

ANIMALS PROHIBITED

Application of the Dutch ban on keeping animals as a special condition attached to a suspended sentence



Summary

Beke *reeks*

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Summary

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Application of the Dutch ban on keeping animals (“houdverbod”) as a special condition attached to a suspended sentence

Original title

Dieren Verboden

De toepassing van het houdverbod als bijzondere voorwaarde bij een voorwaardelijke straf

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Summary

Cruelty to and neglect of animals are criminal offences, in the perpetration of which harm or injury is inflicted upon animals, animals are deprived of care, or animal welfare is otherwise impaired. In the criminal prosecution of perpetrators of cruelty to and neglect of animals, the court may impose an injunction on the offenders to keep animals for a specific period of time. In the Netherlands, this so-called ban on keeping animals (“*houdverbod*“) can be imposed by the criminal court in the form of a special condition imposed in combination with a suspended sentence.

Commissioned by the Scientific Research and Documentation Centre (Wetenschappelijk Onderzoek- en Documentatiecentrum) of the Ministry of Safety and Justice, Bureau Beke has carried out a national study into the frequency with which and the manner in which the ban on keeping animals is applied nationwide. This was investigated by means of desk research, through an analysis of the data registered by the police and the Public Prosecution Service, by close scrutiny of court judgments, in case studies and in interviews with scientists and professionals in the criminal law and law enforcement chain. The study provides insights into the prerequisites for adequate application of the ban on keeping animals and outlines possible alternative forms of application of this ban. In this summary, the main results of the study are brought together.

The ban on keeping animals

In this section, an outline is offered of the development of animal welfare in law, the application of the ban on keeping animals in the Netherlands and, for the sake of comparison, the ban on keeping animals as applied in other countries.

Animal welfare

Animal health and welfare have gained an increasingly significant position in law since the end of the eighteenth century. With the Animals Act, which became

effective on 1 July 2014, we now have comprehensive animal welfare legislation in the Netherlands, offences against which may be dealt with under administrative and/or criminal law. Criminal law is offender-oriented and concerned with punishing offenders for their conduct. In administrative law, the focus is on recovery or improvement of the situation, for the purpose of promoting animal welfare.

The ban on keeping animals

The Dutch criminal court may impose on offenders an injunction on keeping (specific) animals, or may set a maximum on the number of animals that may be kept. In the Netherlands, the ban on keeping animals is applied as a special condition attached to a suspended sentence. This means that a (partly) suspended sentence, for example a fine or prison term, is linked to a violation of the ban on keeping animals, committed within a specific probation period. In 2012, the maximum probation period was extended from three to ten years. If the ban on keeping animals is violated, the public prosecutor may ask the court to enforce the suspended sentence. From a perspective of policy, the intention is for the Dutch ban on keeping animals to be enforced mainly against repeat perpetrators of cruelty to and neglect of animals

Abroad

In other countries (among others Denmark, Germany, Great Britain, France and Canada), the ban on keeping animals mostly features as an independent punishment or measure, which is sometimes imposed for life. In addition, and more emphatically than in the Netherlands, in these countries the ban on keeping animals is not just intended for repeat offenders but also for first offenders. Both in the Netherlands and abroad, preventing recidivism is the main principle of the ban on keeping animals.

It is difficult to make assertions about the various applications abroad, because legal systems cannot simply be compared. At any rate, it is clear that there are differences in the ways in which the ban on keeping animals is embedded in law, as well as differences in scope, between the Netherlands and other countries. One difference between the Dutch application of the ban and applications abroad regards the (effective) mechanism of the ban. Where the ban on keeping animals takes the form of a special condition, the suspended sentence to which it is linked serves as a warning. On enforcement of that suspended sentence – as a consequence of a violation of the ban on keeping animals – the ban lapses. In case of a violation of the ban on keeping animals, imposed as an independent punishment or measure in the manner used abroad, a new punishable offence is committed. If that offence is prosecuted, the ban on keeping animals remains in effect. A variant that takes up a position between the special condition and the independent punishment or

measure is applied in Belgium. There, the ban on keeping animals is applied as a safety measure under criminal law. Each violation of the ban on keeping animals is followed by an immediately enforceable penalty, whereas the ban remains in effect. A significant observation is that the effectiveness and the actual pros and cons of the ban on keeping animals in its various embodiments are unknown in the Netherlands as well as abroad.

Application

The main results in regard to punishments imposed in animal welfare cases, and with respect to the frequency with which the ban on keeping animals plays a part in those punishments, are outlined in this section. In addition, findings in regard to the specifics and scope of the ban on keeping animals are set out, as well as the characteristics of the target group.

