

CRIMES UNDER ARTICLE 66 OF THE ACT OF 15 JANUARY 2015 ON THE PROTECTION OF ANIMALS USED FOR SCIENTIFIC OR EDUCATIONAL PURPOSES

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1. INTRODUCTION

Before I start discussing the topic, let me draw attention to some historical issues. The Regulation of the President of the Republic of Poland of 28 March 1928 on the protection of animals¹ (in Article 2) defined the concept of animal maltreatment, giving examples, however, the list of them was not exhaustive. The provision of Article 3 of the Regulation on the protection of animals stipulated that scientific tests on animals conducted by persons granted with special authorisation were not treated as animal maltreatment. Article 7 penalised (PLN 1,000 fine) scientific tests on animals violating Article 3 or provisions enacted based thereon. The Act of 21 August 1997 on the protection of animals² (hereinafter: APA) repealed the Regulation of the President of the Republic of Poland on the protection of animals. In Chapter 9 APA, testing procedures with the use of animals were laid down (Articles 28 to 32), and their violation was classified in Article 37(1) APA.³ On 21 January 2005, the Act on experiments on animals⁴ was passed, which repealed Chapter 9 APA, amended

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¹ Journal of Laws [Dz.U.] of 1932, No. 42, item 417, as amended.

² Original text, Journal of Laws [Dz.U.] No. 111, item 724.

³ Article 37(1): "Whoever violates the obligations or bans laid down in Article 9, Article 12(1) to (6), Article 13(1), Article 14, Article 15(1) to (5), Article 16, Article 17(1) to (7), Article 18, Article 19, Article 22(1), Article 24(1) to (3), Article 25, Article 27, Article 28(1) and (7) to (9), Article 29(1) to (3), Article 30 and Article 31, is subject to a penalty of detention or a fine".

⁴ Journal of Laws [Dz.U.] No. 33, item 289, as amended.

the scope of penalisation laid down in Article 37 and introduced new criminal provisions. They were included in Chapter 8, which classified the following offences: conducting experiments exposing laboratory animals to unnecessary pain, suffering, fear or permanent damage to their organism (Article 38), conducting experiments on animals without appropriate anaesthetic (Article 39), conducting experiments on animals in order to test cosmetics or personal hygiene products (Article 40(1)), an aggravated type of crime in relation to the one under Article 40(1), i.e. acting with extreme cruelty (Article 40(2)), and repeated use of laboratory animals in experiments resulting in strong pain, fear or suffering (Article 41).⁵

The Act of 15 January 2015 on the protection of animals used for scientific or educational purposes⁶ (hereinafter: APAUSEP) entered into force on 27 May 2015 and repealed the Act of 21 January 2005 on experiments on animals. The Act lays down the rules and requirements for the protection of animals used for scientific and educational purposes, including: (1) the rules: (a) of implementing procedures and conducting experiments, (b) of the activities consisting in breeding, supplying and using animals, (c) of supervising breeders, suppliers and users; (2) conditions of keeping animals used for scientific and educational purposes and the way of treating them; (3) tasks and competences of ethical commissions for animal testing (Article 1(1) APAUSEP).⁷ It should be added that in matters that are not regulated in APAUSEP, the Act on the protection of animals is applicable (Article 4 APAUSEP). Chapter 1 contains general provisions (Articles 1 to 4), Chapter 2 lays down the rules of the implementation of procedures (Articles 5 to 16), Chapter 3 determines the requirements concerning doing business involving use of animals for scientific and educational purposes (Articles 17 to 25), Chapter 4 deals with the activities of breeders, suppliers and users (Articles 26 to 31), Chapter 5 defines ethical committees for animal testing (Articles 32 to 41), Chapter 6 determines the rules of conducting experiments (Articles 42 to 53), Chapter 7 deals with supervision (Articles 54 to 63), Chapter 8 regulates cooperation with the European Commission and the European Union Member States (Articles 64 to 65), Chapter 9 contains penal provisions (Articles 66 to 68), Chapter 10 lays down administrative penalties

⁵ The Act also classified misdemeanours: use of homeless animals in experiments (Article 42), use of animals representing species that are in danger of extinction or wild animals in experiments (Article 43), acquisition of homeless animals in order to breed them as laboratory animals (Article 44), breeding laboratory animals or supplying animals for testing without the required permission or without providing those animals with appropriate conditions of maintenance (Article 45), conducting experiments without the required permission for their conducting or in conflict with the approved experiment project (Article 46); on the same issue, compare, A. Habuda, W. Radecki, *Przepisy karne w ustawach o ochronie zwierząt oraz o doświadczeniach na zwierzętach*, Prok. i Pr. No. 5, 2008, pp. 31–32.

⁶ Journal of Laws [Dz.U.] item 266, as amended.

