

**Slavko Đorđević, LL.D.\***

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## **SOME REMARKS ON COMPENSATION FOR DAMAGES CAUSED BY INJURING OR KILLING OF COMPANION ANIMALS IN SERBIAN CIVIL (TORT) LAW\*\***

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*This paper deals with the compensation for damages caused by injuring or killing of a companion animal in Serbian tort law, where the main focus is on explaining the influence which 'animal welfare', as a legally protected non-patrimonial interest violated due to injury or killing of a companion animal, and 'emotional relationship between the owner and his/her injured or killed animal companion' may have on the application of tort law rules on recovery of damages. Firstly, the author tries to clarify the general influence of 'animal welfare' on the legal treatment of animals in Serbian civil law, since it seems that such clarification is necessary for the interpretation of the rules of civil law (particularly those of tort law). Thereafter, the author discusses the tort law rules for determining the amount of compensable pecuniary damages for an injured or killed companion animal, with special attention given to the problem of recovering costs for the veterinary treatment of the injured companion animal, which may be significantly higher than the animal's market value. To solve this problem, the author examines whether the fact that the owner is, pursuant to Serbian animal welfare legislation, obliged to take care of 'welfare' of his/her companion animal and to provide the veterinary treatment in case of its injury (i.e. in case of violation of 'animal welfare') can be relevant enough for awarding the compensation of costs necessary for such treatment in accordance with the existing rules of Serbian tort law, irrespective of the companion animal's market value and effectiveness of veterinary treatment. Finally, the author discusses the relevance of the emotional relationship between the owner and his/her injured or*

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\* Full-time Professor at the Faculty of Law of the University of Kragujevac, slavko@jura.kg.ac.rs

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*killed animal companion in Serbian tort law, focusing on the analysis of tort law provisions that may exceptionally enable the owner of an injured or killed companion animal to claim monetary compensation for the emotional/sentimental value that the animal had for him/her.*

**Key words:** *civil law treatment of (companion) animals, violation of ‘animal welfare’, compensation for pecuniary damages, emotional human-animal relationship, non-pecuniary damages, compensation for emotional/sentimental value of injured/killed companion animal.*

## I INTRODUCTION

The idea of providing a proper legal protection for animals matured in the Republic of Serbia (henceforth Serbia) at the end of the first decade of the 21st century, when the Serbian Parliament adopted the Animal Welfare Act<sup>1</sup> (henceforth abbr. AWA), whose solutions are mostly in line with those contained in German,<sup>2</sup> Swiss,<sup>3</sup> and Austrian<sup>4</sup> animal protection acts. As a legal source of public law nature, Serbian AWA prescribes a number of obligations of humans toward animals of all species (such as the obligation to take care of animals' health and life, obligation to refrain from inflicting pain, suffering, fear and stress on animals, obligation to refrain from abusing and killing of animals etc.),<sup>5</sup> including special obligations for owners and keepers of companion animals<sup>6</sup> (following the example of the European Convention for the Protection of Pet Animals,<sup>7</sup> which has been ratified by Serbia<sup>8</sup>), as well as administrative sanctions for their violation.<sup>9</sup> Also, the Criminal Code of Serbia<sup>10</sup> was amended by introducing new criminal offenses that protect animals, especially the criminal offense for the killing and abuse of animals.<sup>11</sup>

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<sup>1</sup> Animal Welfare Act (AWA), *Official Gazette of the Republic of Serbia*, No. 41/2009.

<sup>2</sup> Tierschutzgesetz vom 24. 7. 1972, in der Fassung der Bekanntmachung vom 18. Mai 2006 (BGBl. I S. 1206, 1313), das zuletzt durch Artikel 280 der Verordnung vom 19. Juni 2020 (BGBl. I S. 1328) geändert worden ist.

<sup>3</sup> SR 455 Tierschutzgesetz von 16.12.2005, AS 2008 2965, BBl 2006 327.

<sup>4</sup> Tierschutzgesetz vom 28. 9. 2004, BGBl. I Nr. 118/2004, BGBl I Nr. 86/2018.

<sup>5</sup> Art. 6 and 7 of AWA

<sup>6</sup> Art. 53-70 of AWA

<sup>7</sup> European Convention for the Protection of Pet Animals, ETS No.125, Strasbourg, 13/11/1987.

<sup>8</sup> Act on Ratification of European Convention for the Protection of Pet Animals, *Official Gazette of the Republic of Serbia – International Agreements*, No. 1/2010.

<sup>9</sup> Art. 82-85 of AWA

<sup>10</sup> *Official Gazette of the Republic of Serbia*, No. 85/2005, 88/2005 – correction, 72/2009, 11/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019.

<sup>11</sup> Art. 269 of Serbian Criminal Code