

Warranty for defects in domestic animals under Polish law

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Abstract

The paper examines the applicability of Polish civil law provisions on warranty for defects to the sale of domestic animals, in light of the principle of dereification introduced by the Animal Protection Act. The Act established that animals, as sentient beings capable of suffering, are not things, yet it allows for applying the legal provisions concerning things to animals accordingly. This creates interpretative challenges, particularly in contractual relations involving sales of domestic animals. The main emphasis in the paper is placed on the scope and applicability of the buyer's rights. The paper argues that applying the buyer's rights to domestic animals might contradict both the dereification principle and the prohibition of cruelty to animals. The author concludes that applying the warranty provisions accordingly requires careful reinterpretation in each case to balance the legal interests of buyers and sellers with the interests of the animal as a sentient being, manifested primarily in freedom from suffering, both physical and mental.

Keywords: warranty; domestic animals; dereification; animal defects.

Introduction

It is common for Polish households to keep domestic animals. At least one dog lives in 49% of Polish households, and at least one cat lives in 41%.¹ In addition, the ongoing social changes are leading to an increase in the popularity of purebred domestic animals. Purebred domestic animals are more frequently the subject of civil law transactions, particularly sales contracts, than non-purebred domestic animals. This is due not only to their often significant economic value, but also to the legal framework in Poland, which prohibits the breeding of dogs and cats for commercial purposes by entities other than registered breeders.² Taking this into account, one ought to consider applying provisions concerning warranty for defects in sold items to the domestic animals accordingly, especially from the perspective of animal dereification.³

¹ 'FEIDAF Annual Report 2024', <https://europeanpetfood.org/wp-content/uploads/2024/06/FEDIAF-Annual-Review-2024_Online.pdf> accessed 22 August 2025.

² Articles 10a(2) and 10a(6) APA.

³ Dereification implies excluding animals from the legal category of things. The issue of dereification in the Polish legal system will be discussed in more detail further in this article.

This article analyses warranty provisions applicable to the sale of domestic animals. The main emphasis is placed on the buyer's rights and the possibility of applying them in the case of the sale of a domestic animal. The article aims to employ dogmatic-legal and theoretical-legal methods to address the question of whether warranty provisions apply to the sale of domestic animals and whether all the buyer's rights under the warranty can be extended to domestic animals. The article advances a normative argument that the core buyer remedies under warranty law – particularly replacement, repair, and withdrawal from the contract – are incompatible with the principle of dereification and with animal welfare obligations in the context of domestic animals.

Legislation concerning the seller's liability for defective items is, although with some differences, common throughout Europe. Therefore, it is possible to apply the considerations presented below also to the regulation of animals that are sold in other legal systems. The considerations and theses presented in the article will be particularly useful in the context of legal systems that have implemented Directive (EU) 2019/771 of the European Parliament and of the Council⁴ without providing for a catalogue of animal defects subject to warranty or specific regulations relating to the sale of animals, i.e., in the German system. For other legal systems in the European Union that provide for dereification and for applying property law to animals accordingly,⁵ they may also provide useful insights. For alternative legal systems, Polish law may serve as a case study illustrating a broader structural tension between private law remedies and norms of animal protection.

The issue of warranty for defects in animals in the Polish legal system has already been described in the literature.⁶ Still, these texts either dealt with the subject in a cursory manner or incorrectly assessed the possibility of applying specific buyer rights in the case of animals, without taking into account the principles of the Animal Protection Act.⁷ No study specifically focuses on the warranty for defects in domestic animals; instead, studies on farm and breeding animals are more common.⁸

⁴ Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC, OJ L 136, 22.5.2019, 28–50.

⁵ Examples of such legal systems are the Czech Republic, France, Austria, and the Netherlands.

⁶ See: Małgorzata Lubelska-Sazanów, 'Odpowiedzialność z tytułu rękojmi za wady fizyczne przy sprzedaży zwierząt' (2015) 4 *Transformacje Prawa Prywatnego*; Mieczysław Goettel, *Sytuacja zwierzęcia w prawie cywilnym* (Wolters Kluwer Polska 2013); Monika Piekarska, 'Rękojmia za wady fizyczne zwierząt na przykładzie sprzedaży konia' (2017) 2 *Kortowski Przegląd Prawniczy*.

⁷ *Journal of Laws* 2023, item 1580, hereinafter: APA.

⁸ The studies on the warranty for defects in animals, even those referring to domestic animals (mostly dogs), are conducted from a functional and breeding perspective, rather than focusing on them as companion animals; see:

1. Dereification

1.1 General remarks

The Polish legislator was one of the first in Europe to introduce the principle of dereification into the legal system with the 1997 Animal Protection Act (APA). According to article 1(1) of the APA: “An animal, as a living being capable of suffering, is not a thing. Humans owe it respect, protection, and care” [author’s translation]. Thus, the legislator changed the existing legal status by excluding them from the legal category of things. At the same time, the exclusion of animals from the category of things does not determine their inclusion in the catalogue of legal entities and does not grant them legal personality.⁹ Consequently, the legal status of animals is ambiguous and does not fit into the traditional division between things and subjects of law that applies in Polish law.