⁷ The Act is not applicable to: (1) veterinary services in the meaning of the Act of 18 December 2003 on animal healthcare institutions and farming, including breeding animals in compliance with the provisions on the protection of animals, not aimed at conducting procedures; (2) clinical veterinary research conducted in accordance with Articles 37ah to 37ak of the Act of 6 September 2001: Pharmaceutical law; (3) activities performed for the purpose of animals identification; (4) catching wild animals in order to conduct biometric measurements and determine their systemic classification; (5) activities that, according to medical-veterinary knowledge, do not cause pain, suffering, distress or permanent damage to an animal's body to the extent equal to or higher than a prick of a needle (Article 1(2) APAUSEP).

(Articles 69 to 72), Chapter 11 discusses changes in the provisions in force (Articles 73 to 76), and Chapter 12 contains transitional and final provisions (Articles 77 to 84). Offences are classified in Articles 66 to 67. We deal with five types of prohibited acts: (1) exposing animals to unnecessary pain, suffering, distress or permanent damage to their body resulting from the activities of using them for scientific or educational purposes (Article 66(1.1) APAUSEP); (2) using animals in experiment-related procedures without authorisation to use them in procedures connected with the use of animals for scientific or educational purposes (Article 66(1.2) APAUSEP); (3) a common aggravated type of offences laid down above (in Article 66(1.1 and 2) APAUSEP) in case of causing an animal's death (Article 66(2) APAUSEP); (4) preventing or hindering supervision based on the provisions of statute (Article 68(1) APAUSEP); (5) using information obtained during supervision proceedings for purposes different from the protection of animals used for scientific or educational purposes (Article 67(2) APAUSEP). In accordance with the assumptions made earlier, offences classified in Article 66 (i.e. the first three above-mentioned ones) will be the subject of the foregoing discussion.

2. CRIME OF EXPOSING ANIMALS TO UNNECESSARY PAIN, SUFFERING, DISTRESS OR PERMANENT DAMAGE TO THEIR BODY RESULTING FROM ACTIVITIES THAT INVOLVE USING ANIMALS FOR SCIENTIFIC OR EDUCATIONAL PURPOSES (ARTICLE 66(1.1) APAUSEP)

As W. Radecki rightly points out, “the well-being of animals that, as a result of the activities connected with the use of animals, are exposed to unnecessary pain, suffering, distress or permanent damage to their body”⁸ is a protected legal interest. In other words, it concerns freeing animals from psychical and physical suffering. According to W. Kotowski and B. Kurzępa, in this case, life and health of laboratory animals are subject to protection.⁹ It is a crime of exposing to danger.¹⁰ Thus, it is material in nature, and it results in exposing an animal to unnecessary pain, suffering, distress or permanent damage to its body.¹¹ W. Kotowski and B. Kurzępa expressed a different opinion (in fact, based on Article 38 Act of 21 January 2005 on experiments on animals, however, treating the statutory features in the same way as Article 66(1.1) APAUSEP)

⁸ W. Radecki, *Ustawy o ochronie zdrowia zwierząt. Komentarz*, Warsaw 2015, p. 369.

⁹ W. Kotowski, B. Kurzępa, *Przestępstwa pozakodeksowe. Komentarz*, Warsaw 2007, p. 196.

¹⁰ The feature of exposure should be interpreted as exposing an animal to danger, the influence of something harmful (in this case, unnecessary pain, suffering, distress or permanent damage to an animal's body). Adopting the concept of exposure in criminal law, the legislator makes it possible to prosecute conduct that, to tell the truth, has not resulted in any measurable damage but may lead to it; thus, it is penalisation of the stage preceding a criminal effect, see W. Radecki, *Przestępstwo narażenia życia i zdrowia człowieka na niebezpieczeństwo w kodeksie karnym z 1969 r.*, Warsaw–Wrocław 1977, p. 5.

¹¹ M. Mozgawa, *Ustawa z 15.01.2015 r. o ochronie zwierząt wykorzystywanych do celów naukowych lub edukacyjnych*, [in:] M. Mozgawa (ed.), *Pozakodeksowe przestępstwa przeciwko zasobom przyrody i środowisku*, Warsaw 2017, p. 195.

and (wrongly) stated that it is a formal crime.¹² The provision does not require that an animal should be really exposed to unnecessary pain, suffering, distress or permanent damage to its body; for the occurrence of this crime, it is sufficient that it is highly probable that it can occur in connection with certain activities.¹³ Obviously, in the event an animal really experienced pain, suffering, distress or permanent damage to its body, such a perpetrator's act matches statutory features of the offence in question,¹⁴ and it sometimes may at the same time match statutory features of a crime of animals maltreatment laid down in Article 35(1a) Act on the protection of animals (which will imply the necessity of applying cumulative classification). According to the Dictionary of the Polish language, "pain means physical or psychical suffering".¹⁵ According to the International Association for the Study of Pain, it is a subjective unpleasant and negative sensory and emotional experience resulting from tissue-damaging (called nociceptive) stimuli or ones that create a risk of tissue damage. On the other hand, linguistically, suffering means "great physical or psychical pain".¹⁶ What draws attention is the fact that the legislator used a word "distress" and not "stress".¹⁷ The concept of distress is not fully unambiguous. Distress is sometimes understood as "stress resulting from another type of stress or its strengthened form".¹⁸ In psychology, it is stated that distress is a negative, depressing and demotivating aspect of the phenomenon of stress.¹⁹ Sometimes, the concept of distress is used to describe the stress of deprivation or the stress of overloading causing illnesses;²⁰ or it is pointed out that: "distress (negative stress) means excessive overload remaining when tension is not efficiently eased".²¹ Permanent damage to an animal's body is one that leads to anatomic or functional loss of an animal's organ or substantial limitation to its function.

