especially given the possibilities for legislation and application of law, and the principle of ne bis in idem.

Keywords: animal protection, correct and unlawful breeding, animal cruelty, ne bis in idem, prohibition of double assessment

ABSZTRAKT

A gazdasági haszonállatok esetében az állattenyésztés szabályozott, míg a kedvtelésből tartott állatok esetében nehezebb különbséget tenni a legális és illegális tenyésztési magatartás között, és a közvélemény gyakran követeli a védelem szigorítását, és a szaporítók súlyosabb büntetését. A jogellenes magatartást tanúsító szaporítók szankcionálása elvárt és fontos, ugyanakkor nehéz feladat különös tekintettel a jogalkotás és jogalkalmazás lehetőségeire, valamint az olyan alapelvekre, mint a ne bis in idem.

Kulcsszavak: állatvédelem, helyes és nem megfelelő szaporítás, állatkínzás, ne bis in idem, kettős értékelés tilalma

1. INTRODUCTION

The breeding of animals requires appropriate regulation. The economic, veterinary, legal and other aspects of rules are covered by Hungarian law, especially concerning to farm animals. However, abuses are frequent in the case of pets, but this is a less regulated area. There are many news, stories and criminal offences linked to illegal breeding activities. In Hungarian law, the Government Decree[2] on pet animals is intended to regulate the situation of pets, and this includes breeding, but as a general rule, no official authorisation is required either to keep them or to breed them.[3] However, it may be difficult to distinguish between legal and illegal breeding of pets.

As of 1 January 2022, the legislator has created a qualified case of breeding under the Penal Code, but there is no specific clarification as to who can be classified as a breeder. It is up to the legislator to clarify this.

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2 Government Decree 41/2010. (26. II.) on the keeping and marketing of pet animals (hereinafter referred to as: Government Decree).

3 Paulovics & Jámbor 2013, 13.

The main objective is:
- to define who can legally be a pet breeder.
- In the light of this, it is necessary to define the unlawful breeder.
- to provide the legislator with de lege ferenda proposals on how to assess unlawful breeder behaviour, so that the sanction may be repressive, dissuasive and prevention can be achieved.
- to avoid the double assessment that comes from the ne bis in idem principle.
- but to give special weight to illegal breeding activities leading to animal torture.

2. BREEDERS AND BREEDING OF ANIMALS

2.1 The need to establish legal dogmatics

According to a survey in 2023, 44% of EU citizens own pets and 74% of EU citizens believe that the welfare of pets should be better protected than it is today. The significant trade in dogs and cats takes place through breeding farms and other facilities. Although part of the demand for dogs and cats is met by licensed breeders who follow strict animal welfare standards, many dogs and cats are subject to illegal trade and transport, including from third countries. In 2020, the European Parliament adopted a resolution on the illegal trade in pets within the EU,[4] stressing the need to establish a mandatory harmonised system for the identification and registration of cats and dogs at EU level to combat illegal trade. A study in 2015 found that the rules on the breeding of dogs and cats within the EU differ and that the movement of dogs and cats within the EU is not systematically identified, registered and controlled. It repeats the opinion of the Council of the EU that such differences may lead to unequal breeding and marketing costs which could create animal welfare problems, zoonotic risks and deception of the citizens due to the purchase of animals carrying hidden diseases, including genetic defects and/or with irreversible behavioural problems.[5]

During the coordinated EU action against the illegal trade in cats and dogs in 2022 and 2023, a significant amount of evidence of falsification of documents, misleading information and evidence that commercial movements of dogs were disguised as non-commercial movements in order to comply with less stringent control rules was collected. Several Member States signed the European Convention for the Protection of Pets,[6] but there is no specific binding EU legislation on the welfare of dogs and cats. The European Parliament and the Council have drafted a proposal[7] for a Regulation on the welfare and traceability of dogs and cats, which concerns the breeding, keeping and trade of dogs and cats as live animals and aims to ensure the smooth functioning of the internal market for dogs and cats. There are no common animal welfare requirements for these animals and therefore it aims to avoid distortions and barriers to trade in such animals due to diverging national animal welfare rules, while ensuring a high level of animal welfare and a high level of consumer protection, including against illegal trade. Breeders who do not reach a certain number of litters per year are not subject to rules on how dogs and cats are bred and kept and are only required to identify and register dogs or cats before they are placed in the Union.

In Hungary, the Government Decree on pet animals tries to cover the rules for keeping and trading or marketing animals but pays less attention to their breeding. It would be important to develop a uniform set of rules that can provide guidance and a suitable medium for grasping and legally assessing the category of breeder, not leaving it to the judgment of public opinion.

4 European Parliament resolution of 12 February 2020 on protecting the EU's internal market and consumer rights against the negative implications of the illegal trade in companion pets (2019/2814(RSP)).
5 VetEffecT, Wageningen University & Research Centre (WUR) & Istituto Zooprofilattico Sperimentale dell'Abruzzo e del Molise "G. Caporale" (IZSAM) 2015, 6.
6 The European Convention for the Protection of Pet Animals. This treaty of the Council of Europe is to promote the welfare of pet animals and ensure minimum standards for their treatment and protection. It was signed in 1987 and became effective on 1 May 1992, and more countries had ratified it.
7 Proposal for a Regulation of the European Parliament and of the Council on the welfare of dogs and cats and their traceability, Brussels, 7.12.2023 COM (2023) 769 final 2023/0447 (COD).

