

On the Identification of the Subject of Responsibility for the Harm Caused by Stray Animals in China

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Abstract

With the improvement of people's living standards, raising animals has become a new trend. The increase in the number and species of feeding animals leads to frequent animal damage problems, and the damage caused by stray animals is common. According to incomplete statistics, there are 40 million stray animals in China, and this data is increasing at a rate of 1.5 times a year. The frequent occurrence of stray animal infringement cases also makes the identification of tort liability caused by stray animals a problem that should be clarified in the current law. China's legislation also needs to respond to the concept of stray animals and the identification standards of the subject of responsibility of stray animals. Effective control measures for the survival, management and risk prevention of stray animals need to be improved, so as to realize the harmonious coexistence between man and nature.

Keywords

Stray Animals; Responsible Subject; Identification Criteria.

1. Current Situation of Legal System of Stray Animals in China

1.1. China's Current Relevant Laws and Regulations

The special chapter of China's civil law stipulates the liability for damage to breeding animals. Article 78 of tort liability law is a general provision of liability for damage to breeding animals, and the principle of no fault liability is applicable in our country. Article 82 of the tort law stipulates the liability for damage caused by abandoned or escaped animals. The civil code issued this year also basically follows the provisions of the tort liability law, and stipulates the liability for damage to breeding animals in articles 1245 to 1251 of Chapter 9. However, there are no special provisions on the infringement of stray animals in the legal provisions of China's civil law.

1.2. Identification of Stray and Raised Animals

1.2.1. Definition of Stray Animals

The meaning of the word "wandering" in encyclopedia knowledge is "wandering all over the country, without a fixed place to live, wandering everywhere." therefore, literally, stray animals can be understood as animals that are separated from people's control and with uncertain whereabouts.

1.2.2. Connotation of Raising Animals

Although China has provisions on the liability for damage to abandoned and escaped animals, strictly speaking, "abandoned and escaped animals" is not equal to "stray animals". Abandoned and escaped animals are only one of the situations covered by stray animals. Stray animals also include lost animals and their offspring during abandonment and escape. Therefore, the law also needs to make clear the definition of "stray animals". From the analysis of the legislator's intention, the tort liability of stray animals also belongs to the scope of the chapter of animal damage in the civil code. In this regard, first of all, we should clarify the internal legal meaning

of "raising animals". I think the most important criterion to judge whether an animal is a raised animal is whether it is under human control and depends on the survival degree of the breeder. At the same time, the definition of stray animals can start from the difference between them and raised animals.

2. Identification Standard of Responsible Subject Caused by Raising Animals

2.1. The Subject Identification Standard of Other Countries

The legislative purpose of animal damage liability in various countries is to make people who have the ability to control animals bear responsibility, but the standards of responsibility subjects in various countries are different. The responsible subject in German law is the breeder (keeper) or caretaker. It is considered that the standard of breeder mainly depends on whether the breeder benefits and the decision-making power of the breeder on animals, emphasizing the control of the danger of animals and their own interests; In Japanese law, the subject of responsibility is the possessor or manager, including indirect possessor, emphasizing the actual control of animal danger.

2.2. Identification Standard of Subject in China

China's civil code will come into force in 2021. Article 1245 will replace Article 78 of the tort law and be applied in judicial practice. This article makes it clear that the subject of liability for damage to animals is the breeder and manager of animals, but the specific standards of breeder and manager are not defined in the article. Legislators believe that the animal breeder is the owner who has the right to possess, use, benefit and dispose of animals, and the manager is the person who controls and controls animals directly according to some legal relationship, such as mandate relationship. It can be seen that China's legislation emphasizes the ownership and actual control of animals.

3. Identification of the Subject of Liability for Damage to Stray Animals -- A Case Study

3.1. "Xinyu Qiao and ShuzhenXiao Raising Animal Damage Liability Dispute" Case

On June 4, 2012, when the plaintiff Shuzhen Xiao walked her dog to a residential building in the community, the stray cat scratched her when fighting with her dog, but Shuzhen Xiao did not tie the traction rope at that time. The plaintiff believed that Xinyu Qiao, the cat adopted by the defendant's family in this case, scratched himself. After the mediation of the neighborhood committee, the lawsuit was unsuccessful. In the lawsuit, the defendant claimed that the cat was a stray cat. She only fed the cat out of love and pointed out that the plaintiff Shuzhen Xiao was attacked because of her improper words and deeds. The court of first instance held that as the keeper of stray cats, the defendant's long-term feeding behavior increased the possibility of the stray cats appearing in and around the residence. Therefore, the defendant had the management obligation for the stray cats and should bear tort liability when the stray cats caused damage to others. The defendant appealed against the judgment of first instance. After trial, the court of second instance corrected the judgment of first instance and held that the feeding behavior of the defendant did not constitute the ownership and possession relationship in the legal sense, nor did it form the actual control over the animal. Finally, considering the harmful impact of the defendant's behavior on the public environment, the plaintiff's dog walking without traction rope and improper words at the time of the incident, it is recognized

that both parties are responsible, and the specific responsibility proportion shall be shared by both parties.

3.2. Rules for Determining the Subject of Liability for Damage to Stray Animals

In the process of determining the subject of responsibility for the harm caused by stray animals, the following two standards should be comprehensively considered.

3.2.1. Principle of Actual Control

The fact is that breeders or managers can usually give instructions to animals and have a decisive impact on their survival. Actual control refers to the decision-making power over animals, that is, they have the right to control animal behavior and the ability and obligation to control animal danger. The deep meaning of emphasizing actual control is that the subject judgment should not only focus on the ownership relationship, but also consider whether the animals are under the actual control of a specific subject. Just like the stray cat in the above case, although it was raised by the defendant and put food regularly, in fact, the defendant did not form a certain control over it and had no decision-making power over it. Therefore, it cannot be considered as an animal raised by the defendant.

3.2.2. Principle of Self Interest

Self interest means that the breeder uses animals for his own interests. Just as in real life, most people use animals for their own interests. For example, commercial animal performances, obtaining companionship from animals, making profits from buying and selling animals are all for their own interests. In the above case, the defendant fed food regularly for the purpose of well intention rescue, and did not profit from it. Therefore, it can not be determined that the animals were used for its own interests.

3.2.3. Other Factors

The principle of actual control and self-interest should be the two main criteria for the identification of the subject. However, considering the protection of the legitimate rights and interests of the infringed and the measurement of public interests, other relevant factors, such as the social impact of feeding behavior, should also be considered in specific cases. For example, in this case, the defendant's long-term fixed feeding behavior to stray cats has formed a gathering place for stray cats in the public environment of the community. In addition, the uncontrollable danger of stray animals naturally brings danger to community residents on the premise that they cannot be effectively controlled. In addition, we should also consider the control responsibilities of relevant public authorities or community management institutions for stray animals in this area, and consider increasing the subjects borne by relevant government departments for the damage liability of stray animals.

4. Conclusion

Starting from the identification of the subject of liability for damage to stray animals, combined with judicial cases, through analysis, it is found that the definition of the subject stipulated in relevant laws is not clear enough, and the meaning of stray animals is not clear. Therefore, clarifying the connotation of stray animals and refining the identification rules of responsible subjects are the first step to solve the problem of stray animal damage.

The existence of a large number of stray animals not only brings environmental protection problems, but also constitutes a hidden danger to the personal safety of residents. We should pay attention to the identification of the subject of responsibility of stray animals in advance. Perfecting it is the best prevention of the risks we face.

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