The object of the criminal act classified in Article 66(1) APAUSEP is an animal, although a plural form is used in statute ("whoever exposes animals"). Thus, the issue that has been discussed for quite a long time arises again and a question is asked whether the legislator used the plural form to indicate at least two animals. The problem occurred in connection with Article 52(4)²² Hunting law (in the original wording of the

¹² W. Kotowski, B. Kurzępa, *Przestępstwa pozakodeksowe...*, p. 196.

¹³ W. Radecki, *Ustawy...*, p. 369.

¹⁴ *Ibid.*, p. 370.

¹⁵ *Słownik języka polskiego*, see <http://sjp.pl/b%C3%B3l> [accessed on 15/01/2018].

¹⁶ *Ibid.*, see <http://sjp.pwn.pl/slowniki/cierpienie.html> [accessed on 15/01/2018].

¹⁷ It should be assumed that the legislator consciously did not use the concept of stress. There is a common erroneous opinion that every type of stress is harmful, which is not true. There is also stress called *eustres*, which is positive (it is constructive stress, stimulating an organism); compare, more detailed discussion by J.F. Terelak, *Psychologia stresu*, Bydgoszcz 2001, p. 367. Using the concept of distress, the legislator indicated the negative meaning of stress; also compare, comments by W. Radecki, *Ustawy...*, p. 280.

¹⁸ *Słownik języka polskiego*, see <http://sjp.pwn.pl/szukaj/dystres.html> [accessed on 15/01/2018].

¹⁹ See, <http://www.psychologia.net.pl/slownik.php?level=147> [accessed on 15/01/2018].

²⁰ J.F. Terelak, *Psychologia stresu...*, p. 26.

²¹ A. Wons, [in:] A. Trzcieniecka-Green (ed.), *Psychologia. Podręcznik dla studentów kierunków medycznych*, Kraków 2006, p. 367.

²² Article 52(4): "Whoever breeds or keeps pedigree greyhounds or their crossbreeds without permission is subject to a penalty of a fine, limitation of liberty or deprivation of liberty for up to one year".

provision) and resulted in the Supreme Court resolution of 21 November 2001, I KZP 26/01, stating that: "Just the use of the plural form in the text of the norm in order to refer to the object of direct protection, the object of a criminal act or a means used to commit a crime does not mean that the legislator uses it in the meaning of 'at least two', thus in order to limit the grounds for liability; therefore, the phrase 'pedigree greyhounds or their crossbreeds' used in Article 52(4) of the Act of 13 October 1995: Hunting law (Journal of Laws [Dz.U.] No. 147, item 713, as amended) covers also one pedigree dog or one crossbreed". The resolution should be obviously approved of because a grammatical interpretation should be verified with the use of other types of interpretation (mainly the purposefulness-related one) in such cases, as using it as the only one may lead to undermining the purpose of regulations laid down in legal acts. Thus, also based on the Act on the protection of animals used for scientific or educational purposes, although the legislator uses the plural form ("whoever exposes animals"), it should be recognised that exposure of one animal (to unnecessary pain, suffering, distress or permanent damage to its body) may lead to complete match of the statutory features of the crime in question (in the form of perpetration). W. Radecki rightly emphasises that "insisting that 'at least two' animals must be exposed leads to absurd in the light of the purpose of the Act. Striving to avoid the absurd justifies abandonment of purely grammatical interpretation and the use of the purposefulness-related one".²³ Undoubtedly, the argument strengthening this way of reasoning on the basis of this Act is the fact that constructing an aggravated type (in Article 66(2) APAUSEP), the legislator used the phrase: "whoever, in cases determined in (1), caused death of an animal" (and not death of animals), i.e. a singular form instead of a plural one. The opinion expressed in the doctrine is right that the use of a plural form in Article 66(1) APAUSEP is an indication of a class of cases and not a condition for a perpetrator to expose at least two animals.²⁴ It should be also pointed out that the Act defines animals as "living vertebrates, including larval forms that can feed independently and embryos of mammals in the last third part of their embryonic development or in the early stage of their development when, as a result of procedures carried out, after they reach the last third stage of their embryonic life, they can experience pain, suffering, distress or there is permanent damage to their body, and living cephalopods" (Article 2(1.1) APAUSEP).