According to Hungarian legislation, all animals, regardless of their taxonomic classification, which are not used exclusively for scientific research, the production of animal products, draught animals, pack animals or for nature conservation are considered to be pets, the protection of genetic resources and, with the exception of dogs and cats, for public display, as well as animals kept and bred for the purpose of feeding other pets, farm animals not kept for farming purposes and animals used for hunting.[8]

Animals may also be marketed in pet shops. As regards pet shops, the Government Decree contains a number of mandatory provisions for the marketing of animals in the framework of commercial activities, such as the keeping of up-to-date records, the existence of an activity licence issued by the district veterinary authority, an annual official inspection, a contract with a veterinarian and the existence of a trading code. For dogs the presence of a transponder is needed, and in general, all pet animals must be marketed with a written authorisation.

A new measure will ban the sale of dogs, domestic cats and wild-caught birds at pet fairs from the second half of November 2024, under a government decree adopted by the Hungarian government in November 2024, which amended the regulations on the conditions for carrying out commercial activities and on the keeping and marketing of pet animals. The amendment was initiated by animal welfare organisations, as a number of irregularities emerged at pet fairs, e.g. animal health conditions at pet fairs were repeatedly found to be objectionable and vendors usually failed to comply with the conditions laid down in the legislation. These conditions also favoured breeders, as animals were sold without pedigrees.

The aim was to stop the animal fair being the favoured forum for breeders, and further measures are expected in this area. For example, it is worth continuing with animal smuggling, as the sale of animals sent abroad is the biggest source of income for breeders. The Hungarian Government Commissioner for Animal Welfare said that the fight against breeders should be a priority and in this fight there are several steps.

2.2. Legal breeder – illegal breeder in Hungarian law

The rules of responsible animal husbandry are binding on the keeper of the animal, while the humane treatment of animals is a compulsory code of conduct for everybody. Everyone, including the owner, is liable to administrative (administrative procedures and sanctions) and criminal prosecution, and may even face civil consequences (legal action, prohibition, compensation). Breeding and reproduction can be synonymous words, but they can also have specific meanings. Breeding is typically used for experimental animals or dangerous animals, where it does not refer to an illegal activity but to one that requires a permit or notification. That is the legal breeder. The Government Decree regulates the keeping and marketing of pets, both the sale and adoption of animals, but does not specifically regulate breeding.

Even legal breeders call puppy mill operators those, who breed animals for purely financial gain not caring about health issues and considere them harmful. Legitimate and illegitimate breeding behaviour should be more clearly defined in the legislation.

3. DELIMITATION CRITERIA

The main characteristics of the distinction between breeder and propagator can be summarised as some important features of lawful and unlawful breeding behaviour.

3.1. The economic side: economic motivation and economic purpose – as a breeder's criterion

Breeders have an economic approach, but the puppy mill operator is interested in making mon-

8 Government Decree Section 1(2) a).

ey quickly and making as much profit as possible with the minimum effort. This is the primary motivation and the goal of the breeder's activity. The most common breeder behaviour is related to the sale of the animal. There is a wide range of behaviours and mindsets that can be used to describe breeding behaviour. There can be huge differences between the classical breeder, the irresponsible owner and the subsistence breeder. The distinction is based on the aim of making a financial profit from the animal.[9] Thus, irresponsibility or ignorance behaviour is less important and does not necessarily fall into bad repute. The irresponsible farmer's consciousness does not grasp that he can harm anyone. There is no neutering, no conscious breeding, just the reproduction that nature gives, no consciousness of any kind, but no interest in this issue. It is emotionally motivated, not economically. He likes animals and animal husbandry, in pathological cases he may even be an animal -hoarder, in which case he has no idea that he is acting in a legally reprehensible way. This activity may increase the number of dogs in the shelter, but the irresponsible behaviour of the pet owner is not in itself an unlawful breeding activity.

3.1.1 Breeding for sale

In the case of pets, we are thinking primarily of the breeding of dogs and cats, and it is easy to feel psychologically as they are companion animals and so there is a high demand for them. Material gain as a motivation immediately appears. The basic aim of the classical breeder is to breed and sell the animals and the profit that can be made from it. A puppy farm also known as a puppy factory or puppy mill is defined as an intensive dog breeding facility that is operated under inadequate conditions that fail to meet the dogs' behavioural, social and/or physiological needs.[10] These breeders seem to keep their animals in poor, overcrowded conditions, with inadequate quality and quantity of food and water, and they are typically not concerned about the welfare, health or future fate of the animals. They also often cheat by selling dogs as other breeds, such as Labradors as golden retrievers or purebred mixes. Such breeding farms keep animals in unhealthy, poor condition from birth, with large numbers of pets kept in cramped, non-ventilated and darkened areas, which can lead to permanent damage and death. These breeders often sell their animals abroad and profit margins are paramount. The legislator wants to make this layer of breeders, the so-called puppy mill operators be more vulnerable to criminal prosecution, which is why the Penal Code was tightened up from 2022 by adding a qualifying case for breeding. The obligations of good stewardship are set in Section 3 (8) of Act XXVIII of 1998 on the Protection and Welfare of Animals (hereinafter referred to as: Animal Protection Act). The animal keepers must be held accountable, since the aim is to eradicate the breeders with unlawful conduct.[11] This objective is also justified because these abuses may be accompanied by other criminal offences (e.g. falsification of documents, fraud). Breeders' pricing also varies, because they have realised that if they advertise their dogs too cheaply – which has already been restricted in some places – they are suspect, so they often set their prices just below the registered breeders' price level, pretending to be cheaper but still professional. This is why it is difficult to distinguish the legal breeder from the other type of breeders.

