

THE SOCIAL PHENOMENON „ZOO“ - FEATURES OF LEGAL CONSTRUCTION

Abstract: This article analyses the primary national legislation regulating the existence of zoos in Bulgaria. It also focuses on social norms, in accordance to which zoos perform their functions.

The goal is to analyse the legal norms from the perspective of their studying and future application by students majoring in veterinary medicine. It makes an overview of the effects of the actual national legal model and the possibilities for animal protection.

The current normative acts and the frameworks of the existing legal system, which has adopted the international judicial norms for applying them in this specific sector of the social environment, which is related to animals are analysed.

The paper also suggests possibilities for a positive legal influence of the norms on the zoos' work, as well as the students' educational framework.

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The historical overview of zoos takes us to 1794, when the existing menagerie of Paris (*Ménagerie du Jardin des Plantes*) was transformed and gradually became the contemporary predecessor of zoos. In a historical context the development of zoos is intensive and rich in social and educational functions. The development of zoo models, their variety of species, their functioning and regulative norms shows us countries' efforts towards animal care and creating conditions close to their natural habitats.

The main context of the current study is the search and prioritisation of legal norms, as well as their implementation and observation, without which contemporary zoos in our country could not exist. The study does not aim to analyse the social and educational aspects, which are part of zoos' influence in the current social and educational space, or to conduct a legal analysis of normative acts' effect in relation to animals, particularly zoo animals. The study is based on national, European union, and international legislation as of 2018.

The intent is to present only the legislative acts that students and interested parties accept as the primary legal constructs giving zoos in the country the ability to expand their animal variety and to function legally under the supervision of the state, municipal and non-governmental organisations, in order to provide animals with conditions close to their authentic habitat, for the sake of their comfort. This is the sense, in which we can stress that legislative acts are an inevitable legal companion in the functioning of zoo spaces, and the educational interest of students should therefore be directed towards the application of the regulative norms.

The legislative acts impose control on the conditions for keeping, development and medical care of zoo animals, outlining the possibilities for their reproduction and minimising as much as possible trade with endangered animal species.

The *Constitution of the Republic of Bulgaria* is the primary legal text, which is indirectly related to the present topic. The Republic of Bulgaria is a member of the European Union since January 01, 2007 by signing the Treaty of Accession of the Republic of Bulgaria and Romania to the European Union. It is necessary to mention this circumstance due to the fact that it is related to the legal model and the sense of Bulgaria's current acting basic law. It is also important to consider this circumstance due to the sense of Art. 5, para. 1, which states that: "The Constitution shall be the supreme law, and no other law shall contravene it," as well as the sense of Art. 5, para. 4, stating: "International treaties which have been ratified in accordance with the constitutional procedure, promulgated and having come into force with respect to the Republic of Bulgaria, shall be part of the legislation of the State. They shall supersede any domestic legislation stipulating otherwise" These constitutional models become preconditions allowing for unrestricted influence by the current international and contemporary acting union legal norms related to the functions of zoos, which can further enrich and develop the acting national legislation in the field. The animal world is a priceless asset for all of us, and it is everywhere in the environment.

In this sense, our Constitution imperatively states the following in Art. 18, para. 1: "The State shall enjoy exclusive ownership rights over the underground resources; beaches and national thoroughfares, as well as over waters, forests and parks of national importance, and the natural and archaeological reserves established by law."

A careful legal review of this text suggests its influence on the preservation of some animal species under controlled breeding at zoos. These constitutional texts are fundamental for our national legislation related to the functioning of zoos and the animals living in them, while the sense of their philosophy is multiplied as an essential part in the acting special legislation pertaining to animals in zoos.

Council Directive 1999/22/EC of 29 March 1999

The Directive regulates keeping wild fauna in zoos and its objectives, as stated in art. 1, is: „, to protect wild fauna and to conserve biodiversity by providing for the adoption of measures by Member States for the licensing and inspection of zoos in the Community, thereby strengthening the role of zoos in the conservation of biodiversity“. Another important emphasis of this element of the legal construction regulating the functioning of zoos, is the introduction of the following definition with art. 2: „For the purpose of this Directive, *zoos* means all permanent establishments where animals of wild species are kept for exhibition to the public for 7 or more days a year, with the exception of circuses, pet shops and establishments which Member States exempt from the requirements of this Directive on the grounds that they do not exhibit a significant number of animals or species to the public and that the exemption will not jeopardise the objectives of this Directive“.

The judicial value of the Directive is further enhanced by the fact that text in art. 3 outline the necessary requirements for zoos' existence and application of the following conservation measures:

- taking part in research from which conservation benefits accrue to the species, and/or training in relevant conservation skills, and/or the exchange of information for species conservation and/or, where appropriate, breeding in captivity, repopulation or reintroduction of species into the wild;
- promoting public education and awareness about biodiversity conservation, in particular by providing information about exhibited species and their natural habitats
- accommodation of their animals under conditions satisfying the biological and conservation requirements of the species, *inter alia*, by providing species specific enrichment of the enclosures; and maintenance of a high animal husbandry standard through a developed programme of preventive and curative veterinary care and nutrition,
- prevention of the escape of animals to avoid possible ecological threats to indigenous species and prevention of the intrusion of outside pests;
- keeping of up-to-date records of the zoo's collection appropriate to the species recorded.