According to W. Radecki's right opinion, "The essence of a crime is contained in the statement that pain, suffering, distress or permanent damage to the body are unnecessary. It is important because experiments are almost always connected with distress, usually with pain and suffering, sometimes with permanent damage to the body. The features of a crime are matched only when such a consequence is unnecessary, i.e. when it can be avoided without detriment to the sense of an experiment".²⁵

Exposing animals to unnecessary pain, suffering, distress or permanent damage to their body must occur in connection with the activities that involve using animals

²³ W. Radecki, *Ustawy...*, p. 371. Also compare, K. Nazar, *Ustawa z 13.10.1995 r. – Prawo łowieckie*, [in:] M. Mozgawa (ed.), *Pozakodeksowe przestępstwa przeciwko zasobom przyrody i środowisku*, Warsaw 2017, p. 238.

²⁴ W. Radecki, *Ustawy...*, p. 371.

²⁵ *Ibid.*, p. 370.

for scientific or educational purposes. Thus, it concerns not only procedures²⁶ and experiments on animals,²⁷ but also keeping animals to be used for scientific or educational purposes by users²⁸ as well as activities of their breeders²⁹ and suppliers³⁰. Therefore, the scope of the provision application is broader than just scientific or educational activity. The legislator indicates the connections between the activities involving the use of animals for scientific or educational purposes and, as it is rightly pointed out in the doctrine, such activities consist not only in experiments (and procedures) but also in breeding and supplying them.³¹ Thus, if an animal is exposed to unnecessary pain, suffering, distress or permanent damage to its body still in the course of breeding, transporting to the place of use, then the statutory features of the crime in question may be matched. A series of other types of conduct may lead to matching the features of the crime under Article 66(1.1) of the discussed Act, including:

- 1) implementation of the procedure in case the (scientific or educational) purposes laid down in Article 3 APAUSEP might be achieved with the use of a research method without the use of animals (breaking the principle of substitution expressed in Article 5(1.1) APAUSEP);
- 2) applying inappropriate research methods used in the procedure, not selected in order to limit or eliminate pain, suffering, distress or a possibility of damage to an animal's body (breaking the principle of improvement expressed in Article 5(1.3) APAUSEP);
- 3) implementation of the procedure causing serious damage to an animal's body and severe pain without anaesthetic and the use of medicinal products or veterinary medicinal products that act as painkillers (breaking the requirement under Article 13(1) APAUSEP);
- 4) using an animal in the procedure again, although its full health and well-being recovery has not been obtained and without a veterinarian's permission (breaking the requirement under Article 12(1) APAUSEP).

According to W. Radecki: "Only a natural person that is a breeder, a supplier or a user, or his representative or employee may be a perpetrator of a crime classified

²⁶ The Act determines the procedure as any form of using animals for purposes laid down in Article 3, which can cause that an animal experiences pain, suffering, distress or permanent damage to its body to the extent equal to or greater than a prick of a needle as well as activities aimed at or that may cause birth or hatching of animals or the creation and maintenance of a genetically modified line of animals in the conditions of pain, suffering, distress or permanent damage to animals' body to the extent that is equal to or more intensive than a prick of a needle; depriving an animal of life only in order to use its organs or tissues for purposes laid down in Article 3 (Article 2(1.6)) is not a procedure.

²⁷ In accordance with Article 2(1.7), experiment is "a research programme, including a procedure or procedures with a specific scientific or educational aim".

²⁸ Article 2(1.11): "a user is a natural person, a legal person or an organisational unit without legal personality that uses animals in procedures."

²⁹ Article 2(1.9): "a breeder is a natural person, a legal person or an organisational unit without legal personality that breeds animals in order to use them in procedures or use their tissues or organs for purposes laid down in Article 3."

³⁰ Article 2(1.10): "a supplier is a natural person, a legal person or an organisational unit without legal personality that is not a breeder and supplies animals for the purpose of using them in procedures or using their tissues or organs for purposes laid down in Article 3."

³¹ W. Radecki, *Ustawy...*, p. 370.

in Article 66(1.1)".³² It is a right observation because exposing animals to unnecessary pain, suffering, distress or permanent damage to their body must be connected with the activity involving the use of animals for scientific or educational purposes (and this activity is mainly a user's one as well as, what has been mentioned above, a breeder's or a supplier's one).³³ He draws attention to the fact that offences under Articles 66 and 67 APAUSEP are not included in the group of offences for the commission of which a collective entity may be prosecuted (Article 16 of the Act of 28 October 2002 on collective entities' liability for prohibited acts carrying a penalty³⁴).

The crime in question is intentional and may be committed with direct as well as oblique intent. Thus, a perpetrator must want to expose an animal to unnecessary pain, suffering, distress or permanent damage to its body or predicting such a possibility, he agrees to it.³⁵ Cases of unintentional conduct consisting in breaking the rules of careful treatment of animals in connection with the activity of using animals for scientific or educational purposes and leading to exposing animals to unnecessary pain, suffering, distress or permanent damage to their body remain outside the sphere of criminal liability.³⁶