The ethical breeder treats animals as a commodity and sees them as a source of profitable income, whereas the responsible breeder takes care of the other two segments of the triple bottom line, taking into account the welfare and genetic characteristics of the animal. The puppy mill operator is just looking to minimise costs and make a profit, because keeping ethical breeding rules can be expensive.[12] This breeder does not attach particular importance to suitability of the breeding stock, the genetic background or the proper husbandry of the animals. They keep animals with the aim of realis-

9 ABOSTONTERRIER.HU (no date).
10 RSPCA Victoria (no date).
11 Section 3 of the Detailed Explanatory Memorandum to Act CXXVIII of 2021 amending certain criminal laws necessary for the protection of animals.
12 Tar 2024.

ing a financial gain as soon as possible. In the case of breeding for commercial purposes, the breeder wants to get rid of the "goods" as soon as possible not to spend much money on them. This can work on a large scale, especially for dogs. If the breeder deceives the buyer by selling the mixed breed dog as a purebred, this could even constitute a criminal offence of fraud,[13] if the perpetrator has intended to deceive the unsuspecting buyer or has kept him or her deceived, since he has caused damage or harm to the buyer. But civil liability may also arise for inadequate consideration.[14]

In the case of pets, the legislator imposes additional obligations on the pet shop (licence, operating conditions, etc.) but does not restrict the private breeder. Section 6 (3) of the Government Decree says that, where a specific law provides for the keeping, breeding, marking or registration of pet animals, only animals kept, bred, registered and marked in accordance with the provisions laid down therein may be placed on the market.

Under the Act C of 2012 on the Criminal Code (hereinafter referred to as: Criminal Code), in Hungary operating a puppy mill, or being an irresponsible breeder is not specifically criminalised. However, the legislator has designated the activity of breeding as a more serious qualifying circumstance of crime Cruelty to Animals as of 1 January 2022, when it inserted a rule in Section 244 (4) of the Criminal Code that, pursuant to paragraph (3), it shall be punishable by imprisonment for a term of one to five years for any person who is engaged in the unjustified abuse or unjustified mistreatment of vertebrate animals resulting in permanent damage to the animal's health or in the animal's destruction for the purpose of gaining profit in connection with reproduction, on more than 10 pet animals, with a failure to exercise good stewardship.

The legislation does not identify the breeder here either, but merely defines the profit-making purpose of the reproduction, which must therefore be assessed by the law enforcement authorities on a case-by-case basis. The focus is therefore on the purpose and not on the breeding activity. This offence is present for offences involving more than 10 animals, but if the offence is committed for 10 animals or less, with the obvious purpose of reproduction, the more serious criminal assessment is not made. Imagine a good lawyer defending this more serious form of Cruelty to Animals by proving that it was committed on fewer animals, thus helping his client's case. The person who has the animals under his control, is the subject of the offence of failing the care of a good steward. The legislator did not define this concept more precisely.
In summary, the economic side is the most practical criterion for defining an incorrect breeder, but as further developments, it will be necessary to address the need for a coherent conceptual net and a set of obligations.

In December 2024 the Encsi District Court (North-East Hungary, Borsod County) adjudicated an animal torture case. According to the facts established by the court, the accused woman kept her two medium-sized dogs in a fenced property in a dwelling house in a village in the Borsod region. After the woman had been sent to a penitentiary, she did not ensure that the two dogs received adequate food and drinking water during her absence. In October 2023, police patrols were called and found the animals, one of which had died in chains and the other which was at large had become emaciated. The convict's actions exposed the dogs to unjustified treatment that could have caused their death. The abandoned dogs suffered the lack of care. The court sentenced the defendant to 10 months' imprisonment, suspended for 2 years, for the crime of Cruelty to Animals. The sentence is final.[15]

13 Criminal Code Section 373 (1) 'Fraud' shall mean when a person uses deceit, deception, or trickery for unlawful financial gain, and thereby causes damage.
14 See for example the Civil Code Section 6:98 [Obvious disproportionality] (1) If, upon the conclusion of the contract, there is an obvious disproportionality between the value of the service and the consideration, and there is no intention by one of the parties to grant benefits free of charge, the aggrieved party may contest the contract. A person who was able to recognise the obvious disproportionality or undertook the risk of obvious disproportionality, shall not contest the contract.
15 borsodihir.hu 2024.

In November 2024 another tough crimes against animals emerged in Vas county, Hungary. For breeding purposes, an Austrian woman kept hundreds of dogs in bad conditions in several dog farms (Vas County municipalities of Csönge, Csapod and Kőszegpatyi). Most of the animals died and the ones that survived, skin covered in piss, stomping up to their bellies in their own excrement, were left with bare bones waiting for someone to find them. The perpetrator ran three such breeding farms, where the animals lived completely cut off from light and terrified of human touch. The dogs were kept for breeding purposes by an Austrian woman who was banned from keeping animals in her home country. Some of the dogs were living off the carcasses just to survive. Around 200 animals were rescued. Several animals died from torture and some dogs were taken to animal welfare services from the farm and are being prosecuted as culprits. When the woman was kept, she was faking sickness and taken to the hospital in Szombathely, from where she escaped and went into hiding in Austria. A manhunt was launched against the Austrian owner of the discovered breeding farms and an international arrest warrant was also issued. The case has now internationalised, with information that the offender asked up to €1,500 for a single puppy. The transfers took place in Graz and Wallern. After her arrest, the perpetrator was sent to a prison in Graz, but the Graz Prosecutor's Office commented that the judge rejected their request for custody and ordered the defendant's release. In the court's view, the arrest warrant issued in Hungary did not justify the reason of her detention. Austrian and Hungarian judicial authorities contacted to share the criminal files and investigation materials. - Interestingly, these serious acts of a breeder who kept animals for business and tortured them for profit, and who had previously been banned from keeping animals, was not sufficiently serious for the Austrian court to accept the Graz Prosecutor's Office's request for her arrest.[16] Finally, in mid-December 2024, the wanted Austrian woman was arrested in Slovenia. The Vas County Government Office imposed an animal protection fine of more than HUF 28 million on the perpetrator and banned her from keeping animals as pets for 8 years in the administrative territory of the county. In my view, the question in this case is how the principle of the ne bis in idem and provisions of the Hungarian Sanction Act may shape the relations of the different proceedings.