What is essential from the perspective of the legal situation of animals is that the principle of dereification has been placed in the APA, i.e., a legal act devoted entirely to animals. In some European countries, the principle of dereification has been introduced in civil codes, which limits its application only to civil law relations.¹⁰ However, the solution introduced in Polish law determines the application of the principle of dereification throughout the entire legal system – in civil law relations as well as in criminal and administrative law.¹¹ Thus, the principle of dereification is horizontal and cross-sectoral,¹² and should also influence the process of applying the law.¹³ As a horizontal principle, applicable throughout the entire legal system, it becomes a key interpretative guideline.¹⁴ This means that whenever legal provisions are applied to animals, consideration must be given to whether the provisions to be used require reinterpretation since the subject of the action in question is an animal, i.e., a sentient being that deserves respect.¹⁵

Jolanta Loranc-Borkowska, ‘Konsumencka reklamacja wady fizycznej zwierzęcia’ in Zbigniew Długosz, Krzysztof Podgórski, Elżbieta Sługocka-Krupa (eds), *Reklamacje, mediacje i inne postępowania w sprawach konsumenckich* (Wydawnictwo C.H. Beck 2021); Małgorzata Lubelska-Sazanów, ‘Odpowiedzialność z tytułu rękojmi za wady fizyczne przy sprzedaży zwierząt’ (2015) 4 *Transformacje Prawa Prywatnego*; Monika Piekarska, ‘Rękojmia za wady fizyczne zwierząt na przykładzie sprzedaży konia’ (2017) 2 *Kortowski Przegląd Prawniczy*.
⁹ Urszula Moszczyńska, ‘Sytuacja prawna zwierzęcia w cywilnym postępowaniu egzekucyjnym’ (2020) 8 *Przegląd Prawa Egzekucyjnego* 5; Tomasz Pietrzykowski, *Foundations of Animal Law, Concepts – Principles – Dilemmas* (Wydawnictwo Uniwersytetu Śląskiego 2023) 100.

¹⁰ Mieczysław Goettel, *Sytuacja zwierzęcia w prawie cywilnym* (Wolters Kluwer Polska 2013) 42-43.

¹¹ *ibid* 43.

¹² Tomasz Pietrzykowski, *Foundations of Animal Law, Concepts – Principles – Dilemmas* (Wydawnictwo Uniwersytetu Śląskiego 2023) 102.

¹³ Emil Kruk, *Ustawa o Ochronie Zwierząt. Komentarz* (Wolters Kluwer Polska 2024) 46.

¹⁴ *ibid*.

¹⁵ Judgement of the Supreme Administrative Court of 3 November 2011, II OSK 1628/11.

1.2 Applying provisions on things to animals

As a consequence of excluding animals from the category of things while not granting them legal personality, the APA, in article 1(2), introduced a rule according to which “in matters not regulated by the Act, the provisions concerning things shall apply accordingly to animals”. Such regulation is necessary to avoid a legal gap into which animals would otherwise fall. At the same time, Polish doctrine indicates that article 1(2) of the APA severely limits the potential associated with the principle of dereification, as the APA itself regulates only a tiny fraction of situations involving animals.¹⁶ The APA introduces only fundamental prohibitions and requirements, mainly concerning animal welfare. Therefore, article 1(2) is very often applied, especially in civil relations relating to animals,¹⁷ such as sales. However, it should be emphasized that, due to their specific nature, animals are special subjects of law.¹⁸

When applying article 1(2) of the APA, particular attention should be paid to the fact that it requires the provisions to be applied “accordingly”. Doctrine and case law clearly indicate that applying provisions accordingly may mean applying them directly, applying them with modifications, or not applying them at all due to differences between the norms.¹⁹ It is also pointed out that applying the provisions accordingly should also take into account the objectives and nature of the standards to which the provisions are to be applied.²⁰ In view of the above, in the case of animals, “applying accordingly” must consider article 1(1) of the APA as *lex generalis*.²¹ Therefore, taking into account, first and foremost, that an animal is not a thing, that it is capable of suffering, that it deserves respect, protection, and care, as well as the requirement for humane treatment and the prohibition of cruelty to animals, as expressed in articles 5 and 6(1a) of the APA.

The relevant provisions should be applied on a case-by-case basis, meaning that each situation in which the provisions concerning animals are to be used should be assessed individually.²² Each time, it should be considered whether the provisions to be used require

¹⁶ Karolina Kuszlewicz, *Ustawa o Ochronie Zwierząt. Komentarz* (Wolters Kluwer Polska 2021) 61; Grzegorz Lubeńczuk, ‘The Concept of the Normative Dereification of an Animal in Polish Law’ (2021) 30(5) *Studia Iuridica Lublinensia* 413 (DOI: <http://dx.doi.org/10.17951/sil.2021.30.5.413-427>).

¹⁷ Karolina Kuszlewicz, *Ustawa o Ochronie Zwierząt. Komentarz* (Wolters Kluwer Polska 2021) 63.

¹⁸ Michał Rudy, ‘Dlaczego potrzebujemy nowej ustawy o humanitarnej ochronie zwierząt?’ (2017) 108 *Przegląd Prawa i Administracji* 73 (DOI: <http://dx.doi.org/10.19195/0137-1134.108.6>).

¹⁹ Judgment of the Supreme Administrative Court of 3 November 2011, II OSK 1628/11; Lech Morawski, *Zasady wykładni prawa* (Toruń: Towarzystwo Naukowe Organizacji i Kierownictwa "Dom Organizatora" 2010) 244.

²⁰ Ruling of the Supreme Court of 19 April 2012, IV CZ 153/11.

²¹ Resolution of the Supreme Court of 20 June 2012, I KZP 4/12.