W. Radecki raises an interesting problem connected with the issue of liability for a crime under Article 66(1.1) APAUSEP. He asks a question whether an ethical commission's permission for an experiment is a circumstance excluding unlawfulness, and thus also criminal liability. As the author rightly notices, an ethical commission (taking into consideration the provisions of APAUSEP) cannot give permission for exposing an animal to unnecessary pain, suffering, distress or permanent damage to its body. Therefore, it should be assumed that the permission issued by an ethical commission for the use of animals in the procedure does not mean a permission for unnecessary pain, suffering, distress or permanent damage of their body. However, if an ethical commission issued a permission for the procedure that, according to objective scientific opinions, exposes an animal to dangers laid down in Article 66(1.1) APAUSEP, according to W. Radecki, one cannot exclude criminal liability of a person carrying out the procedure as well as of the members of an ethical commission who were for issuing of a permission for the procedure (and the concept of aiding or directing the perpetration may be applicable to their liability³⁷). It should be assumed that such a possibility really exists, however, in case of an ethical commission members' liability, it would be necessary to prove intentionality on their part (their direct or oblique intent, i.e. that they wanted or at least agreed to issue a permission for the procedure in which animals were to be exposed to unnecessary pain, suffering, distress or permanent damage to their body). One cannot also exclude such cases, in which a permission has been issued in compliance with the law, however, breaking its requirements (resulting in the exposure laid down in Article 66(1.1) APAUSEP) in the course of implementation of the given procedure.

³² *Ibid.*, p. 371.

³³ M. Mozgawa, *Ustawa...*, p. 200.

³⁴ Journal of Laws [Dz.U.] of 2016, item 1541, as amended.

³⁵ W. Radecki, *Ustawy...*, p. 371.

³⁶ M. Mozgawa, *Ustawa...*, p. 200.

³⁷ W. Radecki, *Ustawy...*, p. 372.

3. CRIME OF USING ANIMALS IN THE PROCEDURES DURING EXPERIMENTS WITHOUT OBTAINING A PERMISSION FOR THEIR USE IN CONNECTION WITH ACTIVITIES THAT INVOLVE USING ANIMALS FOR SCIENTIFIC OR EDUCATIONAL PURPOSES (ARTICLE 66(1.2) APAUSEP)

The National Ethical Commission for Animal Testing (Krajowa Komisja Etyczna do Spraw Doświadczeń na Zwierzętach) (in statute referred to as the Commission³⁸) and local ethical commissions for animal testing (in statute referred to as local commissions) are bodies competent to issue and change permissions for experiments (Article 32(1) APAUSEP). Local commissions (11 at the most) are appointed based on the location of centres where experiments are conducted and the number of experiments conducted in a given centre (Article 32(2) APAUSEP).

A local commission's tasks include, inter alia:

- 1) issuing a permission for:
 - a) conducting experiments, including:

³⁸ Article 33: "1. The Commission's tasks include:

- 1) formulating and presenting:
 - a) opinions and conclusions to breeders, suppliers and users concerning the protection of animals used for scientific or educational purposes;
 - b) opinions to users on cooperation in the field of mutual provision of animal organs and tissues;
 - c) recommendations to breeders concerning the increase in the percentage of animals that are offspring of primates bred in captivity;
- 2) development and provision of good practice to users, especially in the field of planning and implementing procedures, application of the principle of substitution, limitation and improvement and the use of alternative methods;
- 3) presenting conclusions resulting from an annual report, including the findings of proceedings of breeders', suppliers' and users' supervision to a minister for science and a minister for agriculture;
- 4) appointing and dismissing members of local ethical commissions;
- 5) cooperation with the European Commission in the field of:
 - a) developing and approving research methods ensuring acquisition of the same or greater amount of information without the use of animals or with the use of a smaller number of animals, or in a method causing less pain than in case of the procedures with the use of animals (alternative methods);
 - b) selecting laboratories conducting research aimed at approval of alternative methods for the needs of the EU Reference Laboratory being a European centre for validation of alternative methods;
- 6) providing access to information about methods alternative to animal testing and propagating them;
- 7) presenting opinions concerning acquisition, breeding, maintenance and use of animals in procedures and taking care of such animals to a person or persons referred to in Article 25(2), and giving access to good practices in this area;
- 8) exchange of information between competent bodies of other European Union Member States concerning the tasks of the Commission and the implementation of tasks laid down in Article 25(1) in the breeders', suppliers' and users' centres, and making good practices in this area available."

- reusing an animal in the procedure, as referred to in Article 12(2.2) APAUSEP,³⁹
- implementing the procedure without general or local anaesthesia, as referred to in Article 13(3) APAUSEP,⁴⁰
- administration of medicinal products or veterinary medicinal products that prevent or hamper experiencing pain, as referred to in Article 14(1.2) APAUSEP,
- using animals in the procedure referred to in Article 7⁴¹ and Article 8(1.2 and 3) APAUSEP;⁴²

³⁹ Article 12(2): "An animal that has been used:

- 1) in a soft or moderate procedure may be used again in a procedure classified as terminal, without regaining conscience, soft or moderate;
- 2) once in a severe procedure may be used again, in extraordinary situations after a local ethical commission for animal testing gives consent, in a procedure classified as terminal, without regaining conscience, soft or moderate, based on the justification for the reuse submitted by the user."

