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FAILURE TO TAKE SUFFICIENT CARE AND CONTROL OF VERTEBRATES – ADMINISTRATIVE VIOLATION OR CRIME

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ABSTRACT

Owners and persons supervising animals are obliged to take adequate and enough care for them and to control their behaviour. This obligation is explicitly governed by the provisions of article 149, article 150 and article 177 of the Veterinary Medicine Act (VMA). Any failure to take due care, i.e. owners' omission, may result in damages both to animals and the other members of the society. The liability of the owners and the persons supervising the animals may be criminal in case the hypotheses of article 325c) of the Criminal Code exist, or administrative – criminal in case with their omission, respon-sible individuals have violated only the requirements of the veterinary medical legislation.

This study highlights the need to differentiate cases where the responsible individu-als' failure to take enough care for the animals is only an administrative violation, and cases where this is a crime, and what are the competent government authorities that im-pose sanctions to the violator. The judgment of this circumstance is crucial with view of the prohibition to sue a violator twice for the same, also used as a basis for the interpretation in Interpreting Decision No 3 enacted on 22.12.2015 under interpreting case No 3/2015 as per the inventory of the General Assembly of the Criminal Bar at the Supreme Court of Cassation.

Key words: vertebrate, medium level of bodily injury, severe bodily injury, administrative violation, crime.

Introduction

Owners and individuals who supervise animals are obliged to take adequate and sufficient care of animals and to exercise sufficient control on them. This obligation is laid down specifically in the provisions of Article 3 of Directive 98/58/EC according to which the member states shall make provisions to ensure that the owners or keepers take all reasonable steps to ensure the welfare of animals under their care and to ensure that those animals are not caused any unnecessary pain, suffering or injury. Furthermore, in the conditions under which animals (other than fish, reptiles or amphibians) are bred or kept, having regard to their species and to their degree of development, adaptation and domestication, and to their physiological and ethological needs in accordance with established experience and scientific knowledge should comply with the provisions set out in the Annex. This directive is harmonized with the Bulgarian legislation with Ordinance No 16 of 2006.

Animal owners and keepers, in addition to all other cares, are obliged to undertake the required steps to prevent animals' escape. The national legislation stipulates this issue in Article 149, Article 150 and Article 177 of the Law of Veterinary activity (LVA). The LVA sets out the legal framework defining what sufficient care means and what is the control under which animals are, as well as what is the administrative-criminal liability owners and individuals who care of animals have for failure to fulfil their obligations.

At the same time, as a result of owners' failure to fulfil the veterinary requirements for ensuring care and control, the animals can cause damages to people or to other animals. If such damage results in average or grievous bodily injury or death, except administrative violation (breach of the provisions of the LVA), this is considered a crime within the meaning of the Criminal Procedure Code Criminal Procedure Code (Article 325 (c)). On the other hand, suffered property and non-property damages are subject to monetary compensation pursuant to the terms and conditions of the civil proceedings as damages caused by unauthorized injury.

This study is aimed at clarifying and differentiating the cases in which failure to take cares of animals by the persons in charge to this effect is only an administrative violation, and the cases in which this is considered as a crime. The competent authorities that have the right to sanction the offender are also identified for the needs of this study.

The assessment of such circumstances is crucial for the proper application of laws and improvement of administrative and criminal activities with view of the prohibition to sue the individual (offender) for the same crime twice (non bis in idem).

Material and methods

With view of the objectives of the study, legal regulations in the field of veterinary legislation and case law of courts of different ranking related to their interpretation and application have been examined and subject to content-analysis (according to Krippendorff, Klaus H.). Cases completed with res judicata court deeds confirmed after institutional control thus terminating the criminal proceedings initiated and conducted against the individual guilty for crime under Article 325 (c) of the Criminal Procedure Codehave been analyzed. The interpretation of the highest court instance in the Republic of Bulgaria – Interpretation Decision No 3/2015 of the General Assembly of Criminal Bodies of the Supreme Court of Cassation, is of crucial importance for the issue in question.

Results and discussion

The applicable national legal regulations define animal welfare in the provisions of LVA, in particular Article 150 of Chapter Seven "Protection and Welfare of Animals", Section I "Requirements for Protection and Welfare of Animals". Further regulations about adequate care of animals for the purposes of ensuring their natural freedoms are provided for in the Animal Protection Act (APA). In addition, the requirement to provide appropriate care and living conditions corresponding to the physiological and behavioural features of animals, and protecting them against cruelty, is set out in ArticleArticle 35 of APA. It clearly defines the obligations of pet owners to prevent any kind of unreasonable aggression against their dogs demonstrated at public places and in situations endangering the life or health of the people and the animals. Furthermore, ArticleArticle 106, paragraph 1 of the Road Traffic Act sets out that the drivers of animal-drawn vehicles, the guides of animals or flocks should continuously guide the animals in a way not impeding and endangering the road traffic and should not leave them unattended on the road.

