

## THE SPECIFIC POSITION OF THE ANIMAL, ESPECIALLY A DOG IN THE ROMAN AND MODERN CZECH LAW<sup>1</sup>

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**Abstract:** Considerable attention is paid to issue of things at the present time. The new Czech Civil Code (NOZ) introduces big changes, one of these changes is definition of things „in a wide-ranging way“, including introducing the term of things we cannot touch (*res incorporales* of Roman Law).

In this context, the particular importance has the concept of animal. The article examines the concept of animal in the Czech and Roman Law, especially relationship between man and dog. The legal regime of a dog in the Roman Law and in the present Czech Law is significantly different. The Roman Law considered the dog as a thing and dogs in Roma had the same status as other things (including slaves). The article deals with the legal status of dogs as things, master's responsibility for a damage caused by their dog (*actio de pauperiae*). In the Czech Law in contrary, an animal does not have the status of thing, but „entity“, that is different. However, dogs in ancient Rome had the special status as well as in the Czech Republic nowadays. In Rome, dogs were considered as an example of fidelity (*canis fidelis*), dogs were not only hunting companions, but also pets (pets). Dogs were provided with special care by doctors-specialists, we have preserved statues of dogs and their image on headstones, together with their masters. We can find the same status of dogs also in life of present-day Czechs who invest large sums in the health care for dogs, in their diet and even in their look. Then we can see that despite the different legislation in the Czech Republic and in ancient Rome, the position of man and dog is very similar, despite all the social and cultural differences.

The article deals with the matter of roots of such position. It seeks the answer by means of evolution psychology in human race prehistory. The close relationship to the dogs is given by the fact that dogs were the first domesticated animals. The article describes the process of domestication when dogs became guards of prehistoric people's home, as well as their companions on hunting. This is how the strong bond between man and dog was created and it continues until these days.

**Keywords:** conception of thing (*res*), evolutionary psychology, history of Roman law, the position of animal in the Roman and the Czech law, legal history

### 1. INTRODUCTION

“Dogs are a man's best friend”. The statement was first recorded as being made by Frederick II, King of Prussia, referring to one of his female Italian greyhounds named Biche, and today it is acknowledged in many languages.<sup>2</sup> Quoting it we usually do not realize how deep the ties between two mammalian species *Homo sapiens sapiens* and *Canis lupus familiaris* are.

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<sup>2</sup> LAVEAUX J. CH. Thibault de. *Vie de Frédéric II, roi de Prusse. accompagnée d'un grand nombre de remarques, pièces justificatives & anecdotes, dont la plupart n'ont point encore été publiées.* Strasbourg 1787, p. 369: “(...) lui [the king] présenta Biche, comme son meilleur ami.” (= LAVEAUX J. CH. Thibault de. *The life of Frederick the Second, King of Prussia. To which are added observations, Authentic Documents, and a Variety of Anecdotes.* London 1789, p. 521). See also its versions in different languages <http://forum.unilang.org/viewtopic.php?t=3429&start=80>.

Further statements are only a preliminary sketch concerning the topic and omits the differences between the regions of the vast Roman Empire, focusing on some of its universal dimensions.

First it is important to emphasize that Latin does not possess many assemblies with negative connotations containing the word *canis*, unlike many other languages, as for example ancient Greek, modern English or Polish or Czech. Many sayings and proverbs are related to dogs in Latin, with the most famous *canis fidelis* („A loyal dog”) on top, which symbolically reflects the nature of the relationship between a dog and its Roman owner.<sup>3</sup>

Pliny the Elder (23-79 AD), in his encyclopedic *Natural history* started the unit concerning domestic animals, saying:

“Many also of the domestic animals are worth studying, and before all the one most faithful to man, the dog, and the horse. (...)”<sup>4</sup>

Later the writer notes anecdotes concerning dogs, especially about the examples of a dog’s loyalty to their masters and the use of dogs by other peoples in war campaigns. The remarks of Pliny is full of admiration for the dog’s advantages, especially their ability to recognize people and places, and their worth in hunting connected with a dog’s extraordinary sense of smell.