Animal welfare cases

In the period 2010 – 2015 there was an annual increase of the number of animal welfare cases heard and adjudicated by the courts. In total, some two thousand cases (2,017) were heard in those five years. Almost half of them related to neglect, a quarter to cruelty, and the other quarter to other offences against animals. That latter category included sex or porn with animals (made punishable by law in 2010), and inciting or failing to hold harmless the animal(s) in question.

The courts imposed punishment in the majority of cases. For cases concerning only animal facts (“pure” animal welfare cases), this happened in eight out of ten cases. In cases where, besides offences against animals, other, non-animal related offences had been committed (“mixed” animal welfare cases), the court imposed punishment in nine out of ten cases. Pure animal welfare cases were largely (in two thirds of the cases) settled with an (unconditional) fine. In a quarter of them, community punishment orders were imposed. Prison sentences (mostly suspended) occurred in less than ten percent of the pure animal welfare cases. For mixed cases, punishments were usually more severe; in four out of ten cases, (non-suspended) prison sentences were imposed and in a third (unconditional) fines.

The ban on keeping animals

Besides the main sentence, the court may impose special conditions. In the 2,017 animal welfare cases that were heard by the courts in a period of five years, the ban on keeping animals was imposed as a special condition a total of 67 times. This means that on average, a ban on keeping animals is imposed thirteen times a year. Related to the number of animal welfare cases, one in thirty cases results in a ban on keeping animals being imposed.

On average, the judgments in the cases in which a ban on keeping animals was imposed followed thirteen months after the offence. Well over half of the cases were finalised within a year; the others took over a year. A possible explanation for the limited number of bans imposed is that it is still a relatively little-known special condition for the Public Prosecution Service and the judiciary, even though it has been effective for some time. A possible cause of the lack of familiarity with the ban on keeping animals is that animal welfare cases constitute only a minor share of the total number of criminal cases. If subsequently, a ban on keeping animals is imposed in only a small number of animal welfare cases, that lack of familiarity continues. Courts do not always adopt the public prosecutor's demand for a specific punishment; where a ban on keeping animals was imposed, however, this had usually been suggested by the public prosecutor. From this perspective, it is important for the ban on keeping animals to be properly safeguarded, in particular in the Public Prosecution Service in particular. This is done insufficiently as yet. There is scattered knowledge among the public prosecutors; where one may know the ban on keeping animals, another may have never heard of it. An illustration of this is that there are marked geographical differences in the application of the ban on keeping animals, that cannot be explained by the distribution of the number of animal welfare cases. The districts in the "Randstad" conurbation and the National Public Prosecutor's Office for Financial, Economic and Environmental Offences ("*Functioneel Parket*") represent nearly three quarters of the number of bans imposed. In other districts, relatively speaking (far) fewer bans on keeping animals are imposed.

A step in the right direction may be that, since March 2015, the option of demanding a ban on keeping animals has been mentioned in the Public Prosecution Service's guideline for the criminal procedure in cases of cruelty to and neglect of animals ("*Richtlijn voor strafvordering dieren mishandeling en dierenverwaarlozing*"). In addition to this, appointing an animal welfare portfolio holder in all offices of the Public Prosecution Service might be a way of securing any knowledge on the subject.

Practical application and scope

A ban on keeping animals is imposed almost exclusively in cases of cruelty to and neglect of animals and not for other punishable conduct vis-à-vis animals. The ban on keeping animals is most often linked to a (partly) conditional monetary fine (of € 1,640 on average) or a community punishment order (of 83 hours on average). In a fifth of all cases, the ban on keeping animals is linked to a suspended prison sentence (of 86 days on average).

As a rule, the probation period for the conditional sentence equals the probation period for the ban. In over two out of three cases, this period is two years; in

a quarter, three years. Despite the option to impose a probation period of ten years max, no probation period of over three years was found to have been imposed. With a view to judicial tailoring, the fact that the option of a longer probation period exists is considered a positive sign in the criminal law and law enforcement chain.

The further practical application and scope of the ban on keeping animals differs for each case. Judgments may entail a ban on keeping animals, or a restriction on the maximum number of animals kept. In one half of the judgments, the animals to which the ban on keeping animals relates are specified further. In the other half, the injunction's application is formulated more generally, to relate to 'animals' or 'domestic animals', for example. One difficulty with the ban on keeping animals is that it is personal; as such, it can be difficult to maintain where the offender may be living with others. This problem may be mitigated by formulating the scope of the ban on keeping animals more amply, using terminology such as 'indirectly' (someone else) and 'directly' (oneself).