On the other hand, in 2011 the legislator rectifies its omission, namely failure to take sufficient care of vertebrates thus causing damages to individuals comprising average, grievous injury or death, and defines it as a separate crime – ArticleArticle 325 (b) and (c) of the Criminal Code. A new case law on this issue was initiated with the introduction of this crime in the Criminal Code.

Failure to take cares and exercise control of vertebrates may has not resulted in the crime as set out in Article 325 of the Criminal Procedure Code– injuring the physical integrity of people, and in this case, with their conduct, the persons in charge have breached the requirements of the veterinary medicine regulations only. The public hazard caused by the act is adopted as a common criterion by the legislator to differentiate between administrative violations and crime. Acts of weaker public hazard are considered administrative violations, and those of higher public hazard – crimes.

For the purposes of proper administrative and criminal activities, it is crucial to clarify the content of the violations of the veterinary legislation and the question which is the competitive authority having the power to sanction the offender and on what legal grounds such offender should be prosecuted.

Pursuant to the requirements of Article 150 of the LVA, the owners and keepers of the animals and the managers of the farm breeding facilities are obliged to: take care of the animals and not to abandon them; having regard to its species, age and breed, to provide each animal with: living place and conditions corresponding to its needs; the required space and freedom of movement; sufficient amount of food and water; free access to feeding and watering facilities; appropriate microclimate; regular prophylactic veterinary-medical service and immediate treatment in case of disease or injury; appropriate feeding and watering vessels installed in a way avoiding contamination and reducing the aggressive competition among animals to the minimum extent; undertake all measures to avoid animal escape. The animal keepers are obliged to inspect the status of the animals at least once a day.

In summary, we could conclude that Article 150 of LVA stipulates requirements for sufficient care and also adequate and timely control of the animals for the purposes of prevention of accidents that might result in grievous consequences for the people.

In terms of the violations of Article 150 of LVA, the sanctioning legal regulation under LVA is the provision of Article 471(a), paragraph 1 of LVA. The application of the proper sanctioning provision is crucial for the future of the penal ruling as the application of different grounds other than those set out by the legislator would result in material violation of the procedure rules that could not be remedied in its legal nature. Due to this, this section of the penal ruling should be repealed by the court, and even only on these legal grounds. The official veterinarians, inspectors and experts of the Bulgarian food safety agency (BFSA) are competent to establish a violation of the provisions of Article 150 of LVA, and the directors of the regional BFSA offices on whose territory the violation is committed – to sanction the violation. The observance of the rules of substantive and territorial jurisdiction as set out in Article 472 of LVA is a prerequisite for compliance of enactments.

Not using a dog leash and any free walk of dogs is a specific case of failure to undertake measures against animal's escape from its owner. A particular obligation for the dog owners is contained in the provisions of Article 177, paragraph 1, item 3 and item 4 of LVA, which prohibits to take dogs out without leash, and aggressive dogs – without muzzle; walking dogs on children playgrounds and places indicated by the municipal authorities with prohibition signs is also prohibited. In terms of the prohibition for taking dogs out without muzzle, the law stipulates that this requirement applies to aggressive dogs. A legal definition is set out in § 1 of the Supplementary Provisions of LVA, and namely: "aggressive dogs" refer to any dogs who demonstrate spontaneous inadequate aggression to people or animals, which, depending on its force and nature, could cause injury or death". Whether the dog is aggressive or not is determined on case by case basis with view of collected evidence. Each municipal authority has adopted ordinances applicable within its territory that

require the owner of a pet not to leave it unattended, without muzzle or leash and to ensure continuous and direct control over its behaviour whenever such pet is at public place.

However, in this particular case, the municipal authorities have jurisdiction to establish the violation under Article 177, paragraph 1, item 3 and item 4 LVA and to impose the punishments. In these cases, the inspectors of the municipalities and regions are authorized to establish the violations, and the mayors of municipalities and regions issue penal rulings /Article 472, paragraph 4 of LVA/.