Similarly the dog’s advantages are described by other Roman writers, who called them the best guardians of human dwellings, the sheepdogs<sup>5</sup>, the lovely pets<sup>6</sup>, or the companions of Roman hunters<sup>7</sup> and soldiers.<sup>8</sup> Some philosophical views popular in

<sup>3</sup> The statement is borrowed from Roman fabulist Phaedrus (15 BC? – 50 AD?): Phaedr. 1.23. In Greek the word κῶων (“dog”) was insulting, and among more than one hundred combinations including this word, many are offensive too. See LILJA, S. *Dogs in Ancient Greek Poetry. Societas Scientiarum Fennica*. Helsinki 1976, pp. 126–129; WESOŁOWSKA, E. Antyczny pieski świat. In: ILSKI, K. (ed.). *Człowiek w świecie zwierząt – zwierzęta w świecie człowieka*. Poznań: Wydawnictwo Naukowe UAM, 2012, p. 9, pp. 16–17. See also on example of American English: HABER, T. B. Canine terms applied to human beings and human events. *American Speech*. 1965, Vol. 40, pp. 83–101, pp. 243–271.

<sup>4</sup> Plin. H. N. 8.142: *Ex his quoque animalibus, quae nobiscum degunt, multa sunt cognitu digna, fidelissimumque ante omnia homini canis atque equus.* (...).

<sup>5</sup> Lucius Iunius Moderatus Columella (ca 4-65 AD?) in his famous treatise “Agriculture” asks even: “(...) What servant is there, that loves his master more? What companion more faithful? What keeper or watchman more less liable to bribes and corruption? What watchman can be found more vigilant? (...)” (Col. *De re rustica* 7.12.1.: [...] *quis famulus amantior domini, quis fidelior comes, quis custos incorruptior, quis excubitor inveniri potest vigilantior, quis denique ultor aut vindex constantior?* [...]). See about Roman agricultural treatises MIKOŁAJCZYK, I. *Rzymska literatura agronomiczna*. Toruń: Wydawnictwo UMK, 2004, pp. 231–256. Columella depicts different kinds of dogs: watchdogs, shepherd’s dogs and hunting dogs. He thought that the farmer must have a dog, but he only approved watchdogs and shepherd’s dogs, which differs in terms of the desired phenotype and character. He also gives basic information about the rearing of dogs and their medical treatment (Col. *De re rustica* 7.12.1, 10-14; 7.13).

<sup>6</sup> See further.

<sup>7</sup> The importance of dogs is presented in the didactic epics on hunting with dogs (*cynegetica*). See esp. Grat. Cyn.; Nemes. Cyn.; Oppian, *Cynegetica* (cf. also in the light of Plautus’ comedies: GREENP, C. M. C. Did Romans Hunt? *ClAnt*. 1996, Vol. 15, No. 2, p. 243). See about techniques of Roman hunting with dogs AYMARD, J. *Essai sur les chasses romaines des origines a la fin du siècle des Antonins (CYNEGETICA)*. Paris, 1951, pp. 275–293; MERLENP, R. H. A. *De Canibus’. Dog and Hound in Antiquity*. London 1971, pp. 46–64; ANDERSON, J. H. *Hunting in the Ancient World*. University of California Press, Berkeley – Los Angeles – London 1985. Contrary to the views presented in the literature free Romans - and not just slaves and freedmen, or only shepherds – were hunting from the very beginning of Rome, and this activity was not despised (see so e.g. ORTH, F. Jagd. In: *RE* 9, 1914, col. 552 and with hesitation AYMARD, J.

Roman times placed dogs in peculiar position in comparison to other animals<sup>9</sup>, e.g. eating dog's meat was also forbidden in general, apart from being used in extraordinary