Hunting and Game Protection Act

We can search, even if only indirectly, for a relation between legislation related to zoo spaces and the ones that are the object of the aforementioned law. The relation can be found in the state's functions, such as care for the animals in both types of spaces – zoos and areas designated by law for hunting. In both cases (in zoos and hunting territories) it is a matter of breeding, preserving and managing (freely or controlled), yet under the supervision of the state bodies, such as: the Executive Environment Agency and the Executive Forestry Agency. The state's engagement is also related to veterinary medical supervision and control of game diseases on a national scale, which is conducted by the Bulgarian Food Safety Agency and the Executive Forestry Agency, while the organisation of hunting areas, management of hunting reserves and control over breeding game are carried out by the Ministry of Agriculture, Food and Forestry.

These legal norms emphasise the circumstance that the state, through its administrative bodies, exercises control and is an active participant in the processes affecting the animal world. We can view the addenda and amendments of the Hunting and Game Protection Act as a legal extension of the Council relating to the keeping of wild animals in zoos, as a stage in the modernisation of our national legislation, in accordance with European requirements.

The Convention on Biological Diversity

In the context of the study, the Convention is related to the national legislation and in particular, to animals kept in zoos. The document is opened for signature in Rio de Janeiro on 5 June 1992 and entered into force on 29 December 1993. Bulgaria has ratified the Convention with a law promulgated in State Gazette No. 22 of 15 March 1996. Having ratified the Convention, Bulgaria has become an equal party making efforts to implement appropriate measures and actions related to the general priorities of biodiversity.

Biological Diversity Act

After Bulgaria's accession to the European Union, a fast and successful harmonisation of our legislation with international norms and Community law has been implemented. In this sense, this act was adopted as a continuation and upgrading of the implementation of the aforementioned Convention, and promulgated in State Gazette No. 77 of 9 August 2002. With the texts in art. 1, it regulates "...the relations among the state, the municipalities, and the juristic and natural persons in respect of the conservation and sustainable use of biological diversity in the Republic of Bulgaria". As stated in § 9 of supplementary provision, this Act supersedes the Nature Protection Act. Also, numerous notions connected to this study's subject, are introduced. Among the most important is the definition of the zoo in § 1, p. 21 as: „ ... any permanent establishment where animals of wild species are kept for exhibition to the public for seven or more days a year, with the exception of circuses, pet shops and other establishments which do not exhibit a significant number of animals or species to the public“, and the definition for specimen bred in captivity (§ 1, p. 16): „ ... " any specimen of an animal species born, hatched and raised in captivity, or any artificially propagated specimen of a plant species. Artificially propagated specimen shall be any specimen produced by propagation in an environment created or modified by man or under the control of man, which, in the case of animals, is at least second-generation offspring bred by man without addition of genetic material from the wild“.

Expectedly, the definition of zoo as per the national legislation is not different from that in Council Directive 1999/22 of 29.03.1999, which proves the existence of sufficient legal instruments.

Convention on International Trade in Endangered Species of Wild Fauna and Flora

It is ratified by the Grand National Assembly on 12.12.1990, State Gazette No. 103/1990. Our legal community accepts it as a valid legal document relevant to zoo animals as its texts stress on the necessity of: „... international cooperation“, in order to protect „...certain species of wild fauna and flora against over-exploitation through international trade“.

The essence of its legal philosophy is aimed at wild flora and fauna, but because of the fact that zoo animals become often subject to attacks, it is approved in Bulgaria as a normative act providing in Art. I (b) (ii) “Definitions” a meaning of “specimen” in the case of an animal. The existence and operation of the Convention in the national legal space is the necessary legal instrument in the security sense of its nature.

Animal Protection Act, promulgated, State Gazette No.13 of 8 February 2008

The act’s General provisions, art. 1 para. 1 stipulates that it shall regulate “... animal protection and means for its implementation” and continues in art. 1 para. 2 with „Animal protection shall comprise protection of animals’ life, health, and good condition; protection from inhumane, cruel, and extremely cruel treatment; ensuring proper care and living conditions, adapted to their physiological and behavioural specifics“.