3.1.2. Breeding for the purpose of taking part in animal fights

Under Section 247 (1) of the Criminal Code, any person involved in the organization of fights using vertebrate animals, or in making arrangements for betting or placing bets on such animal fight, is guilty of a felony punishable by imprisonment not exceeding three years. This has been supplemented by paragraph (1a), under which anyone who takes part in an animal fight is liable to a misdemeanour punishable by imprisonment for up to two years. Paragraph (2) of the same provision states that anyone who obtains, keeps, breeds, trains, breeds, trains or markets vertebrate animals for the purpose of animal fighting shall be liable to a misdemeanour punishable by imprisonment for up to two years. The use of the word 'breed' implies that the offence may be committed by a person who engages in lawful breeding behaviour, so we are not talking about the concept of breeding, but about the prohibited purpose. And it is essentially the purpose that is decisive, and that purpose is the patenting of animals, and any activity connected with that purpose, whether it be breeding, propagation or any other form of property transfer, is criminalised by the legislation if it serves that purpose.

3.2 Genetics, biology, animal health – as a breeder's criterion

Breeders do not pay much attention to animal health aspects, but try to get rid of their stock as quickly as possible. They sell the 6 week old puppy, the female dog has no rest between litters because they use up their fertility as long as possible, even mating every time they have a litter, and they expect up to 8-10 litters per animal. This in itself

16 Domján 2024; VAOL 2024.

is grounds for Cruelty to Animals, but the rule applies to the individual, and it is not so easy to catch the breeds. Irresponsible breeding, inbreeding, the meeting of genetic mutations and defects, inconsistency and lack of traceability of bloodlines are all factors that can destroy and sicken entire breeds of animals. There are now long queues in veterinary surgeries for dogs bought from 'breeders' for hereditary diseases that were once considered to be more typical of humans, such as heart, circulatory, liver, kidney, other internal organ problems, etc., and even deaths from testicular cancer.[17]

On the other hand, the breeder is also exposed to a kind of competition to breed better, more attractive, more marketable mutations and hybrids,[18] which makes it even more difficult to draw the imaginary line between noble breeding and negligent breeding, as extremes have become very fashionable (e.g. vitiligo colour, which is the result of a pigment defect, is basicly a disease).[19] And genetic-based hereditary disorders are now common in breeders, and genetic defects are even more untraceable in dogs bought from breeders. In view of this, a quarter of respondents to a recent survey said that it was important to clearly separate breeding and reproduction and to sanction breeding.[20]

The incorrect breeder, from a genetic, biological point of view, is someone who is not interested in breeding a variety, in improving it, and is typically not even interested in the aspects of damaging the variety.[21] The correct breeder is concerned with the breed, while the other type of breeders is concerned with their own material interests, so consciousness is crucial. Many animal breeds, especially dog breeds, have suffered from irresponsible breeder thinking, resulting in the deterioration of whole herds and the deformed appearance of the breed. Appearance is an attractive criterion both for judges at competitions and for sale. Breeding for looks, breeding for designer dogs, can also be very detrimental to the breed. In English bulldogs, for example, the genetically narrowed hips make natural calving difficult, and puppies are born by caesarean section with veterinary assistance. Short-nosed brachycephalic dog breeds (e.g. pugs, bulldogs, Boston terriers) have a high incidence of upper respiratory tract disorders, and their compressed noses are a common cause of breathing problems. This is known as Brachycephalic Obstructive Airway Syndrome, which is not a genetic disorder but a physical disorder and can cause respiratory, thermoregulatory and digestive symptoms. However, owners of these dogs see respiratory difficulties as a simple breed characteristic,[22] and their buyers see it as a cute bronchial phenomenon, which makes these animals even more marketable.[23]

In addition, tooth defects are common, as well as outward and inward turning of the eyelids. It is also rather odd that for the propagation material of a good bloodline – legal or illegal – the breeders are prepared to travel a great distance to get the sample themselves and then, on the return home, artificially inseminate their own dogs with it. In essence, artificial insemination is replacing natural mating, and the animals are adapting to this as their willingness to mate decreases.[24]

According to Section 3 (4) of the Animal Protection Act, the unnecessary or painful abuse of an animal, or interference or treatment with an effect, or the restriction of its needs to such an extent that

17 See Bell 2007.
18 See on the problems of breeding for competition: https://tenyeszszemle.reblog.hu.
19 See Kruzer 2024.
20 Tóth et al. 2024, 315; 24.5% of the respondents to the survey said that it would be important to clearly separate breeding and propagation activities and to sanction propagation.
21 ABOSTONTERRIER.HU (no date).
22 Tóth et al. 2024, 308–309.
23 V. Molnár 2014.
24 Information obtained through hearsay.

it may cause lasting fear or damage to its health, as well as the breeding or reproduction of animals suffering from a hereditary disease, not intended for experimental purposes, are considered to be Cruelty to Animals.

Section 16 (3) of the Government Decree on Pet Animals specifically provides that the pet keeper must prevent the reproduction of animals which have any defects in appearance or behaviour that would cause suffering to their offspring or have a detrimental effect on their health.

Pursuant to Section 24/A (5) of the Animal Protection Act, it is prohibited to breed – including negligent breeding –, exhibit, compete in any form, keep for guarding purposes, train and employ, import into the country, export from the country, or keep dangerous dogs in any form. Pursuant to Section 24/F of the the Animal Protection Act, the keeping, breeding and marketing of specific animals as pets, which are ecologically dangerous to the country's indigenous flora and fauna, is prohibited. These practices are therefore already prohibited under the animal protection rules, and it is perhaps only a step from here to making such conduct an offence or even a criminal offence.