²² Karolina Kuszlewicz, *Ustawa o Ochronie Zwierząt. Komentarz* (Wolters Kluwer Polska 2021) 56.

reinterpretation since the subject of the activity in question is an animal, i.e., a sentient being.²³ According to Tomasz Pietrzykowski, the ability of animals to feel suffering means that animals have “their own legally relevant interests, which should, as far as possible, be taken into account as a separate legal good”.²⁴

2. Domestic animals

2.1 Statutory category of domestic animals

The APA divides animals into several categories: domestic animals, farm animals, stray animals, laboratory animals, animals used for entertainment, spectacle, film, sports, and special purposes, and wild animals. The category of domestic animals, which is a subject of this article, includes “animals traditionally living with humans in their homes or other suitable premises, kept by humans as companions”.²⁵ The legislator decided to use a descriptive definition of this category rather than introducing a list of animal species. It is not the species of an animal that determines whether it belongs to the category of domestic animals, but the purpose assigned to it by humans.²⁶

This approach to the definition of domestic animals allows for a certain degree of flexibility. Over the past few decades, the perception of pets has evolved – from cats and dogs to exotic animals,²⁷ and then to animals traditionally considered farm animals or even wild animals. Thanks to the wording of the definition of domestic animals, the species of the animal is irrelevant, and only its purpose matters – to accompany humans.²⁸

On the other hand, however, the word “traditionally” used in the definition may raise some doubts. This may lead to the exclusion of certain animals from the category of domestic animals because they have only recently been kept by humans as pets. However, according to legal doctrine, the statutory definition of domestic animals is open-ended and subject to

²³ Judgement of the Supreme Administrative Court of 3 November 2011, II OSK 1628/11.

²⁴ Tomasz Pietrzykowski, *Prawo Ochrony Zwierząt: Pojęcia, Zasady, Dylematy* (Wolters Kluwer Polska 2022) 119.

²⁵ Article 4 point 17 APA.

²⁶ Judgement of the Supreme Administrative Court of 29 April 2009, II OSK 1953/08.

²⁷ Kamil Szpyt, ‘Nowe wyzwania zawodu komornika sądowego w świetle ewolucji prawnej ochrony zwierząt. Rozważania na temat egzekucji ze zwierząt domowych’, in Agnieszka Góra-Błaszczkowska, Kinga Flaga-Gieruszyńska, Izabela Gil (eds), *Nowy model zawodu komornika sądowego i finansowania egzekucji sądowej* (Currenda 2018).

²⁸ Judgement of the Voivodeship Administrative Court in Lublin of 10 November 2016, II SA/Lu 656/16.

expansion to adapt to the growing range of animals kept by humans as companions, and domestic animals also include those that have only recently been domesticated by humans.²⁹

2.2 Protection of domestic animals

The APA determines the level of protection granted to an animal based on the statutory category to which it belongs. For example, farm animals or laboratory animals, which in principle can be legally killed (and it can even be said that this is their purpose), are covered by a completely different scope of protection than domestic animals, i.e., those closest (in an emotional sense) to humans. Domestic animals are subject to particular protection standards,³⁰ which are described in chapter II of the APA. Therefore, it should be recognized that the level of protection depends on the relationship between the animal and humans,³¹ or instead on how humans perceive a given animal.

This arrangement of the legal situation of animals is a manifestation of anthropocentrism in the current animal protection law.³² The law, which aims to protect animals and safeguard their interests, does so not because, as stated in article 1 of the APA, an animal is a sentient being that deserves respect, but because of human needs.³³ Animals are subject to the extent of protection that humans wish to grant them.

3. Warranty for defects in animals

3.1 General remarks

As a rule, the Polish legal system allows for freedom of trade, which means that practically anything can be traded.³⁴ However, this freedom may sometimes be restricted by the legislator due to specific values.³⁵ In Polish law, human tissues and drugs, for example, are entirely excluded from trading.

²⁹ Grzegorz Lubeńczuk in Emil Kruk (eds), *Ustawa o Ochronie Zwierząt. Komentarz* (Wolters Kluwer Polska 2024) 291.

³⁰ Mieczysław Goettel, *Sytuacja zwierzęcia w prawie cywilnym* (Wolters Kluwer Polska 2013) 224.

³¹ Tomasz Pietrzykowski, *Foundations of Animal Law, Concepts – Principles – Dilemmas* (Wydawnictwo Uniwersytetu Śląskiego 2023) 181.

³² Karolina Kuszlewicz, *Ustawa o Ochronie Zwierząt. Komentarz* (Wolters Kluwer Polska 2021) 51-52.

³³ Marlena Drapalska-Grochowicz, 'Prawne interpretacje bliskich relacji człowieka z innymi zwierzętami' (2020) 82(1) *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 217 (DOI: <http://dx.doi.org/10.14746/rpeis.2020.82.1.15>).

³⁴ Aneta Kaźmierczyk in Mariusz Fras, Magdalena Habdas (eds), *Kodeks cywilny. Komentarz. Tom I. Część ogólna (art. 1-125)*, (Wolters Kluwer Polska 2018) 346.

³⁵ *ibid.*

Animals, although not considered things, have not been excluded from trade and, therefore, pursuant to article 1(2) of the APA, the provisions governing sale apply accordingly. However, it is worth noting here that the legislator has imposed certain restrictions on the trade in animals. These restrictions apply only to domestic animals, in particular dogs and cats. It should be emphasized that any legal action concerning all vertebrate animals (because the provisions of the APA apply to them) should always be limited, among other things, by the principle of humane treatment and the prohibition of cruelty.³⁶ However, in the case of the sale of domestic animals, the legislator decided to introduce restrictions explicitly stated in the APA. These restrictions consist of a ban on the sale of domestic animals at markets, fairs, and exchanges; the operation of markets, fairs, and exchanges selling domestic animals; and the sale of dogs and cats outside of their breeding or rearing facilities.³⁷

In the Civil Code (CC),³⁸ the provisions concerning sales regulate, among other things, issues related to the warranty for defects in the sold item. A warranty is a legal institution according to which “the seller is liable to the buyer if the sold item has a defect”.³⁹ Defects can be either physical or legal in nature; pursuant to article 556³ of the CC, an item has a legal defect if it is owned by a third party, is encumbered by a third party's right, or if the restriction on the use or disposal of the item results from a decision or ruling of a competent authority, as well as if the right to the item does not exist. All other defects of an item constitute physical defects. A warranty is an institution that exists within the framework of contractual liability and should be considered in the context of a breach of obligation.⁴⁰ Its primary purpose is to protect the buyer by ensuring the equivalence of benefits between the parties if the sold item has a defect.⁴¹ It is worth noting that liability under warranty is based on the principle of risk, i.e., the seller is not exempt from liability either by lack of fault or lack of knowledge of the defect.⁴²

3.2 Two warranty regimes – the Civil Code and the Consumer Rights Act

The primary basis for the functioning of the warranty institution in Polish law is the CC. However, this is not the only act that contains provisions on the seller's liability for defects in

³⁶ Articles 5 and 6(1a) APA.