In practice, this means that if owners and keepers of the animals have failed to ensure sufficient care, and in particular, have failed to undertake the required measures against animal escape, except they walk dogs without leash and muzzle, their conduct is considered a violation under Article 150 of LVA and the veterinarians of the BFSA and the BFSA director carry out the administrative and criminal activities. Here, the most possible and examined hypotheses are related to animals freely left to graze and suddenly going out on the road, or to animal-drawn vehicles, animals or flocks moving along the roads. In these cases, animals cause car accident resulting in damages.

When owners and keepers of animals have failed to undertake required measures for preventing animal escape, moving of animal-drawn vehicles, animals or flocks along the roads in contradiction with the law, as well as in case of failure to fulfil their obligation to put a leash or muzzle, the act is considered an administrative violation and the above regulations apply. However, if such omission of owners and keepers have resulted in anything more, more grievous result, and namely – the animal's behaviour has caused average or grievous bodily injury or death of an individual, we speak about a crime committed by the individual who supervises the animal.

This act has been incriminated in our criminal law not long ago. The provision of Article 325 (c) of the Criminal Procedure Codeenters into force on 27.07.2011 "Anyone who fails to take sufficient care of a vertebrate being under their supervision thus causing average or grievous bodily injury of a man, is subject to imprisonment of up to three years or to probation and fine of up to five thousand levs. (2) If death has been caused in the cases under paragraph 1, the imprisonment is for a period of up to five years and fine up to ten thousand levs."

Systematically, the violation is stipulated in Chapter 10 of the Criminal Procedure Codeand the legislator binds such a conduct with the public relations relevant to violation of the public order.

The crime under Article 325 (c), paragraph 1 of the Criminal Procedure Codehas the following objective and subjective features: a subject may be any criminally liable person and the law does not absolutize the liability of the vertebrate owner but holds the person who supervises the animal liable. Their conduct should comprise failure to take sufficient care of a vertebrate, i.e. to realize one illegal omission. The criminal conduct of the crime under Article 325 (c) of the Criminal Procedure Codecomprises two elements, and namely: failure to take sufficient care of a vertebrate, which is subject to supervision.

Not all failures to take care are considered a crime but only those resulting in such animal's behavior that causes average or grievous bodily injury to a person, which is actually the second element of the criminal conduct. The bodily injuries considered average and grievous injury are defined in Article 128 and Article 129 of the Criminal Code, respectively. All these are those bodily injuries, which are generally related to created hazard for life or suffered continuous or permanent health disorders or dysfunctions of some organs, other than light bodily injuries. The provision of Article 325 (c) of the Criminal Procedure Codeis blanket and for the purposes of clarifying the content of due care it refers to the special legislation – LVA, and in particular Article 150 and the connected Article 177, paragraph 1, item 3 and item 4 of LVA whose provisions set out the legal

framework of due care. The crime is resultative and is completed only with the occurrence of the crime result – human bodily injury, and the any average or grievous bodily injury suffered should be in causal relation with the omission of the individual (failure to take due care) who has supervised the animal.

Subjectively, a direct malice is required as a form of guilt. In terms of the second element of the criminal conduct of the crime – caused average / respectively, grievous/ bodily injury, the form of guild demonstrated by the offender should be possible malice, i.e. he has not directly wanted to do so but has been aware of the socially dangerous nature of his conduct and admits its socially hazardous consequences and their occurrence. Furthermore, the subjective aspect of each act is established in accordance with the facts under the case. There is different case law on this issue. There are court decisions according to which the failure to take care has possibly been committed recklessly, even though the legislator has not used the term "recklessness". /Judgement No 4136 of 30.05.2016 of the Regional Court of Blagoevgrad under general criminal case No 2467/2015; Judgement No 208 of 11.12.2014 of the Regional Court of Ruse under general criminal case No 2195/2014; Decision No 1313 of 20.11.2013 of Sofia City Court under general criminal case of appeal No 3252/2013/

Any failure to fulfil the obligation for taking due care and control of the animals is in all cases an administrative violation, a violation of the veterinary legislation, and the issue under review in this study is raised when the commitment of such violation, being also an element of the criminal conduct under Article 325 (c) of the Criminal Code, has resulted in animals causing damages to people, in particular average, grievous bodily injury or death.