3.3. Administrative side: the register as a breeder criterion

In recent years, under pressure from public opinion and with the intensification of animal protection, a number of measures and restrictions have come into force in Hungary. As of 1 April 2021, pet trade has become an activity subject to FELIR system identification. This means that everyone must register with the authority if they trade in pets. Section 40 (6) of Animal Protection Act stipulates that the establishment and operation of pet trade requires a licence from the trade authority. At the same time as the licence is granted, the authority shall register the operator.

According to the provisions of the Animal Protection Act,[25] as a general rule, a particularly dangerous species may only be kept in a zoo, and the animal health (veterinary) authority may grant a permit for the keeping, breeding, disposal, transfer or transfer to another zoo, import into the country, export from the country or display of the animal. The keeping, breeding, disposal, purchase, transfer of control, offer for sale, import, export or display of specimens of a moderately dangerous species may be authorised by the animal health authority. In both cases, authorisation may be granted only if the keeping, breeding, disposal, transfer of control, offer for sale, import or export or display does not harm or endanger the peace and safety of the environment and the conditions of keeping, including the skills necessary for keeping or breeding, are ensured. The keeping, reproduction, disposal, transfer for keeping, importation into the country of an animal of a species requiring precautionary measures must be notified to the animal health authority. A specimen of a precautionary species may be kept if the conditions for keeping the specimen, including the necessary expertise for keeping or breeding, are ensured.

According to the Dangerous Species Decree,[26] the reproduction of specimens of species of particular and medium danger is subject to authorisation, while specimens of species of animals requiring precautionary measures are subject to notification. In zoos, the breeding of specimens of dangerous species may be carried out without a special authorisation procedure on the basis of the zoo's operating licence, while in circus menageries, authorisation is required, but only the breeding of specimens of a particularly dangerous species which does not possess venom may be authorised.[27]

The Criminal Code establishes a specific crime against anyone who infringes this administrative

25 Section 21 (1)(3).
26 85/2015. (XII. 17.) FM Decree on dangerous animal species and rules for keeping their specimens (Dangerous Species Decree) Section 11 (5); It must be reported to the nature conservation authority of the place where it is actually kept or bred.
27 Dangerous Species Decree Section 1 (4), 4 (3).

act of breeding dangerous animals.[28] In Section 359 it defines the offence of breaching the obligation to keep a dangerous animal or dangerous dog as a criminal offence and provides for the punishment of the offender. Thus, whoever keeps, breeds, disposes of or brings into the country a dangerous animal without a licence or violates the safety requirements prescribed by law for keeping dangerous animals is punishable as a misdemeanour with imprisonment of up to two years.

With regard to dogs that have been declared individually dangerous by an official decision, the legislator has introduced a special provision in subsection (2) of the same legislative provision, according to which any person who is engaged in breeding, importing or exporting dangerous dogs to or from the territory of Hungary, or in keeping such for racing without permission, in trafficking in dangerous dogs unlawfully; or who violates the legal obligation relating to the spaying of dangerous dogs, or breaches the security requirements laid down in the relevant legislation relating to the keeping of dangerous, shall be punished as above. A person who keeps, trains or performs a guarding or protection task with a dangerous dog shall be punishable by imprisonment for up to three years for a qualified offence and a felony.

The non-responsible breeders usually breed several popular breeds of dogs, the wide supply and lower purchase price can be a good criterion. They are not good at veterinary documentation and testing, they do not monitor the subsequent fate of the breeding, they separate the puppies from the mother at an early stage and sell them, no transponder, no vaccination book, no written contract at the sale, no kennel name and no records of any kind, such as the form of breeding activity, despite the fact that there may be a tax implication for any income-generating activity.

As with the regulation of dangerous animals and dangerous dogs, de lege ferenda, (additional) administrative obligations could be imposed on the scope of breeding activities – in the form of a permit or notification – which would help to clarify beyond doubt who falls outside this scope, i.e. who can be considered an incorrect breeder, and legal consequences could be linked. This behaviour could be identified from the economic side of breeding, since Cruelty to Animals is already punishable by law and can be committed by any natural person. A separate set of conditions for registration could be laid down, and such unregistered behaviour could be recorded either as a misdemeanour or as a separate criminal offence, and in the latter case could be punished in a cumulative manner, alongside the offences of Cruelty to Animals and the Organization of Illegal Animal Fights.

4. PROBLEMS AND FUTURE OPTIONS FOR ACTION AGAINST UNLAWFUL BREEDERS

4.1. Breeders in a tightening regulatory environment

The public opinion on unlawful breeders is unfavourable and it may be necessary to thematise more specifically the activities of breeders, which are both preventive and regressive, essentially aimed at achieving compliance with the law. The public is often impatient and dissatisfied with the actions of the authorities because animal abuse is widespread worldwide, but its causes are divided and sometimes contradictory.[29] The purpose of procreation has been included in the Criminal Code as a qualifying circumstance attached to the conduct of the basic offence, but the issues of detection and proof make prosecution difficult. The numerical solution of the qualification, which provides for a stricter sanction for offences involving more than 10 pet animals, seems problematic. An offence involving 6, 8 or 4 animals may be high

28 Violation of Legal Liabilities Relating to the Keeping of Dangerous Animals and Dangerous Dogs.
29 Lorászkó et al. 2023, 1.

profile or worthy of assessment, but remains less punishable due to that numerical barrier. There would be a need to create a doctrinal background that would allow for a precise terminology of breeding and reproduction, and to tighten up on registration and recording, and then attach legal consequences, whether administrative or even civil or criminal sanctions.