Target group

Since the ban on keeping animals entails an injunction on keeping (specific) animals, it is a condition that can apply only to keepers of animals who have perpetrated neglect of or cruelty to *their* animals. They may be keeping animals either in a private or a business capacity.

In practice, the target group of the ban on keeping animals both includes first and repeat offenders. Characteristic for perpetrators of cruelty to and neglect of animals on whom a ban on keeping animals is imposed, is that they have often been known to various institutions for some time on account of multiple problems. These may vary from psycho-social to financial problems, and crime. Because of such a background, some offenders may be unable to take proper care of their animals or, where keeping animals is their business, their operational management may be defective. In addition, the target group often seems to apply unusual standards and values in regard to its behaviour to animals and sometimes also to people.

Enforcement

Imposing a ban on keeping animals requires that its enforcement be supervised. In this section, the main findings in regard to the enforcement in practice of the ban on keeping animals are set out.

Regulatory framework

In formal terms, the responsibility for supervision on compliance with the ban on keeping animals lies with the Public Prosecution Service. In practice, the Dutch Probation Service ("Reclassering Nederland"), the Dutch National Police, the

Inspectorate of the Dutch Society for the Protection of Animals (“Landelijke Inspectiedienst Dierenbescherming” LID) and the Netherlands Food Authority (“Nederlandse Voedsel- en Warenautoriteit” NVWA) perform regulatory tasks. The police and the LID operate in regard to private keepers of animals; the NVWA supervises businesses. The Probation Service may play a part both in private and in commercial settings. Since the Probation Service is focused on realising behavioural change in sentenced persons, this organisation may offer significant added value to the supervision on compliance with the ban on keeping animals. Certainly in view of the fact that cruelty to and neglect of animals occur in the context of broader psycho-social problems, the Probation Service seems to be a suitable party to include punishable conduct vis-à-vis animals in a more comprehensive approach. Formally, however, the Probation Service has not yet been given a part to play in the supervision on this group of offenders.

Generally speaking, the option of imposing a ban on keeping animals is more alive to the enforcement parties than to the judiciary and the Public Prosecution Service. The LID and NVWA are sufficiently aware of the options of the ban on keeping animals, since animal welfare is their specific field of expertise. It is much less obvious for the National Police and the Probation Service. Because the animal welfare job focus holders of the National Police focus on cruelty to and neglect of animals, they have a fair knowledge of the subject. Fair, since there are great differences between individual job focus holders. It is important for supervisors to be sufficiently conversant with the option of the ban on keeping animals, so that their knowledge may be shared with the Public Prosecution Service and accordingly, will grow also there. In specific cases, the Public Prosecutor may be made aware by the enforcement parties of the option of the ban on keeping animals. This also actually happens in practice, where supervisors argue the suitability of imposing the ban in their reports; in this way, the knowledge of parties working in the field of animal welfare is ultimately disseminated also to the judiciary.

For the Dutch Probation Service, animal welfare is a new topic with which the Probation Service staff usually have little to do. To be able to actively maintain animal welfare, it is necessary for supervisors to have expertise of the field; they need to know what they are seeing and must be able to form their opinions accordingly. Greater knowledge of animal welfare in general and of the ban on keeping animals in particular is important for the enforcement parties, more specifically the police and the Dutch Probation Service.

Information sharing

Checking on compliance with the ban on keeping animals is an option only if the enforcement parties are informed where the ban has been imposed. However, judgments, and as such, any special conditions made in them, are not systematically

fed back to the enforcement chain by the Public Prosecution Service. This does not apply only in animal welfare cases: according to respondents, it is a more general problem. In practice, therefore, whether enforcement parties are aware if a ban on keeping animals has been imposed turns out to be dependent on the individual involvement of supervisors and public prosecutors. Individual supervisors may become informed informally of a judgment in a specific case, however. There are no agreements concerning the enforcement of the ban on keeping animals. Because of this, it is unclear which party should act in that context, the risk being that no party will take responsibility for enforcement. As a result of this lack of clarity, often no action is taken to enforce the ban. This impasse could be broken if the courts were to specifically appoint a supervisory party. In the current situation, the courts explicitly appoint a party to be in charge of supervising compliance with the ban in fewer than one in ten cases. Even so, it is naturally still important that a court judgment be relayed to the relevant party.