³⁷ Article 10a(1) APA.

³⁸ Journal of Laws 2025, item 1071, hereinafter: CC.

³⁹ Article 556 CC.

⁴⁰ Małgorzata Lubelska-Sazanów, ‘Odpowiedzialność z tytułu rękojmi za wady fizyczne przy sprzedaży zwierząt’ (2015) 4 *Transformacje Prawa Prywatnego* 21.

⁴¹ *ibid* 25.

⁴² *ibid* 26.

the sold things. Due to the addition of chapter 5a to the Consumer Rights Act (CRA),⁴³ the provisions on warranty contained in the CC do not apply to consumer contracts, i.e., sales contracts concluded by entrepreneurs with consumers, the subject of which are movable things or water, gas, or electricity if they are offered for sale in a specific volume or quantity.⁴⁴

It should therefore be recognized that the warranty regulated in the CRA may also apply to the sale of animals. Thus, to determine the basis for the buyer's rights, it is necessary to determine whether the consumer regime applies, i.e., whether the seller is an entrepreneur and the buyer is a consumer (a natural person), or whether both parties are entrepreneurs or both parties are natural persons.⁴⁵

In the case of animal sales, the seller is usually the breeder. In Polish law, the issue of animal breeders is regulated by the APA and the Act on Associations.⁴⁶ Pursuant to article 10a(6) of the APA, the prohibition on breeding dogs and cats for commercial purposes does not apply to animal breeders registered with nationwide social organizations whose statutory purpose is to engage in activities related to the breeding of purebred dogs and cats. In practice, this means that dog and cat breeding can operate as an association.⁴⁷ There are two types of associations in the Polish legal system – registered (with legal personality) and ordinary (without legal personality, but with legal capacity).⁴⁸ A registered association, as a legal entity, may be an entrepreneur. However, an ordinary association, which is not a legal entity, may not conduct business activity,⁴⁹ but its members may be entrepreneurs (although they do not have to be) if they register in the Central Register and Information on Economic Activity.

In summary, consumer law applies when the buyer is a natural person and the seller is a breeder who is either a registered association or a member of a business registered in the Central Register and Information on Economic Activity. If the members of an ordinary association are not entrepreneurs, and the buyer is an entrepreneur, the CC regime applies, not the consumer regime.

⁴³ Journal of Laws 2024, item 1796, hereinafter: CRA.

⁴⁴ Dominik Bierecki in Piotr Nazaruk (eds), *Kodeks cywilny. Komentarz aktualizowany* (LEX 2024), <<https://sip.lex.pl/komentarze-i-publicacje/komentarze/kodeks-cywilny-komentarz-aktualizowany-587857707>> accessed 29 July 2025.

⁴⁵ Article 1 Consumer Rights Act, article 22¹ CC and article 43¹ CC.

⁴⁶ Journal of Laws 2020, item 2261.

⁴⁷ Marta Nowakowska, Ewa Niemiec, 'Hodowla rasowych psów i kotów a ochrona zwierząt — analiza polskich rozwiązań prawnych' (2017) 108 *Przegląd Prawa i Administracji* 87 (DOI: <http://dx.doi.org/10.19195/0137-1134.108.7>).

⁴⁸ Articles 17(1) and 40 Act on Associations, Agnieszka Rzetecka-Gil, *Prawo o stowarzyszeniach. Komentarz* (2nd edn., LEX 2022), <<https://sip.lex.pl/komentarze-i-publicacje/komentarze/prawo-o-stowarzyszeniach-komentarz-wyd-ii-587724017>> accessed 29 July 2025.

⁴⁹ *ibid.*

3.3 Seller's liability and buyer's rights under the warranty

From the perspective of this article, the most critical aspects of the warranty are the seller's liability period and the range of rights available to the buyer. These issues are regulated identically in both the CC and the CRA, so below, it will be referred to as a “warranty” without distinguishing between the legal basis for its application.

Pursuant to article 568 § 1 of the CC, the seller is liable under the warranty if a physical defect in a movable thing is discovered within two years from the date of delivery of the thing. This period also applies to animals. In a situation where the seller has fraudulently concealed a defect or assured the buyer that there are no defects, the expiry of this period will not result in the expiry of the seller's liability and, therefore, the buyer's rights under the warranty for defects will not be excluded.⁵⁰ In the case of legal defects, the buyer's rights are not limited to a two-year period from the date of delivery of the item sold, but only to a one-year limitation period for claims, which runs from the moment the buyer becomes aware of the defect or the judgment of a third party becomes final.⁵¹ However, pursuant to article 557 § 1 of the CC, the seller is exempt from liability under the warranty if the buyer was aware of the defect at the time of concluding the contract.

Whereas, as regards the buyer's rights, the CC provides for the possibility of submitting a statement on price reduction or withdrawal from the contract.⁵² In the first instance, however, the seller may decide to replace the defective thing with one that is free from defects or to remove the defect.⁵³ The matter of buyer rights will be discussed in more detail later in this article.