<sup>Ad.7</sup> *Essai sur les chasses romaines des origines a la fin du siècle des Antonins (CYNEGETICA)*. Paris 1951, pp. 25–41; ANDERSON, J. H. *Hunting in the Ancient World*. Berkeley – Los Angeles – London: University of California Press, 1985, pp. 83–100). According to those views hunting was popularized among the Romans in second century BC, who were to follow Greek customs in this regard. Correctly GREEN, C. M. C. 1996. Did Romans Hunt? *ClAnt*. 1996, Vol. 15, No. 2, pp. 222–260, with further literature. See also SŁAPEK, D. *Sport i widowiska w świecie antycznym. Kompendium*. Kraków – Warszawa: Wydawnictwo Homini – Wydawnictwa Uniwersytetu Warszawskiego, 2010, pp. 450–453. Contrary to the Greek tradition, the Romans did not consider hunting as the part of a citizen-warrior's education. See BARRINGER, J. M. *The Hunt in Ancient Greece*. Baltimore: The Johns Hopkins University Press, 2002, passim, with further literature. The Romans used also specially bred of dogs for this purpose. The most complete list of them gave Flavius Arrianus (80–160 AD) in his *Cynegeticus* (it was the redaction of the work of the ancient Greek philosopher and military leader Xenophon (430–355 BC), *Cynegeticus* (“Hunting with Dogs”). See e.g. from more recent studies PHILLIPS, A. A., WILLCOCK, M. M. *Xenophon and Arrian, On Hunting*. Warminster: Aris & Phillips, 1999, passim, and STADTER, P. A. Xenophon in Arrians's 'Cynegeticus'. *GRBS*. 1976, Vol. 17, No. 2, pp. 157–167; BOSWORTH, A. B. Arrian and Rome: the Minor Works. *ANRW*. 1993, Vol. 34, pp. 233–242. Arrianus describes the hunting dogs of different nations, adding the detailed information concerning their rearing and usage; thanks to him we can assume that the Romans known different breeds of Molossers, hounds and greyhounds. Cf. about the breeds of Roman dogs YMARD, J. *Essai sur les chasses romaines des origines a la fin du siècle des Antonins (CYNEGETICA)*. Paris 1951, pp. 235–274, with further literature. See also in general BREWER, D., CLARK, T., PHILLIPS, A. *Dogs in Antiquity. Anubis to Cerberus. The Origins of the Domestic Dog*. Warminster: Aris & Phillips, 2001, passim and examples gathered in: CROCKFORD, S. J. A commentary on dog evolution. Regional variation, breed development and hybridisation with wolves. In: CROCKFORD, S. J. (ed.). *Dogs Through Time. An Archaeological Perspective*. Oxford: Archaeopress, 2000, pp. 141–190.

<sup>8</sup> The Romans knew war dogs, which played essentially two roles. First, they took part in venationes, a kind of circus games. See e.g. SŁAPEK, D. *Sport i widowiska w świecie antycznym. Kompendium*. Kraków – Warszawa: Wydawnictwo Homini – Wydawnictwa Uniwersytetu Warszawskiego, 2010, pp. 703–708 (s.v. Venationes), with further literature. Second, despite the popular myth about dogs detachments in the Roman army, those animals usually played there the role of watchdogs and bloodhounds or greyhound. See KITCHELL, K. F. *Animals in the Ancient World. From A to Z*. London–New York: Routledge, 2014, pp. 47–53 (esp. p. 50) versus the computer game Rome Total War 2; the movie Gladiator of Ridley Scott (USA 2000). See also the funny dispute concerning this issue on: <http://historum.com/ancient-history/77601-use-dogs-roman-army.html>. For example Flavius Vegetius Renatus, in his *Epitome rei militaris* (“Concerning Military Matters”), the late antique military manual which summed up Roman knowledge concerning military matters, mentions only watch dogs (Veg. Mil. 4.26; about Vegetius and the importance of his treatise see e.g. RICHARDOT, P. *Végece et la culture militaire au Moyen Âge (Ve–XVe siècles)*. Paris: Economica, 1998, passim; CHARLES, M. B. *Vegetius in Context. Establishing the Date of the Epitoma Rei Militaris*. Stuttgart: Franz Steiner Verlag, 2007, passim). The myth the concerning use of dogs in military combats by the Romans is caused probably by the stories of Strabo (64 BC–24 AD) regarding war dogs of Gauls (imported also from the British Isles: Str. Geographus 4.5.2) and the information concerning dog's of war used by other ancient peoples. See e.g. FORSTER, E. S. Dogs in Ancient Warfare. *Greece & Rome*. Vol. 10, No. 30, 1941, pp. 114–117; FLETCHER, G. B. A. Another Word on Dogs in Ancient Warfare. *Greece & Rome*. Vol. 11, No. 31, 1941, p. 34; MALINOWSKI, G. *Zwierzęta świata antycznego. Studia nad 'Geografią' Strabona*. Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego, 2003, pp. 98–103; ZWOLSKA, P. *Pies. Antyczny przyjaciel*. Kraków: Avalon, 2014, pp. 120–126. Dogs are still used as watchdogs and bloodhounds in modern armies and military forces. See e.g. SLOANE, CH. F. Dogs in War, Police Work and on Patrol. *Journal of Criminal Law and Criminology*. 1955–1956, pp. 385–395; ROGAK, L. *Dogs of War. The Courage, Love, And Loyalty of Military Working Dogs*. New York: Dunne Books, 2011, passim; ENGLISH, T. L. *The Quiet Americans: A History of Military Working Dogs*. Lackland 2000, <http://www.37trw.af.mil/shared/media/document/AFD-061212-027.pdf>.