Registration

Apart from the fact that it is important for a responsible supervisor to be appointed and to be informed of the ban on keeping animals, any relevant knowledge received must be secured by the enforcement party in question, that is to say, clearly recorded under the sentenced person's name and address. That will render an effective ban on keeping animals transparent to all supervisors of an enforcement organisation. In the current situation, it turns out that knowledge about any bans imposed is often restricted to individual supervisors. None of the enforcement organisations record bans on keeping animals systematically and according to a standard protocol each time. The police registration system lacks records of bans imposed in nearly eight out of ten cases. Good examples of registration, to be used for future improvement, may be found with some of the parties. The ideal would be to have a national registration system of bans imposed that is accessible and transparent to all enforcement parties.

Implementation

The consequence of defective information sharing is that supervisors may observe persons in possession of animals when going about their tasks, without acting against those persons because they are unaware that a ban on keeping animals has been imposed on them. Apart from this, the actual enforcement of the ban on keeping animals constitutes a problem. After all, enforcement requires – besides knowledge – sufficient manpower, and it is very much the question whether the various parties have this. With the current limited number of bans imposed, lack of manpower is not expected to be the biggest enforcement issue. The practical feasibility of supervision on compliance is another problem, however. In view of the target

group, voluntary cooperation to check-ups is not always a given, so it is best to do all checks together with the police. To carry out an effective check, the sentenced person's house should be searched. However, none of the supervisors, including the police, may simply and always do a search. Ideally, the implementation of enforcement is enabled by the law, with the court linking an obligation to cooperate to any ban on keeping animals and also recording this obligation in the judgment. Failure to cooperate in checks might also become considered a violation of the special condition in such cases.

Effectiveness

In practice, the implementation of the ban on keeping animals in its current form faces some problems. The question is how the effectiveness of the ban on keeping animals may be improved and whether there are alternative ways to apply the ban on keeping animals that may serve the purpose better. Below, the main findings are set out as regards the ban on keeping animals in the manner it is applied in the Netherlands today, as well as possible alternative forms of application. It should be noted in this respect that the focus of this study was on the ban on keeping animals under Dutch criminal law, as currently applied in the Netherlands; the alternatives were merely explored.

Special condition

The underlying idea to applying the ban on keeping animals as a special condition, attached to a suspended sentence, is that the suspended sentence serves as a kind of warning. On violation of the ban on keeping animals within the probation period, the public prosecutor may ask the court to enforce the suspended sentence. The ban on keeping animals will lapse as soon as the suspended sentence is enforced. With a view to animal welfare and the risk of recidivism, this is generally considered an undesirable effect. After all, it will enable the sentenced person to keep animals once again, unpunished, and a new (criminal law) file will have to be started. After the ban on keeping animals has lapsed, animals can be removed again only once their owner has offended again. On violation of the ban on keeping animals, a new criminal proceedings may result in another suspended sentence. How frequently this occurs is not known; in practice, it turns out that at any rate, it does not happen in all cases.

Judging from the target group on which a ban on keeping animals may be imposed, it seems highly unlikely that private keepers of animals will intentionally accept their suspended sentence so that the ban on keeping animals will lapse. In theory, such calculating ideas are more likely to be engaged in by those who keep animals for commercial purposes, since a ban may have greater consequences

for their income; however, practice does not evidence this. Violations of the ban on keeping animals often seem to result from offenders' powerlessness and lack of knowledge of how to treat their animals properly. In anticipation of the theoretical risk that the suspended sentence carries an insufficient threat, this sentence should not be too light. In general, the courts seem to take this into account, but it can do no harm to enhance the alertness of public prosecutors and the courts in this respect.

For now, the option to impose a longer probation period (of ten years max) with a special condition attached is not being used by public prosecutors and judges who impose bans on keeping animals. A longer probation period can only be as effective as it was meant to be if enforcement continues consistently throughout that period. As long as enforcement for the relatively short period of two to three years has not been organised effectively, a longer probation period – let alone a measure for life – will definitely not have any added effect.

Alternatives

The ban on keeping animals, imposed as an independent measure in the manner in which this is done abroad, is not possible in the Netherlands at this time. One would assume it to be more effective than the current ban that is applied as a special condition, however. The main advantage of an independent measure compared to a special condition is that a violation of the ban on keeping animals may be prosecuted as a new punishable offence, while the ban continues to be in effect. With a view to maintaining animal welfare and preventing recidivism, in theory this may be more effective than a special condition. However, also as an independent measure, the ban on keeping animals can only be effective with structural supervision, definitely since the ban remains in force after a violation.