3.4 Animal defects

In order to determine the seller's liability under the warranty, it is necessary to establish the existence of a defect. Pursuant to article 556¹ §1 of the CC, “a defect consists in the non-compliance of the sold item with the contract.” The same article contains a non-exhaustive list of examples of defects. Therefore, an item is considered defective if it lacks the qualities that

⁵⁰ Jolanta Loranc-Borkowska, ‘Konsumencka reklamacja wady fizycznej zwierzęcia’ in Zbigniew Długosz, Krzysztof Podgórski, Elżbieta Sługocka-Krupa (eds), *Reklamacje, mediacje i inne postępowania w sprawach konsumenckich* (Wydawnictwo C.H. Beck 2021).

⁵¹ Article 576 CC.

⁵² Article 560 § 1 CC.

⁵³ *ibid.*

are expected for its type, based on the purpose specified in the contract, the relevant circumstances, or its intended use. Defectiveness also arises if the item does not possess the characteristics that the seller assured the buyer it would have. Similarly, if the item is unsuitable for a purpose that the buyer communicated to the seller when concluding the contract, and the seller did not object to this intended use, it is deemed defective. An item is also defective if it is delivered in an incomplete state.

Following the entry into force on December 25, 2014, of the Consumer Rights Act amending the CC,⁵⁴ animal defects are subject to uniform regulation – the species of the animal and the type of disease are irrelevant.⁵⁵ The Act above repealed the provisions previously existing in the CC which, introduced, on the basis of an executive regulation, an exhaustive list of animal species (horses, sheep, minks) and their defects, which were referred to as “major defects”. The seller was only liable for major defects, unless other defects were expressly specified in the contract.

Since December 25, 2014, there have been no regulations dedicated to warranty for animal defects; therefore, all species of animals and all their defects are subject to the relevant provisions on warranty for defects in items. The doctrine indicates that the most common examples of animal defects are diseases, undesirable traits, physical disabilities, or other flaws that impair the appearance or condition of the animal or reduce its usefulness.⁵⁶ It is worth noting here that there is a frequently expressed view that the “defectiveness” of an animal should be assessed in terms of the purpose for which the animal was acquired.⁵⁷

In the case of domestic animals, it is pointed out that different characteristics should be expected from, for example, a dog that is intended to perform defensive functions and a “family friend”.⁵⁸ However, this approach may seem controversial in light of the legal definition of domestic animals presented above. The main characteristic of domestic animals is that humans keep them as companions. This means that the primary purpose of domestic animals is established by law and is to accompany humans. According to case law, for an animal to be

⁵⁴ Journal of Laws 2014, item 827.

⁵⁵ Jolanta Loranc-Borkowska, ‘Konsumencka reklamacja wady fizycznej zwierzęcia’ in Zbigniew Długosz, Krzysztof Podgórski, Elżbieta Sługocka-Krupa (eds), *Reklamacje, mediacje i inne postępowania w sprawach konsumenckich* (Wydawnictwo C.H. Beck 2021).

⁵⁶ Mieczysław Goettel, *Sytuacja zwierzęcia w prawie cywilnym* (Wolters Kluwer Polska 2013) 136.

⁵⁷ Jolanta Loranc-Borkowska, ‘Konsumencka reklamacja wady fizycznej zwierzęcia’ in Zbigniew Długosz, Krzysztof Podgórski, Elżbieta Sługocka-Krupa (eds), *Reklamacje, mediacje i inne postępowania w sprawach konsumenckich* (Wydawnictwo C.H. Beck 2021); Mieczysław Goettel, *Sytuacja zwierzęcia w prawie cywilnym* (Wolters Kluwer Polska 2013) 136.

⁵⁸ Małgorzata Lubelska-Sazanów, ‘Odpowiedzialność z tytułu rękojmi za wady fizyczne przy sprzedaży zwierząt’ (2015) 4 *Transformacje Prawa Prywatnego* 21.

considered a domestic animal, it is necessary to “establish an emotional bond between humans and animals and grant them the right to stay with humans in their immediate environment, as members of the herd”.⁵⁹ This means that “companionship” should be understood as a relationship based on an emotional bond, somewhat similar to family ties. It is therefore challenging to require such a “companion” to have specific characteristics that would translate into its “useful” value.

The same applies to all diseases and undesirable characteristics. Both doctrine and case law indicate that these are circumstances that fulfill the definition of a “defect” under the warranty regime.⁶⁰ However, the existence of diseases, behavioral defects, and other undesirable traits is often directly related to the fact that we are dealing with a living creature, not an inanimate object. When purchasing a live animal, the buyer must take into account that, as a result of numerous factors, diseases may occur during its lifetime.⁶¹ Therefore, it should be recognized that the requirement to apply the provisions to animals, as set out in article 1(2) of the APA, requires that not only their welfare during the sale be taken into account, but also the fact that, as living beings, they are unique and subject primarily to the laws of biology. Thus, issues such as diseases or behavioral defects could be considered an inherent risk in the purchase of an animal.

3.5 Buyer's rights applied accordingly to domestic animals

Once it has been determined that the provisions on warranty for defects in things apply accordingly to animals, the rights of the buyer should be considered. As mentioned earlier, pursuant to article 560 § 1 of the CC, the buyer may submit a statement requesting a price reduction or withdrawal from the contract, unless the seller immediately and without undue inconvenience to the buyer replaces the defective item with an item free from defects or removes the defect. This means that the rights to remove the defect or replace the item with a defect-free one are fundamental rights that take precedence in enforcement. The above-mentioned rights of the buyer apply to both physical and legal defects.