⁴⁰ Article 13(3): "In the case referred to in (2), the procedure may be performed without general or local anaesthesia only when the application of this anaesthesia: 1) would cause greater pain, suffering or distress than the procedure alone or 2) cannot be reconciled with the aim of the procedure, after obtaining a local ethical commission for animal testing consent based on the justification for abandoning anaesthesia submitted by the user."

⁴¹ Article 7: "After a local ethical commission for animal testing gives its consent, it is admissible to use the following animals in the procedures:

- 1) of species referred to in Article 2(1.2) – in case the aims of the procedure referred to in Article 3 cannot be obtained with the use of laboratory animals;
- 2) of primates referred to in Annex A to the Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ EC L 61 of 03.03.1997, p. 1, as amended; OJ EU Polish special edition, Chapter 15, Vol. 3, p. 136, as amended), hereinafter referred to as Regulation No. 338/97, which are not subject to application of Article 7(1) of the Regulation, exclusively in case of procedures aimed at research referred to in Article 3:
 - a) par. 1 (b) first indent or par. 3., serving prevention, diagnosis or treating physical or psychical disability or diseases dangerous for people's life;
 - b) par. 1 (c)
 - when the aim of the procedure cannot be obtained with the use of a species of animals not listed in this Annex and a species not belonging to primates;
- 3) of primates other than listed in par. 2 – only in case of procedures aimed at research referred to in Article 3:
 - a) par. 1 (a) or (c),
 - b) par. 1 (b) first indent or par. 3, serving prevention, diagnosis or treating disability or diseases dangerous for people's life – when the aim of the procedure cannot be obtained with the use of species other than primates;
- 4) of species in danger of extinction with the exception of primates referred to in Annex A to the Regulation No 338/97, which are not subject to the application of Article 7(1) of the Regulation – only in case of procedures aimed at research referred to in Article 3(1(b)) first indent and par. 3 – when the aim of the procedure cannot be obtained with the use of a species of animals not listed in the Annex."

⁴² Article 8: "Procedures shall not be implemented with the use of:

- 1) apes;
- 2) wild animals;
- 3) homeless animals in the meaning of Article 4(16) of the Act of 21 August 1997 on the protection of animals, with the exception of farm animals."

- b) changing an experiment, as referred to in Article 51(1) APAUSEP;⁴³
 2) withdrawing a permission granted for conducting an experiment⁴⁴ (Article 36(1) APAUSEP).

In accordance with the provision of Article 66(1.2) APAUSEP, the essence of the crime classified therein is the use of animals in the procedures from the category of experiments without obtaining a permission for their use in connection with the activities that involve using animals for scientific or educational purposes. Thus, it concerns a situation in which a perpetrator undertakes activities consisting in conducting experiments on animals without the permission from a competent ethical commission. Hence, these are situations, in which a perpetrator:

- did not even try to obtain the necessary permission;
- submitted an application for permission but it was refused;
- applied for permission but did not wait for it and started experiments;
- continued experiments, although the formerly issued permission was withdrawn;
- changed the experiment without obtaining permission to do this.

There is an open question of how to treat a perpetrator who has permission to use animals in experiments, however, violates the conditions for it. The grammatical interpretation results in a conclusion that we do not deal with an offence under Article 66(1.2) APAUSEP then, because the provision clearly stipulates “without obtaining permission” and not “in conflict with the conditions for the permission”. However, the purposefulness-related arguments suggest that this interpretation should be verified. It should be assumed that if the violation of the conditions for the permission is significant, a perpetrator’s liability for an act under Article 66(1.2) APAUSEP should be considered.

The crime in question is a formal one and only a person conducting experiments or responsible for their conducting may be its perpetrator (individual crime).⁴⁵ As far as objective side is concerned, we have to speak about intentionality in the form of both types of intent. That means that a perpetrator must want to conduct an experiment, regardless of the lack of the required permission or, predicting that the permission was not issued (or was withdrawn), agrees to that.⁴⁶

⁴³ Article 51(1): “Introduction of a change in the experiment, which may have a negative impact on the well-being of animals used, requires permission from a local ethical commission issued on the request of a user who wants to introduce it, submitted to the local commission that issued the original permission for the experiment.”

⁴⁴ The local commission’s tasks also include:

- 1) supervising an experiment against the criteria laid down in Article 53(2), which is called “a retrospective evaluation” and retention of retrospective evaluation findings;
- 2) provision, on a motion filed by a commune/municipal vet conducting supervision of a user concerning the experiment, information necessary for conducting supervision;
- 3) provision of access to non-technical summaries of experiments in Biuletyn Informacji Publicznej on the website of a minister for science (Article 36 APAUSEP).

⁴⁵ W. Radecki, *Ustawy...*, pp. 372–373.

⁴⁶ *Ibid.*, p. 373.