<sup>9</sup> See DIERAUER, U. *Tier und Mensch im Denken der Antike. Studien zur Tierpsychologie, Anthropologie und Ethik*. Amsterdam: B.R. Grüner Verlag, 1977, pp. 180–187; STEINER, G. *Anthropocentrism and Its Discontents. The Moral Status of Animals in the History of Western Philosophy*. Pittsburgh: University of Pittsburgh Press, 2005, pp. 38–111. See also about the status of animals in antiquity in general: ONIDA, P. P. Dall'animale vivo all'animale morto: modelli filosofico-giuridici di relazioni fra gli esseri animati. *Diritto@Storia 7 – Tradizione Romana* 2008, <http://www.dirittoestoria.it/7/Tradizione-Romana/Onida-Animale-vivo-morto-modelli-relazioni-esseri-animati.htm>.

medicinal purposes.<sup>10</sup> The images of dogs can be found on the mosaics and sculptures documenting the everyday life of Romans and the mythological scenes, as well as among the surviving relics of Roman wall painting.<sup>11</sup> The multiplicity of the roles of dogs makes them “compagnon omniprésent” of the Romans, which is similar to the place which those animals hold in modern Western societies, where dogs are treated mainly as pets or even members of the family.<sup>12</sup> On the other hand, dogs were sometimes dirty for the Romans because those animals eat things which were recognized as polluted and because of the dog’s and bitches promiscuity, which is close to the attitude towards dogs in many Non-Western cultures.<sup>13</sup> As it was said before, dogs were treated frequently by the Romans as pets, regardless of the cost.<sup>14</sup> Dogs would

<sup>10</sup> Living dogs, and parts of their bodies and secretions were attributed medicinal properties. For instance, according to late Roman writer Marcellus Empiricus “He who suffers from a pain in the stomach will be relieved should he girdle himself with a dog-leash” (*Corregia canina medius cingatur qui dolebit ventrem, statimque remediabitur*: De medicamentis 28.39-40). Cf. also RZEŹNICKA, Z. Rola mięsa w okresie pomiędzy II a VII w. w świetle źródeł medycznych. In: KOKOSZKO, M. (ed.). *Dietetyka i sztuka kulinarna antyku i wczesnego Bizancjum (II-VII w.). Część II. Pokarm dla ciała i ducha*. Łódź: Wydawnictwo Uniwersytetu Łódzkiego, 2014, pp. 218–219, p. 428. The blood of the dogs had to release the poisons while the blood of bitches prevent rabies, which aroused dread till nineteenth century because no one understood its reasons and there was no effective treatment of the malady. Cf. BLANCOU, J. Early methods for the surveillance and control of rabies in animals. *Scientific and Technical Review of the Office International des Epizooties*. 1994, pp. 361–372. See also BARATAY, É. *Zwierzęcy punkt widzenia. Inna wersja historii*. Gdańsk: Wydawnictwo w Podwórku, 2014, p. 153.

<sup>11</sup> See e.g. TOYNBEE, J. M. C. *Animals in Roman life and art*. London: Thames and Hudson, 1973, pp. 101–124; ZWOLSKA, P. *Pies. Antyczny przyjaciel*. Kraków: Avalon, 2014, pp. 71–76.

<sup>12</sup> See in detail AMAT, J. *Les animaux familiers dans la Rome antique*. Paris: Les Belles Lettres, 2002, pp. 25-92, who entitled the section concerning dogs “Le chien, compagnon omniprésent”. The more important however are KELLER, O. *Die antike Tierwelt*. Leipzig: Wilhelm Engelmann, 1909, pp. 91–151 and ORTH, F. *Der Hund im Altertum*. Schleusingen: Gebrüder Lang, 1910, pp. 1–38. See also VESEY-FITZGERALD, B. S. *The Domestic Dog. An Introduction to its History*. London: Routledge and Paul, 1957, pp. 31–52; TOYNBEE, J. M. C. *Animals in Roman life and art*. Thames and Hudson, London 1973, pp. 101–124; CAMPBELL, G. L. (ed.). *The Oxford Handbook of Animals in Classical Thought and Life*. Oxford: Oxford University Press, 2014, passim, esp. pp. 271–274; BODSON, L. Les animaux dans l’Antiquité: un gisement fécond pour l’histoire des connaissances naturalistes et des contextes culturels. *Acta Orientalia Belgica*. 2001, Vol.14, pp. 1–27 and from Polish studies ZWOLSKA, P. *Pies. Antyczny przyjaciel*. Krakow: Avalon, 2014, esp. pp. 60–165. The dogs had various names pointing indirectly to the roles they played. See apart the studies quoted above: MENTZ, F. Die klassischen Hundennamen. *Philologus*. 1933, Vol. 88, pp. 104–129, 181–202, 415–442. See also <http://www.unrv.com/culture/names-for-roman-dogs.php>. The dogs were often, usually favorably, mentioned also in Roman comedies, which, by their nature, gives a particular image of Roman society since the third century BC. Cf. LILJA, S. *Terms of Abuse in Roman Comedy*. Helsinki: Suomalainen Tiedeakatemia, 1965, passim. The summary of the dog’s status in modern western societies is given by BARATAY, É. *Zwierzęcy punkt widzenia. Inna wersja historii*. Gdańsk: Wydawnictwo w Podwórku, 2014, esp. pp. 234–268, pp. 283–287.