Other criminal law alternatives for the current application that may be interesting to explore include: a court order, disqualification from a profession, a settlement with the Public Prosecution Service and a behavioural instruction. In addition, measures under administrative law may be imposed for specific punishable offences regarding animal welfare (such as biting incidents), be it that these measures have only a limited, local effect.

For now, it is impossible to make any hard claims about the effectiveness of the ban on keeping animals when attached to a suspended sentence by way of a special condition. The same is true of existing and not yet existing alternatives for the ban on keeping animals in criminal law and in other areas of law.

Concluding observations

The issue of the most effective form in which to implement a ban on keeping animals – also in the longer term – is a thorny one. The purpose of the ban is to prevent repeated cruelty to and neglect of animals at all times. The risk of recidivism is a very real one in the target group in question, since punishable conduct vis-à-vis animals is often part of the offenders' greater problems, as a result of which they are not always capable of taking proper care of themselves. Violations of a ban on keeping animals seem to spring mainly from helplessness or ignorance about how to treat animals in the right manner. In view of this fact, the question is whether the chances of recidivism would be slimmer with a ban on keeping animals in the shape of an independent measure, rather than in the form of a special condition. The impact for the specific target group of a ban on keeping animals – in whatever form or shape – will be considerable. For private keepers of animals, their animals are often an important part of their lives. For commercial keepers, the animals are a source of income. If suspended sentences to which a ban may be attached as a special condition are as severe as auxiliary sentences attached to an independent ban on keeping animals, the form of application may well make no difference for the offender. The main difference between the two applications is that after violation, the ban on keeping animals as an independent measure remains in force, whereas as a special condition, it lapses after the suspended sentence is enforced. Theoretically speaking, the ban on keeping animals is more sustainable in the form of an independent measure. In terms of animal welfare, a more sustainable ban on keeping animals is preferable. However, that the ban on keeping animals continues for a longer time does not necessarily mean that the purpose of the ban is achieved more fully. Effectiveness decreases or grows with the successful enforcement of any ban imposed. In the current practice, however, enforcement is the main obstacle.

A general problem with criminal prosecution is also that there may be a long time between the offence and the judgment. In the case of animal welfare matters, suspects may purchase new animals pending the trial. As long as no new instances of abuse are observed, this cannot be prevented. In view of the target group and the fact that its members' sometimes unusual association with animals belong to their general repertoire of behaviour, a lengthy process is undesirable and also does not suit the purpose of the ban on keeping animals. The message to the suspect, that he can no longer keep animals, loses its strength if it follows only after a year, where in the meantime, pending the judgment, the suspect has been allowed to keep animals. Cracking down is more appropriate with this target group. A lengthy criminal trial as is currently the practice with the ban on keeping animals as a special condition will likely also be held with a ban on keeping animals in the form of an independent measure. The same applies for the ban on keeping animals in the shape

of a court order or disqualification. In other words, the problem with the effectiveness of the ban on keeping animals does not so much lie in the severity or the form of the measure, but in the speed with which an intervention can be effected. With a view to animal welfare and the prevention of recidivism, it would be obvious in the event of a criminal trial also to carry out some other intervention in the period that precedes the judgment. Realising a (widening of) the option to impose a behavioural instruction or settlement by the Public Prosecution Service may offer possibilities there. Parallel to this, an administrative procedure might be started. Measures of the Public Prosecution Service and administrative measures both have the advantage of being applicable immediately after the offence. Since the criminal offences are anchored in criminal law, criminal law proceedings must follow.

The main preconditions for imposing any kind of punishment or measure focused on preventing a person from keeping animals are knowledge of animal welfare inside the criminal law chain and effective enforcement. Apart from the fact that enforcement parties should be designated for the supervision, both on paper and in practice, they must have knowledge of animal welfare and the ban imposed, as well as be equipped to actually do the checks. In respect to the latter item, there must be attention for supervisor safety and solid collaboration between enforcement parties, as well as the legal option to do a search.

In its turn, structured and consistent enforcement requires adequate action by the Public Prosecution Service if a violation of the ban on keeping animals is observed. After all, in failing to act against violations of the ban on keeping animals one would miss the target of maintaining animal welfare.

It must be concluded that no single application of the ban on keeping animals will provide the ultimate solution. This is also true of the ban on keeping animals as an independent measure. The existing arsenal of punishments and measures in regard to cruelty to and neglect of animals is well filled at this point in time. The problem is that for now, the options to impose a ban on keeping animals are insufficiently used, and enforcement is defective. In view of the problematic target group for the ban on keeping animals, a comprehensive approach inclusive of welfare support is likely to prove most effective in the long term.



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