4. PENALTY

Offences under Article 66(1) APAUSEP carry a penalty of a fine (from 10 to 540 daily rates), a penalty of the limitation of liberty (from one month to two years) or deprivation of liberty for up to two years. The execution of the imprisonment sentence not exceeding the period of one year may be conditionally suspended. Due to the maximum limit of a penalty of deprivation of liberty laid down in Article 66(1) APAUSEP, conditional discontinuation of the proceedings is possible (in accordance with Article 66 §1 CC, of course, provided that all the conditions laid down therein are met). Renouncement of punishment is also possible (in accordance with Article 59 CC) for a crime under Article 66(1) APAUSEP, due to the fact that the penalty envisaged does not exceed three years of deprivation of liberty (provided that social harmfulness of an act is not considerable). In such a situation, a court adjudicates on a penal measure, forfeiture or compensation (provided that the aim of punishment is met this way). In case of conviction for a crime laid down in Article 66(1) APAUSEP, a court may adjudicate on such penal measures as: ban on holding a post or practicing a profession or doing business in a specified field or publicising the sentence. It is also possible to adjudicate on forfeiture of objects and financial profits obtained as a result of that crime.

5. AGGRAVATED TYPE OF OFFENCES UNDER ARTICLE 66(1.1) AND (1.2) APAUSEP: CAUSING AN ANIMAL'S DEATH IN CASES REFERRED TO IN ARTICLE 66(1) (ARTICLE 66(2) APAUSEP)

Article 66(2) APAUSEP lays down a common aggravated type of crime in case of offences laid down in 66(1.1) (exposing animals to unnecessary pain, suffering, distress or permanent damage to their body in connection with the activity that involves using animals for scientific or educational purposes) and in Article 66(1.2) (using animals in the experiment-related procedures without obtaining permission for their use). A circumstance classifying an act as aggravated is an animal's death resulting from activities referred to in Article 66(1.1) or (1.2) APAUSEP. It is a material crime (an animal's death is an effect), which is an individual one like the one referred to in Article 66(1) APAUSEP (due to the limitation of the scope of entities to persons performing activities that involve using animals for scientific or educational purposes). However, the crime is not aggravated due to a result because the legislator does not use a phrase "if an act results in", which means that a combined guilt is not the case. Thus, W. Radecki's opinion that: "A perpetrator is liable pursuant to Article 66(2) if he had predicted an animal's death or had not predicted it but could have predicted a result in the form of an animal's death" is not right.⁴⁷ On the part of a perpetrator, there must be intentionality such as direct intent (he wanted an animal to die) or oblique intent (he predicted an animal's death and agreed to

⁴⁷ *Ibid.*

it). If an animal's death is connected with lack of a perpetrator's intentionality, his liability is limited to Article 66(1) APAUSEP.

The crime under Article 66(2) APAUSEP carries a penalty of deprivation of liberty (from one month to three years). If the adjudicated penalty of deprivation of liberty does not exceed a year's time, its execution may be conditionally suspended. It is also possible to apply Article 37a CC ("If statute stipulates penalty of deprivation of liberty not exceeding eight years, a penalty of a fine or limitation of liberty can be applied instead in accordance with Article 34 §1a (1) or (4)") or the mixed penalty (Article 37b). A court may apply conditional discontinuation of criminal proceedings (provided that conditions laid down in Article 66 §1 CC are met). It is also possible to renounce punishment (in accordance with Article 59 CC) for a crime under Article 66(2) APAUSEP, due to the fact that a statutory penalty does not exceed three years' time of deprivation of liberty (provided that social harmfulness of an act is not considerable). In such a case, a court adjudicates on a penal measure, forfeiture or compensation (of course, based on the assumption that the aims of the penalty will be met this way). In case of conviction for a crime under Article 66(2) APAUSEP, a court may adjudicate on such penal measures as: ban on holding a given post or practice a given profession, ban on doing specified business or publicising the sentence. It is possible to adjudicate on the forfeiture of objects and financial benefits obtained as a result of this crime.

6. CONCURRENCE OF PROVISIONS

Provisions of Article 66 APAUSEP may be in cumulative classification with the provisions of Article 35(1), 910a or (2) APA. Article 35(1) APA criminalises killing, causing death of or slaughtering animals with the breach of regulations of Article 6(1), Article 33 or 34(1) to (4) APA. Article 35(1a) APA lays down criminal liability for animal maltreatment, and Article 35(2) APA lays down a common aggravated type of crime for Article 35(1) and (1a) APA ("If a perpetrator of an act referred to in (1) or (1a) acts with special cruelty, he is subject to a penalty of deprivation of liberty for up to three years"). Obviously, experiments on animals are usually connected with some ailments, pain or suffering (or even depriving them of life), however, it is necessary to distinguish between what is necessary and justified in the interest of science and cases where in the course of experiments animals are abused by the application of additional suffering (maltreatment). In case of conscious exposure of laboratory animals (or those used for educational purposes) to unnecessary pain, suffering and distress or permanent damage to their body, it is undoubtedly justifiable to apply cumulative classification under Article 66(1) APAUSEP in concurrence with Article 35(1a) or (2) APA in conjunction with Article 11 §2 CC, and in case of causing an animal's death, Article 66(2) APAUSEP in concurrence Article 35(1), (1a) or (2) APA in conjunction with Article 11 §2 CC.⁴⁸

⁴⁸ M. Mozgawa, *Ustawa...*, p. 214.