Here we raise the issue for the need of the authority imposing administrative punishments – the directors of the Food Safety District Directorates, on one hand, or the mayors of regions and municipalities, on the other hand, to assess the violations under Article 177, paragraph 1, item 3 and item 4 of LVA and whether the particular case refers only for a violation of the veterinary legislation, or the owners and the individuals supervising the animals, with their illegal omission, has committed a crime under Article 325 (c) of the Criminal Code. If there is evidence that the particular case refers to more serious injuries, other than general medical disorder not endangering life, and other than caused pain and suffering (which in their nature are light bodily injury), the authority imposing administrative punishments is obliged to terminate the administrative file it reviews and to refer it to the competent authorities – the Prosecutor's Office of the Republic of Bulgaria, for initiating criminal prosecution. No forensic expertise is required to assess this circumstance in the course of the administrative proceedings. Such assessment will be made in the course of the future criminal proceeding. Such obligation is set out in the provisions of Article 33, paragraph 2 of the Administrative Violations and Punishments Act /AVPA/ - upon finding that the act subject to the initiated administrative-criminal proceeding is a crime, the proceeding is terminated, and the materials are forwarded to the respective prosecutor. After the obligatory interpretation in the interpretation decisions, the case law is firm on the matter of the future of the issued penal ruling in case of pending criminal proceeding – in doing otherwise, the authority imposing administrative punishments would issue illegal deed, which should be repealed, and the illegal course of the administrative-criminal proceeding should be terminated due to the existence of pending criminal procedure for a crime for the same act. This will be the course of the proceeding in case the offender would appeal the issued penal ruling.

What will happen, however, if the penal ruling is not appealed, if it enters into force nevertheless it has been issued in contradiction with the administrative procedure rules, and in particular if it enters into force first in terms of time?

This issue is solved in Interpretation Decision No 3: "If when doing an act violates criminal and administrative-criminal provisions simultaneously (as in this particular case), the liability of the offender may not be engaged in two separate proceedings, and he could not be punished with two separate punishments – administrative and under the Criminal Code, and in these cases the offender should bear only the liability for the offence (administrative offence or crime), and such offence will be the one for which the respective proceeding has been completed first in time".

In practice, this means that if there is enforced enactment against the same person under administrative-criminal proceedings, in this particular case – penal ruling for violation of Article 150 of LVA or Article 177, paragraph 1, item 3 and item 4 of LVA, no criminal proceeding should be initiated then, and if initiated – it should be terminated on the grounds of Article 34, paragraph 1, item 6 of the Criminal Procedure Code. This is so as the issued penal ruling (if enforced) is considered of penal nature within the meaning of the European Convention on Human Rights (ECHR) and Article 4 §1 of Protocol No 7. By virtue of Article 4, §1 of Protocol No 7 to the Convention, no one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State. The administrative-criminal proceedings completed first, if of criminal nature within the meaning of Article 6, §1 of ECHR, is considered procedural obstacle for initiating and conducting subsequent criminal proceeding against the same person for the same act, even though it corresponds to the features of a crime under the Criminal Code. Therefore, in this particular case, any criminal proceeding conducted in violation of the non bis in idem principle /not twice for one and the same thing/ is subject to termination.

The above international treaty is part of the national legislation of the Republic of Bulgaria as far as it is adopted with Law for ratification of Protocol No 7 to the ECHR and has precedence before the provisions of the national legislation on the grounds of Article 5, paragraph 4 of the Constitution of the Republic of Bulgaria.

Therefore, we may come to a situation in which due to the fact that the owner has been imposed a fine of BGN 100 under administrative-criminal proceeding for violation of the veterinary legislation, although his act is a public hazard to much greater extent (as it has caused average, grievous bodily injury, and even death, of a third person) and is also considered a crime under Article 325 (c) of the Criminal Code, the state cannot exercise its powers in relation to the same act – to sue the guilty persons, to punish the offender and to consider him sentenced.

Conclusions

The identification of the violations under Article 150 and Article 177, paragraph 1, item 3 and item 4 of LVA with the elements of the crime under Article 325 (c) of the Criminal Procedure Codeshows that these provisions protect the same and significant public relations in terms of ensuring public order and comfort of citizens.

The difference between the two provisions is due to the extent the public relations are affected, bearing in mind the harmful result of such offender's conduct, as a feature of the crime under the Criminal Code.

With view of avoiding any violations of the "non bis in idem" principle, if the case refers to suffered average bodily injury, grievous bodily injury, or death, the authority imposing administrative punishment is obliged to terminate the administrative file, without issuing any penal ruling, and to forward it to the competent authorities – the Prosecutor's Office of the Republic of Bulgaria, for initiating criminal prosecution.

If the issued penal ruling has come into force first in terms of time, in order to enforce the criminal liability of the offender, the administrative criminal proceeding should be renewed first, and if there are grounds to this effect, the penal ruling should be repealed and the proceeding should be terminated followed by renewal of the criminal proceeding until the offender is finally acquitted or convicted with enforced court enactment.

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