4.2. The importance of the ne bis in idem principle in the assessment of breeders

The ne bis in idem principle aims to eliminate multiple procedures and thus avoid double assessment and double sanctioning, avoid punishing the same person twice for the same conduct in different proceedings. The principle of ne bis in idem, as developed in the case-law of the Court of Justice of the European Union and the European Court of Human Rights, prevents the same person from being subject to two proceedings or sanctions for the same conduct, both with similar functions and objectives. This does not in itself preclude the possibility of several proceedings in different areas of law, but they should have different functions of sanctions. A retributive criminal sanction cannot be accompanied by an administrative sanction of a punitive nature, which also has a repressive purpose. Both administrative sanctions and sanctions for infringements are considered to be criminal matters.

It seems realistic that administrative proceedings can produce results in a shorter period of time and with a higher deterrent effect compared to criminal proceedings.[30] In previous case law, the two types of procedure were used in parallel, but the application of the constitutional principle of ne bis in idem has overridden this.

In Hungary, three important decisions of the Constitutional Court (hereinafter referred to as: Constitutional Court or CC) emerged in the field of animal protection, the list is obviously not yet complete, because the legal framework is still being developed. Decision No 8/2017. (IV. 18.) CC ruled on the prohibition of double assessment with animal protection fines and criminal penalties for Cruelty to Animals. A criminal conviction in the case was handed down before the administrative procedure. The Constitutional Court ruled that, from the principle of legal certainty and the prohibition of double jeopardy and double punishment comes the constitutional requirement that, where criminal liability has been established for the crime of Cruelty to Animals or a final judgment has already been given on the question of criminal liability, no animal protection fine may be imposed on the same person for the same unlawful conduct in proceedings brought by the animal protection authorities on the basis of the same facts. It follows from the requirement of predictability arising from legal certainty that the legislator must regulate the relationship between the different procedures where the offence is accompanied by a sanction under another legal branches.[31]

The legislator intended to avoid the accumulation of procedures and sanctions in violation of the ne bis in idem principle with Act CXXV of 2017 on Sanctions for Administrative Violations (hereinafter referred to as: Sanction Act), which entered into force on 1 January 2021. The Sanction Act provides that if the court has convicted the natural person for a crime in a final decision and imposed a penalty or measure on him or her, or acquitted him or her on the grounds that the offence was not committed by the accused,[32] so, on the basis of the same facts an administrative fine or a prohibition of an activity is not applicable as an administrative sanction,[33] as they are of a criminal nature. This does not apply to facts not assessed in a criminal case (residual facts) or to a natural person not assessed in a criminal case, in which case any sanction may be applicable.

30 Tilki 2017, 13.
31 Decision No 8/2017. (IV. 18.) CC [49].
32 Section 566(1)(b) of Act XC of 2017 on Criminal Procedure (hereinafter referred to as: the Criminal Procedure Act).
33 Sanction Act Section 5/A.

The Sanction Act provides that if the administrative authority becomes aware that criminal proceedings are in progress and the application of the administrative sanction depends on the outcome of those proceedings, it shall suspend its action until the criminal proceedings are concluded.[34] There are administrative offences that are subject to criminal sanctions and those that are not. Regardless of the criminal liability, a warning and a confiscation sanction under the Sanction Act, as well as other administrative sanctions or measures not covered by the Sanction Act, may be applied; administrative fines and prohibition from activities not. However, administrative sanctions may be applied earlier in time than criminal proceedings, and this is not sufficiently regulated in the Sanction Act. It was to be expected that such a case would arise and be brought before the Constitutional Court.[35]

Decision No 18/2022. (VIII. 1.) CC in connection with fish protection fine and the crime Poaching Fish[36] considered that Sanction Act does not provide for the case when the administrative sanction is imposed earlier than the criminal prosecution, so there is no possibility the administrative sanction to be taken into account in the criminal procedure.[37]

The ne bis in idem principle is not infringed by the rule introduced from 4 October 2022 that the criminal court notifies the animal protection authority that animal keeper has been convicted by a final judgment of a criminal offence of Cruelty to Animals or Organization of Illegal Animal Fights. The animal protection authority will carry out an administrative inspection on the basis of the court's notification.[38] This can help with some follow-up and may be useful for specific prevention. It is the legislator's intention[39] that in all cases of criminal offences of Cruelty to Animals or the Organization of Illegal Animal Fights, the court should notify the animal protection authority, since the offender may keep other animals and should also be examined whether the animal keeping rules are kept. These circumstances cannot be examined in criminal proceedings, but in animal protection proceedings.

If breeding or the breeder would get specific determination criterion, this would facilitate the separate assessment of breeding, which is related to, but distinctly more than an animal cruelty conduct. In this case, the prohibition of double assessment could even be avoided by saying that the failure to carry out breeding as an activity subject to registration or authorisation is an act causing economic harm and should (also) be punished. Since the breeder is motivated by profit, he could be punished, monitored and supervised in the same way as, for example, tax evasion, and could be subject to sanctions under animal protection legislation at the legislator's discretion.

4.3. Sanction of prohibition on keeping animals

4.3.1. Administrative prohibition

The most problematic administrative sanction, apart from administrative fines[40] and the obligation to provide animal welfare training, is the prohibition of the keeping of animals.