7. CONCLUSIONS

The Act of 15 January 2015 on the protection of animals used for scientific or educational purposes transposed into the Polish legal system the provisions of Directive 2010/63/EU of the European Parliament and of the Council of 22 September 2010 on the protection of animals used for scientific purposes. It seems to be a successive significant step towards the extension of humanitarian protection of animals. The construction of the above-discussed types of prohibited acts (laid down in Article 66 APAUSEP) does not raise any substantial interpretational doubts and the sanctions envisaged seem to be proportionate to the social harmfulness of the indicated conduct.

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CRIMES UNDER ARTICLE 66 OF THE ACT OF 15 JANUARY 2015 ON THE PROTECTION OF ANIMALS USED FOR SCIENTIFIC OR EDUCATIONAL PURPOSES

Summary

The article discusses prohibited acts classified in Article 66 of the Act of 15 January 2015 on the protection of animals used for scientific or educational purposes. The crime under Article 66(1.1) consists in the exposure of animals to unnecessary pain, suffering, distress or permanent damage to their body in connection with the activity that involves using animals for scientific or educational purposes and is a material one. The object of an act is an animal, although a plural form is used in the Act ("whoever exposes animals"). It is an individual crime that may only be committed intentionally (with both forms of intent). The essence of an offence under Article 66(1.2) is the use of animals in experiment-related procedures without obtaining appropriate permission in connection with the activity that involves using animals for scientific or educational purposes. It is a formal crime and only a person conducting experiments or a person responsible for their conducting can be a perpetrator (individual crime). The subjective aspect is expressed in intentionality (direct or oblique intent). A circumstance classifying the aggravated type (Article 66(2)) is an animal's death resulting from undertaking activities laid down in Article 66(1.1) or (1.2). It is a material crime (an animal's death is the effect) and an individual one. However, it is not a crime aggravated by the result because the legislator does not use a phrase "if an act results in", which means that *culpa dolo exorta* is not applicable. However, on the part of a perpetrator, there must be intentionality, such as direct intent (he wanted an animal to die) or oblique intent (predicting the possibility of an animal's death, he agreed to it). If an animal's death is not intentional on the part of a perpetrator, his liability is limited to Article 66(1) APAUSEP.

Keywords: animal, experiments, protection of animals

PRZESTĘPSTWA Z ART. 66 USTAWY Z 15 STYCZNIA 2015 R.
O OCHRONIE ZWIERZĄT WYKORZYSTYWANYCH
DO CELÓW NAUKOWYCH LUB EDUKACYJNYCH

Streszczenie

Przedmiotem rozważań są czyny zabronione stypizowane w art. 66 ustawy z dnia 15.01.2015 r. o ochronie zwierząt wykorzystywanych do celów naukowych lub edukacyjnych. Przepięstwo z art. 66 ust. 1 pkt 1 polega na narażeniu zwierząt na niepotrzebny ból, cierpienie, dystres lub trwale uszkodzenie organizmu w związku z prowadzoną działalnością w zakresie wykorzystywania zwierząt do celów naukowych lub edukacyjnych i ma ono charakter materialny. Przedmiotem czynności wykonawczej jest zwierzę, choć w ustawie użyta została liczba mnoga („naraża zwierzęta”). Jest to przestęstwo indywidualne, które może być popełnione jedynie umyślnie (w obu postaciach zamiaru). Istotą wystętku z art. 66 ust. 1 pkt 2 jest wykorzystywanie zwierząt w procedurach objętych doświadczeniem bez uzyskania odpowiedniej zgody w związku z prowadzoną działalnością w zakresie wykorzystywania zwierząt do celów naukowych lub edukacyjnych. Ma on charakter formalny, a jego sprawcą może być tylko osoba przeprowadzająca doświadczenia lub osoba odpowiedzialna za ich przeprowadzenie (przepięstwo indywidualne). Strona podmiotowa wyraża się w umyślności (zamiar bezpośredni i ewentualny). W typie kwalifikowanym (art. 66 ust. 2) okolicznością kwalifikującą jest spowodowanie śmierci zwierzęcia w następstwie podjęcia czynności wskazanych w art. 66 ust. 1 pkt 1 lub 2. Jest to przestęstwo materialne (skutkiem jest śmierć zwierzęcia), które ma charakter indywidualny. Nie jest to jednak przestęstwo kwalifikowane przez następstwo, bowiem ustawodawca nie używa formuły „jeżeli następstwem czynu jest”, co oznacza, iż nie ma zastosowania *culpa dolo exorta*. Po stronie sprawcy musi wystąpić umyślność w postaci zamiaru bezpośredniego (chciał śmierci zwierzęcia) albo ewentualnego (przewidując możliwość śmierci zwierzęcia, godził się na nią). Jeżeli śmierć zwierzęcia objęta jest przez sprawcę nieumyślnością, wówczas jego odpowiedzialność ograniczy się jedynie do art. 66 ust. 1 u.o.z.n.e.

Słowa kluczowe: zwierzę, doświadczenia, ochrona zwierząt

Cytuj jako:

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