In the case of replacement of items with items free from defects, it is emphasized that this right is available to the buyer only and exclusively in the case of purchasing replaceable

⁵⁹ Judgement of the Supreme Administrative Court of 29 April 2009, II OSK 1953/08.

⁶⁰ Judgement of the District Court for Łódź-Śródmieście in Łódź of 6 July 2020, XVIII C 2219/18; Mieczysław Goettel, *Sytuacja zwierzęcia w prawie cywilnym* (Wolters Kluwer Polska 2013) 136.

⁶¹ Grażyna Manjura-Niskiewicz, *Ustawa o Ochronie Zwierząt. Komentarz* (Wydawnictwo C.H. Beck 2022) 20.

items.⁶² Replaceable items are those that have the same physical characteristics, and where each of them has the same characteristics as the set of items that they form.⁶³ The buyer may only demand the delivery of the same item free from defects, and not a different item, even if it has very similar or identical functional properties.⁶⁴ In the case of any animal, it is difficult to say that it has the same physical characteristics as other animals, even those of the same species or breed. The animal's physical characteristics are not limited to its appearance but also include its character and personality. Every animal, as a sentient being, is unique, and it is impossible to consider that the provisions on replaceable items can apply to them.

Nevertheless, there are voices in the doctrine according to which the right to replace an item with one free of defects is possible in the case of small animals purchased in pet shops, for example, rodents.⁶⁵ This approach would mean treating certain animals, based on criteria such as their size or place of purchase, as replaceable items. This approach does not take into account, for example, the animal's cognitive abilities, the level of development of its nervous system, its ability to form emotional bonds, and so on, but only the fact that it is a small animal that can be purchased in a pet shop. This is entirely contrary to the principle of dereification and is unjustified. However, case law and most doctrine take the position that replacement cannot apply, even when applied accordingly to animals.⁶⁶

Another right of the buyer (actually a counter-right of the seller) is to demand removal of the defect. Pursuant to article 560 § 1 of the CC, the defect should be removed immediately and without undue inconvenience to the buyer. When assessing inconvenience, it is pointed out that it must be greater than in the case of withdrawal from the contract. When determining whether the expectation is excessive, the point of reference may be the time the buyer would need to repurchase the item in the event of withdrawal.⁶⁷ Furthermore, the seller may refuse to exercise this right if the defect cannot be removed (i.e., the defect is irreparable) or if, compared to replacing the item with one free of defects, it would incur excessive costs.⁶⁸

⁶² Roman Trzaskowski in Jacek Gudowski (eds), *Kodeks cywilny. Komentarz. Tom IV. Zobowiązania. Część szczegółowa* (2nd edn, Wolters Kluwer Polska 2017) 385.

⁶³ Teresa Bielska-Sobkowicz in Jacek Gudowski (eds), *Kodeks cywilny. Komentarz. Tom V. Zobowiązania. Część szczegółowa* (2nd edn, Wolters Kluwer Polska 2017) 498.

⁶⁴ Roman Trzaskowski in Jacek Gudowski (eds), *Kodeks cywilny. Komentarz. Tom IV. Zobowiązania. Część szczegółowa* (2nd edn, Wolters Kluwer Polska 2017) 385-386.

⁶⁵ Małgorzata Lubelska-Sazanów, 'Odpowiedzialność z tytułu rękojmi za wady fizyczne przy sprzedaży zwierząt' (2015) 4 *Transformacje Prawa Prywatnego* 21.

⁶⁶ Judgement of the District Court in Szamotuły of 27 November 2017, I C 870/15; Grażyna Manjura-Niskiewicz, *Ustawa o Ochronie Zwierząt. Komentarz* (Wydawnictwo C.H. Beck 2022) 20.

⁶⁷ Roman Trzaskowski in Jacek Gudowski (eds), *Kodeks cywilny. Komentarz. Tom IV. Zobowiązania. Część szczegółowa* (2nd edn, Wolters Kluwer Polska 2017) 360-361.

⁶⁸ *ibid* 393.

Considering the possible defects of animals discussed earlier, in the case of purchasing an animal, a potential form of removing the defect is, for example, curing it in the case of diseases or subjecting it to behavioral therapy in the case of behavioral defects.⁶⁹ However, in the case of any congenital disabilities, it seems that we will be dealing with irreparable defects, and therefore, the right to remove the defect will not apply.⁷⁰ There is no doubt that the process of treating an animal, depending on the type and severity of the disease, can be extremely costly and lengthy, and at the same time, is not always fully effective. In such cases, we cannot speak of “immediate” removal of the defect.⁷¹ Therefore, the prevailing view is that demanding removal of the defect in the case of animals is only a theoretical right and does not apply in practice.⁷²

The least invasive measure, and the simplest way to restore the balance between the parties' benefits, is to reduce the price.⁷³ Pursuant to article 560 § 3 of the CC, the reduction of the contractual price should be made in proportion to the ratio of the value of the defective item to the value of the item without defects. Therefore, determining the extent to which the defect reduces the item's value is a key element of this right. A buyer who cannot demonstrate the ratio of the value of the item free of defects to its value calculated taking into account the existing defects cannot demand a price reduction.⁷⁴

The issue of determining the reduction in value of an animal with a defect, and thus the possibility of exercising this right in the case of purchasing an animal, remains controversial. Two conflicting positions exist in the doctrine – according to one of them, it is not possible to determine the impact of a given defect on the market value of an animal. Thus, the right to reduce the price does not apply to the sale of animals.⁷⁵ The second position recognizes that, due to the widespread practice of purchasing purebred animals, their market prices are widely available and easy to determine, and entities involved in the trade of animals on a given market

⁶⁹ Jolanta Loranc-Borkowska, ‘Konsumencka reklamacja wady fizycznej zwierzęcia’ in Zbigniew Długosz, Krzysztof Podgórski, Elżbieta Sługocka-Krupa (eds), *Reklamacje, mediacje i inne postępowania w sprawach konsumenckich* (Wydawnictwo C.H. Beck 2021).