The legal interpretation of the text shows its power over the entire legal spectrum related to animals, regulating rearing rules and animal care. In Chapter Three “ Specific conditions of animal keeping and usage” art. 24, the act pays a particular attention to circus animals affirming that „Veterinary-sanitary requirements on movement of circus animals shall be governed by Commission Regulation (EC) No 1739/2005 laying down animal health requirements for the movement of circus animals between Member States. The act includes detailed texts about the movement of circus animals between states and associated requirements, the conditions of rearing and use, requirements for keeping companion animals, measures for control of stray animal populations. All necessary rules, measures and actions aimed at animal protection (protection of their life, health and good condition, prevention of inhumane treatment, cruelty and extreme cruelty, provision of appropriate care and living conditions in line with their physiological and behavioural needs) and animal welfare are outlined. The act gives also legal definitions of the terms “inhumane treatment” and “cruelty”. It stipulates the norms relating to abandonment of animals reared when they are not prepared to survive in their natural environment. The Animal Protection Act regulates the duties and responsibilities in case of finding of a sick or injured animal, for informing animal shelters, municipal authorities, the regional veterinary service, the district police department or regional office of the Executive Forestry Agency. It states the requirements about catching stray animals, about persons in charge of this activity and legal authorities controlling catching teams. The Animal Protection Act specifies the conditions for rearing wild animals outside their natural habitat and requires that *The Minister of Environment and Water* shall issue an ordinance on conditions for their keeping. It asks *municipal councils* to adopt programmes to contain stray dog population, and to implement control measures in registered mobile or stationary ambulatory facilities by the municipalities or the *animal protection organisations*.

The act imposes on *veterinary authorities* the obligation for fulfillment of requirements described in the Veterinary Practice Act in connection with the health status, humane treatment, transportation and registration of animals, the supervision and control on stray dog catching teams and cooperation for training in the field of animal protection.

The broad legal frame of the Animal Protection Act obliges the the *Minister of Agriculture and Food* through the Bulgarian Food Safety Agency and the Minister of Environment and Water through the Executive Forestry Agency to conduct the supervision under this act.

Municipal authorities are required to execute administrative control on animals abandoned on the territory of municipalities, the identification and registration of dogs and conformity to requirements of

animal protection in shelters. This does not exclude possibilities of public supervision by demanding that shall be carried out by authorised representatives of legal entities, registered under the Non-Profit Legal Persons Act with the cooperation of the Ministry of Interior and executive government authorities to prevent cruelty towards animals

Veterinary Practice Act

The Act is promulgated in State Gazette No 87 of 01.11.2005. Its judicial philosophy is presented in the text of art.1, according to which the Act regulates "...the public relations relevant to the implementation, management and control of the veterinary practice, and shall introduce the principles of the veterinary legislation of the European Union and the World Organization of Animal Health (WOAH) “.

Apart the framework related to management and control of veterinary activities, the Act deals with the complex judicial matter about: practicing of the veterinary medical profession, terms and conditions for carrying out veterinary practice and implementing programs for prevention, surveillance, control and eradication of animal diseases and zoonoses, veterinary medical requirements for animals, germinal products, raw materials and foods of animal origin and animal by-products, control of the health protection of the animals, border veterinary medical control, state veterinary sanitary control, disposal, storage, transportation and destruction of animal by-products, veterinary medical products and their use.

Control and licensing of zoos

Bulgaria fulfills the requirements of an European programme of endangered species, which is the most intensive kind of management of populations for species raised in zoos without being a member of the European Association of Zoos and Aquaria. The national judicial space associated to zoo activities comprises Ordinance № 6 of 23 October 2003 for the minimum requirements and rearing conditions for animals in zoos and centers for reproduction of protected animal species, promulgated in State Gazette No. 105 of 02.12.2003. The Ordinance defines the minimum requirements and environment for rearing animals in zoos and centres for rearing and reproduction of protected species.

Licensing of zoos is performed according to *Ordinance No.1 of 9.05.2006 on the terms and procedure for licensing of zoos* promulgated in State Gazette No. 43 of 26.05.2006. The Ordinance is issued as per art. 62 para. 1 of the Biological Diversity Act and stipulates the conditions and order for granting a license to zoos, its validity, cases for imposing coercive measures and supervision on licensed zoos. Licensing of zoos certifies their appropriateness for conservation of wild species outside their natural environment through their rearing and reproduction under controlled conditions, as required by the Biological Diversity Act and the secondary normative acts for its implementation.

According to the Ordinance, all permanent establishments keeping wild animals for showing them in public for more than 7 days a year are subject to licensing, except for:

- circuses and pet shops
- other establishments which do not show in public a substantial number of animals or animal species.

The Ordinance defines also the order for granting a license to a zoo, license validity and conditions for license suspension.

The control on the condition of animals in zoos are described in Art. 3 and Art. 4 of the Veterinary Practice Act and are a responsibility of the Minister of Agriculture, Food and Forestry through the Bulgarian Food Safety Agency and Executive Forestry Agency.

The present overview on the judicial space related to animals kept in zoos, which does not claim to be complete, allows concluding that the national legal framework takes consideration with at least two important aspects of animal rearing in zoos:

-The legislation is compliant with international and community legal requirements for humane treatment of animals kept in zoos;

-The legislation guarantees their protection from inhumane treatment, cruelty and extreme cruelty by ensuring appropriate care and life conditions according to specific animals' physiological and behavioural traits.

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