If

- a pet animal keeper
- intentionally or repeatedly violates a provision of the legislation or administrative decision on the protection of animals
- causes permanent damage to the health or death of the animal,
- and the welfare of the pet animal kept or to be kept in the future cannot be ensured by imposing

34 Sanction Act Section 5/B.
35 Bányai 2021, 30.
36 Criminal Code Section 246.
37 See more Bányai 2023.
38 Animal Protection Act Section 43 (13).
39 Detailed reasoning to Act CXXVIII of 2021 on amending certain criminal laws necessary for the protection of animals Section 1.
40 Animal Protection Act Section 43 (1)–(7).

an animal protection fine and by requiring the pet animal to undergo animal protection training, – the animal protection authority shall, in addition to imposing an animal protection fine, prohibition on keeping the pet animal for a period of 2 to 8 years, depending on the seriousness of the infringement.

A similar rule applies to a keeper of a non-pet animal if he is prohibited from keeping the species concerned. The same sanction will also apply if the reporting obligation or the obligation to engage a person with experience in keeping the species concerned is not successful.

The records provided for in the Sanction Act must be kept, so that the animal protection authority immediately enters the prohibition on keeping animals in the Register of Administrative Sanctions, the enforcement of which is monitored by the animal protection authority.[41]

4.3.2. Prohibition by a civil injunction

A prohibition on keeping animals may be imposed by means of a civil action. The Hungarian Public Prosecutor's Office, in addition to exclusively enforcing the state's criminal law claims, performs non-criminal law activities in the spirit of contributing to the maintenance of legality, in its capacity to protect the public interest under Act CLXIII of 2011 on Public Prosecution (hereinafter referred to as: the Public Prosecution Act).

To protect the public interest, it helps to ensure that everyone obeys the law.[42] In case of violations of the law, it acts to uphold the law in the cases and in the manner prescribed by law. The public prosecutor exercises these powers to remedy violations of the law primarily by initiating court and non-judicial proceedings (right of action) and by initiating official proceedings and submitting legal remedies (action).[43] Section 27 (5) (e) lists the protection of the environment and nature conservation as one of the public prosecutor's priority tasks. Section 44 (2) specifically empowers the public prosecutor to bring an action for a prohibition of the activity or for compensation for damage caused by the activity in the event of a breach of the legislation on animal welfare and protection. Pursuant to Section 48 (2) of the Animal Protection Act, NGOs whose activities are aimed at the protection of animals may also bring an action before the courts for an injunction against the infringement of animal protection legislation. It could also be argued that the legislator could include the restriction, suspension or obligation to carry out a specific activity within the scope of the prosecutor's right to bring an action.[44]

Pursuant to Section 7 (5) of Act XC of 2017 on Criminal Procedure, the court, the prosecution and the investigating authority are not bound by the decision or the facts established in civil, administrative, misdemeanour, disciplinary or other proceedings as to whether the accused has committed a criminal offence. Under the Act CXXX of 2016 on the Code of Civil Procedure,[45] the property consequences of a final judgment on a criminal offence are to be decided in a civil action, the court may not rule in its decision that the convicted person did not commit the offence charged, but everything else may be disputed in the civil action as to the facts. For example, in a civil action for a prohibition, the question is whether the action is directed against a particular animal, which may have died, or against a species of animal, or whether the prohibition should apply generally to all animals.

41 Animal Protection Act Section 43 (14)–(15).
42 Public Prosecution Act Section 1 (2).
43 Public Prosecution Act Section 26 (1).
44 Kocsis 2012, 93.
45 Section 264 (1).

The Sanction Act considers administrative disqualification as an administrative sanction and does not allow it to be used in parallel with a criminal conviction, but in the case of civil disqualification this is not clear, it is necessary to decide what kind of civil disqualification is considered. This question was raised at the Constitutional Court concluding its latest decision, Decision No 13/2024. (V. 30.) CC. The Constitutional Court held that there was an unconstitutionality of the constitution caused by the legislator's failure to act, since the legislator had not regulated the prohibition of the activity in accordance with the requirements of legal certainty and the principle of nulla poena sine lege. That is because the legislature did not lay down the legal conditions for the application of that sanction in civil proceedings; furthermore, the legislature did not lay down the legal conditions for civil proceedings for breach of the legislation on the protection and welfare of animals in cases where criminal proceedings or proceedings before the animal welfare authorities are also brought, in accordance with the requirements of legal certainty and the principle of ne bis in idem. The Constitutional Court therefore called on the Parliament to fulfil its legislative obligation until 31 December 2024. As a consequence, the applicability of the civil injunction as a legal instrument has become questionable, for example the prosecution service does not yet use this right of action.

5. THE PROHIBITION ON KEEPING ANIMALS AS A CRIMINAL SANCTION; AS USEFUL DE LEGE FERENDA PROPOSAL

The criminal law assessment is subject to administrative disqualification. According to the qualifying circumstance in Section 244 (2) d) of the Criminal Code, the penalty for a criminal offence is imprisonment for up to three years if the Cruelty to Animals is committed during the period of the prohibition against keeping animals as defined in the Animal Protection Act, or against animals of the species concerned.

The administrative penalty of an unlawfully applied disqualification cannot be compensated retrospectively, since it has no specific numerical value like a fine and cannot be redeemed or refunded. The Constitutional Court has already called on the legislature to develop a general solution to respect the ne bis in idem principle in order to harmonise criminal procedures and sanctions regulated by different branches of law.[46]

A prohibition on keeping animals can mean serious damage and financial disadvantage for breeders motivated to make financial gain. In addition, the tightening of the Criminal Code in 2022 also foresaw a more severe penalty if someone commits Cruelty to Animals during a previous ban. Taking into account the ne bis in idem principle with the uncertainties, it should be considered, de lege ferenda, that a prohibition on keeping animals could be incorporated into the criminal law system as a kind of special punishment, similar to prohibition to exercise professional activity.