⁷⁰ Roman Trzaskowski in Jacek Gudowski (eds), *Kodeks cywilny. Komentarz. Tom IV. Zobowiązania. Część szczegółowa* (2nd edn, Wolters Kluwer Polska 2017) 393.

⁷¹ Mieczysław Goettel, *Sytuacja zwierzęcia w prawie cywilnym* (Wolters Kluwer Polska 2013) 143.

⁷² Małgorzata Lubelska-Sazanów, ‘Odpowiedzialność z tytułu rękojmi za wady fizyczne przy sprzedaży zwierząt’ (2015) 4 *Transformacje Prawa Prywatnego* 21.

⁷³ Roman Trzaskowski in Jacek Gudowski (eds), *Kodeks cywilny. Komentarz. Tom IV. Zobowiązania. Część szczegółowa* (2nd edn, Wolters Kluwer Polska 2017) 357.

⁷⁴ Resolution of the Supreme Court of 21 March 1977, III CZP 11/77.

⁷⁵ Mieczysław Goettel, *Sytuacja zwierzęcia w prawie cywilnym* (Wolters Kluwer Polska 2013) 145.

generally have no difficulty in determining the decrease in value of an animal as a result of a specific defect.⁷⁶

Firstly, it should be noted that the widespread availability of market prices for animals does not determine the possibility of assessing the impact of a specific defect on the value and cost of an animal. This possibility depends, among other things, on how often a given defect occurs in, for example, a specific animal species. Some defects or diseases are relatively common in, for example, certain dog breeds. In such cases, determining the decrease in value may be easier than in the case of a rare disease whose effects are difficult to determine.

Therefore, it appears that the possibility of requesting a price reduction will only be available in particular, individually assessed cases; however, it cannot be considered a general rule that this right will always be exercisable in the case of purchasing an animal.

The right that interferes most with the legal relationship between the buyer and the seller, and at the same time the most frequently exercised in the case of a warranty for defects in animals, is withdrawal from the contract.⁷⁷ Due to the highly invasive nature of this right, it cannot be exercised in the case of minor defects.⁷⁸

The application of withdrawal from the contract in the case of the sale of domestic animals seems to disregard the prohibition of cruelty to animals expressed in article 6(1a) of the APA. It should be noted here that, as already mentioned, the seller is liable under the warranty if a physical defect is found within two years of the item (or animal) being delivered to the buyer. This means that two years after the purchase, if a defect is discovered in the animal, the buyer may withdraw from the contract, i.e., return the animal to the seller and demand a refund. In the case of legal defects, this period may even be longer, as the seller's liability is not limited to the same two-year period – regardless of when after the sale of the animal the buyer becomes aware of the legal defect, they may demand withdrawal from the contract within one year from that moment.

There is now a broad consensus regarding the possibility of developing a strong emotional bond not only between humans and animals, but also between animals and humans.⁷⁹

⁷⁶ Małgorzata Lubelska-Sazanów, 'Odpowiedzialność z tytułu rękojmi za wady fizyczne przy sprzedaży zwierząt' (2015) 4 *Transformacje Prawa Prywatnego* 21.

⁷⁷ *ibid.*

⁷⁸ Article 560 § 4 CC.

⁷⁹ Anna Gábor et al., 'Domestication and Exposure to Human Social Stimuli Are Not Sufficient to Trigger Attachment to Humans: A Companion Pig-Dog Comparative Study' (2024) 14(1) *Scientific Reports* <<https://www.nature.com/articles/s41598-024-63529-3>> accessed 28 July 2025; Judgement of the Supreme Administrative Court of 12 March 2019, II OSK 1066/17.

Therefore, not only doctrine but also case law notes that separating a domestic animal from its caregiver causes suffering to the animal.⁸⁰ Even lending, i.e., giving away for a specified period of time, an animal kept as a companion may expose it to mental anguish associated with separation.⁸¹ A fact particularly relevant from the perspective of warranty is that the economic value of an animal is irrelevant to the bond between animal and human.⁸²

In view of the above, it should be recognized that withdrawal from the contract, i.e., returning a pet to the seller after, for example, a year or two from the date of purchase, may cause enormous psychological suffering to the animal. The APA, in article 1(1), explicitly states that animals are capable of suffering, and in article 6(2) it specifies that cruelty to animals should be understood as, among other things, inflicting or knowingly allowing suffering to be inflicted. The APA does not use the term “physical suffering,” so it should be understood that it applies to both physical and mental suffering. Therefore, the mental health of an animal is a value protected by law.⁸³

Thus, the application of the right to withdraw from the contract in the case of the sale of domestic animals might be, under some circumstances (most importantly a strong emotional bond between an animal and its owner) contrary to the prohibition of cruelty to animals and therefore could not be considered as an “appropriate” application of the provisions of the CC. However, it is possible to imagine situations, among others, when the animal is returned shortly after its sale and handover (e.g., after a few days) and thus no emotional bond has been formed, or when the breeder is able to provide the animal with a much better standard of care required for a given type of disease that is a defect than the owner, in which case the animal's welfare will not be affected as a result of withdrawal from the contract. Due to the specific nature of the object of sale – a living animal capable of feeling attachment and suffering – the withdrawal from the contract in accordance with the provisions of the APA should be considered on an individual basis in each case, considering the specific circumstances. Simultaneously, during

⁸⁰ Judgement of the Regional Court in Sieradz of 17 December 2013, I Ca 459/13; Urszula Moszczyńska, ‘Sytuacja prawna zwierzęcia w cywilnym postępowaniu egzekucyjnym’ (2020) 8 *Przegląd Prawa Egzekucyjnego* 5; Adam Bródka, ‘Egzekucja administracyjna ze zwierząt’ in Joanna Helios, Wioletta Jedlecka (eds), *Współczesne wyzwania prawnej ochrony zwierząt* (E-Wydawnictwo. Prawnicza i Ekonomiczna Biblioteka Cyfrowa. Wydział Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego 2023) <<https://bibliotekacyfrowa.pl/publication/146896>> accessed 14 May 2025.

⁸¹ Grażyna Manjura-Niskiewicz, *Ustawa o Ochronie Zwierząt. Komentarz* (Wydawnictwo C.H. Beck 2022) 16.

⁸² Urszula Moszczyńska, ‘Sytuacja prawna zwierzęcia w cywilnym postępowaniu egzekucyjnym’ (2020) 8 *Przegląd Prawa Egzekucyjnego* 5.

⁸³ Karolina Kuszlewicz, *Ustawa o Ochronie Zwierząt. Komentarz* (Wolters Kluwer Polska 2021) 48.

the assessment of the possibility of withdrawing from the contract, the key factor should always be the welfare of the animal, not only physical but also mental.

However, it should be noted here that the right to withdraw from the contract can also be exercised in the event of destruction of the item as a result of an existing defect – in such a case, the buyer may demand a refund of the price.⁸⁴ Therefore, it seems that this version of the right could apply in the event of the death of an animal due to a disease constituting a defect within the meaning of the warranty provisions. In the situation described, we do not cause the animal to suffer by returning it to the seller, and at the same time, we balance the interests of the buyer who paid for the sick animal.

Conclusion

The presence of animals in civil law transactions is familiar; therefore, the proper implementation of the APA's provisions is necessary to ensure an adequate level of protection is granted to the animals that are the subjects of these transactions. The article suggests a readjustment of warranty law for domestic animals, away from a bilateral risk-allocation mechanism between seller and buyer, towards a more complex structure in which the animal's legally protected interests are included. This follows from the combination of the normative dereification of animals in the APA, the requirement of applying provisions on things to animals accordingly, and the specific statutory status of domestic animals as companions who are owed heightened protection. Read together, these elements require that the traditional buyer remedies under warranty — replacement, repair, price reduction, and withdrawal from the contract — be filtered through the lens of animal welfare and the prohibition of cruelty, rather than being transposed mechanically from the context of inanimate goods.

From this perspective, the core conclusion is that some buyer remedies commonly treated as paradigmatic under warranty become structurally ill-suited to domestic animals and should be treated as exceptional or inapplicable. The analysis shows, first, that replacement presupposes interchangeability of items, whereas each animal is an individual with a unique constellation of physical and behavioral traits and with the capacity to form bonds. Accordingly, treating domestic animals as replaceable objects is incompatible with dereification and should

⁸⁴ Judgement of the Supreme Court of 4 February 2011, III CSK 144/10; Roman Trzaskowski in Jacek Gudowski (eds), *Kodeks cywilny. Komentarz. Tom IV. Zobowiązania. Część szczegółowa* (2nd edn, Wolters Kluwer Polska 2017) 381.

be ruled out as a matter of principle. Second, “repair” in the form of cure or behavioral therapy is often only theoretically available: many defects are congenital or only partially remediable, treatment may be costly and protracted, and the statutory expectation of immediate and convenient removal of the defect cannot realistically be met in the case of a living being. These findings suggest that the replacement and repair in Polish warranty regulation do not correspond with the legal status and biological reality of domestic animals.

The article therefore argues for less intrusive remedies that can be reconciled with the animal’s welfare. Price reduction emerges as the primary remedy capable of preserving equivalence of performances without disrupting the animal’s living arrangements, but even here the dogmatic analysis reveals limits: while market practice and price lists sometimes allow the decrease in value of purebred animals with common defects to be quantified, the impact of rare diseases or behavioral issues on value often resists standardization. The exercise of the price-reduction right must therefore remain highly context-sensitive, and it cannot be assumed that this remedy will always be feasible. By contrast, withdrawal from the contract, although formally available under current law, raises the sharpest tensions with the prohibition of cruelty, given the recognized capacity of domestic animals to suffer psychologically and to form strong emotional bonds with their caregivers. On this basis, the article advances a normative proposal that withdrawal should only be considered compatible with the principle of applying provisions concerning things to animals accordingly in narrowly defined situations where the animal’s welfare is not impaired and may in fact be improved. Such circumstances may arise, for example, when the animal is returned very shortly after delivery, before any bond has formed, or where the breeder is demonstrably able to provide better care in light of a serious defect. However, outside such exceptional scenarios, the systematic exercise of withdrawal in relation to domestic animals should be regarded as an inappropriate application of provisions on things.

The article shows that direct application of the catalogue of warranty remedies into the domain of domestic animals, without accounting for the specific legal status of animals and their capacity to suffer, endangers the effectiveness of animal protection provisions. The principle of applying provisions concerning things to animals accordingly should be understood in a narrow and precise manner, i.e., it should lead to a case-by-case examination of whether a given legal norm can be applied to an animal, and if not, it should result in the modification of the norm or complete waiver of its application. When exercising warranty rights for animal defects, it is necessary to take into account not only the interests of the parties and the type of

defect,⁸⁵ but also the interests of the animal, manifested primarily in freedom from suffering, both physical and mental.

⁸⁵ Małgorzata Lubelska-Sazanów, 'Odpowiedzialność z tytułu rękojmi za wady fizyczne przy sprzedaży zwierząt' (2015) 4 *Transformacje Prawa Prywatnego* 21.