For this reason, it would be interesting if the prohibition on keeping animals were included in the Criminal Code. This could be a real deterrent and a real penalty for unlawful breeders. A prohibition on the underlying activity could prevent future unlawful conduct. We see such legal solutions, for example with regard to the institutional system of restraining orders due to violence between relatives, where there is a criminal restraining order and a restraining order defined by a special law.[47]

Currently, according to the Criminal Code,[48] penalties include imprisonment, custodial arrest, community service work, fine, prohibition to exercise professional activity, driving ban, prohibition from residing in a particular area, ban from visiting sport events; expulsion. Deprivation of civil rights may be imposed as a form of additional penalty. Penalties can be applied in combination. The prohibition

46 Decision No 18/2022. (VIII. 1.) CC [119].
47 See Act LXXII of 2009 on preventive injunctions on the grounds of violence between relatives.
48 Criminal Code Section 33.

on keeping animals could also be placed – perhaps by analogy with prohibition to exercise professional activity – so that breeding activities could be assessed separately and weighted in the context of criminal proceedings, without violating the ne bis in idem principle.

6. BREEDING FARMS – ISSUES OF PROOF AND DETECTION

Cruelty to Animals, abuse, Organization of Illegal Animal Fights, and the conditions under which animals are kept are often hidden. Prevention is difficult until the signalling system of animal protection actors is not functioning properly. For example, the veterinarian can detect signs of possible animal fighting sooner, so he could report it, just like the doctor in case of injuries caused to humans. Cruelty to Animals and Organization of Illegal Animal Fights are also subject to public prosecution as human personal harms and injuries.

Some of the criminal criteria for animal cruelty require veterinary expertise in the evidentiary process. Abuse or unjustified mistreatment of vertebrate animals resulting in permanent damage to the animal's health or in the animal's destruction, the possibility of damage to health are all professional questions that need to be answered by an expert,[49] and have an impact on the case.

The chances of detection are also limited in administrative procedures, as the animal health authority or the official veterinarian has limited access to the property or premises, and they can only be exercised in the presence of arm power without the permission of the owner or keeper. It is no coincidence that, in the Czech Republic,[50] for example, following a case that caused an outrage, there was serious concern for extending the powers of official veterinarians. In that case, the animal health authority, as an administrative authority, carried out the inspection of dog owners, but the dog breeder did not allow inspectors to enter his property, and this was repeated later, in 2017. In 2018, the regulation was amended and the veterinary authority was authorized to enter the apartment for inspection. In the apartment, 212 small dogs were found sick and crowded. The keeper was a married couple who defended themselves by saying that they kept dogs for hobby. However, the fact that most females were pregnant more than once indicated that they were not raising animals for pleasure or hobby, but breeding activities, for which the offenders received a three-year prison sentence.[51] In Slovak law, the possibility of taking action against illegal dog breeding has been included within the framework of the Act on Veterinary Care.[52]

As far as the possibilities of the investigating authority are concerned, it can also be said that in the absence of an initial circumstance (e.g. reporting), animal torture behavior remains hidden and only the result can be invented, such as tortured or destroyed animals. It is also typical that animal fights in particular are linked to other crimes, such as drug possession, distribution, assault, vandalism, and attention is drawn to the perpetrators (in the framework of surveillance or eavesdropping) for these other crimes, and it turns out that the organization of prohibited animal fighting is also raised, so it comes to light as a consequence of another case that animal fights are organized.

It is particularly to be welcomed that the legislator provides for the possibility of handing over the animal to the public authority at an early stage of the procedure with regard to the confiscation of live animals as a sign of crime. The livelihood of the animal and the accumulation of maintenance costs justified the creation of separate procedural rules and the exclusion of the steps of use, sale and destruction in the public interest. The only question now is how long the costs of keeping these animals – typically dogs bred for fighting – can

49 Lorászkó et al. 2021, 166.
50 See more Bányai 2023.
51 Nagy 2023, 75.
52 Gallo 2023, 52.

burden the administrative apparatus or whether they will be replaced by state funding for shelters. In any case, every effort must be made to ensure that the seized animal is not returned to the same breeder or breeding establishment during its sale or adoption, as it was poorly kept there and used for criminal offences.

Unfortunately, when a breeding farm is detected, there is no condition that would preclude the return of the animal, unless the offender also receives a prohibition and cannot keep an animal for this reason.[53]

Administrative bodies are connected to the control system of rules relating to animal welfare. If the dogmatic background of propagating activities were established, with the registration system applicable to them, the administrative authority could be entrusted with their control, registration and supervision by the adminsitrative procedural rules.

The operation of illegally operating propagators and breeding plants could be caught up either along the lines of business licensing or tax administration control rules. The legislature may decide whether to attach a criminal assessment to it for financial gain.

7. CONCLUSION

The issues of the puppy mill runners as a subject and illegal breeding as an activity are negatively evaluated by the public and the legislator. To be able to successfully sanction the conducts of unlawful breeders who break the rules of protecting animals it seems necessary to create dogmatic definitions of the incorrect breeders and their activities. It can be judged from the registration side, as well as from the genetic, biological, veterinary, breed, and from economic side.

In addition, the ne bis in idem principle must be respected so that illegal reproductive behaviour can be assessed separately as an additional offence. This could happen by creating a separate, economy-based offence, it could be done either by including a prohibition on keeping animals as a separate penalty in the Criminal Code, or strengthening civil law and administrative law instruments, even in combination. With their effective operation, perhaps the organizers, participants and animal torturers can be better accustomed to behave in accordance with the law and the ethical-moral considerations of society, which is rightly expected in a civilized legal system. In the interdependence of man and animal, the true humanity is to act as we would with ourselves. "Quod tibi fieri non vis, alteri ne feceris."

53 Fialka & Soczó 2023, 32.

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