<sup>13</sup> Cf. e.g. LILJA, S. *Terms of Abuse in Roman Comedy*. Helsinki: Suomalainen Tiedeakatemia 1965, p. 69; OLIENSIS, E. Canidia, Canicula, and the Decorum of Horace’s Epodes. In: LOWRIE, M. (ed.). *Horace – Odes and Epodes*. Oxford – New York: Oxford University Press, 2009, pp. 160–187; SZÚCS, E., et al. Animal Welfare in Different Human Cultures, Traditions and Religious Faiths. *Asian-Australasian Journal of Animal Sciences*. 2012, Vol. 25, pp. 1499–1506. doi: <http://dx.doi.org/10.5713/ajas.2012.r.02>.

<sup>14</sup> Cf. in general LAZENBY, F. D. Greek and Roman Household Pets. *CJ*. 1947, Vol. 44, pp. 245–252 and 299–307, and BODSON, L. Motivations for pet-keeping in Ancient Greece and Rome: a preliminary survey. In: PODBERSCEK, A. L., PAUL, E. S., SERPELL, J. A. (eds.). *Companion Animals and Us. Exploring the Relationships Between People and Pets*. Cambridge: Cambridge University Press, 2005, pp. 27–41; GILHUS, I. S. *Animals, Gods and Humans. Changing Attitudes to Animals in Greek, Roman and Early Christian Ideas*. London - New York: Routledge, 2006, pp. 28–31.

be cured by vets<sup>15</sup>, and according to the zooarchaeological research they were kept in good condition, especially small and hunting breeds.<sup>16</sup>

The love of the Romans for their dogs is shown in latin funerary inscriptions (even epigrams) and tombstones with the images of dogs, sometimes together with their masters. For example, one of most known tombstones of this kind from Praeneste/Gallicano in Lazio (Italy) presents the dog, with a poem for a (female) dog called *Aeolis*: „Behold the tomb of Aeolis, the cheerful little dog, whose loss to fleeting fate pained me beyond measure”.<sup>17</sup>

The custom of intentional burials of dogs was extremely widespread from prehistoric times, which is interpreted as an expression of the special place which they occupied in the context of religious beliefs.<sup>18</sup> But the Romans (as well as the Greeks) basically did not practice the burials of dogs (and other animals).<sup>19</sup> Those beasts were however important in Roman religion – although dogs weren't treated as divine crea-

<sup>15</sup> Vegetius wrote the work concerning treatment of horses (*Digesta Artis Mulomedicinae*), where one chapter regards rabies among dogs (Veg. Vet. 2.148.2). About antique veterinary see in general WALKER, R. E. *Roman Veterinary Medicine*. Toynbee 1973, pp. 303–343; FISCHER, K. D. *Ancient Veterinary Medicine: A survey of Greek and Latin sources and some recent scholarship*. *Medizinhistorisches Journal*. 1988, Vol. 23, No. 3-4, pp. 191–209; ADAMS, J. N. *Pelagonius and Latin Veterinary Terminology in the Roman Empire*. Leiden - New York - Köln: Brill, 1995, passim, with further literature.

<sup>16</sup> MACKINNON, M. 'Sick as a dog': zooarchaeological evidence for pet dog health and welfare in the Roman world. *World Archaeology*. 2010, Vol. 42, No. 2, pp. 290–309. See also the remains from Pompei described in ZEDDA, M. *Ancient Pompeian Dogs – Morphological and Morphometric Evidence for Different Canine Populations*. *Anatomia, Hystologia, Embryologia*. 2006, Vol. 35, pp. 319–324. Cf. also the popularity of breed Spitz – one of the smallest breed of dogs – among the Greeks, Etruscans and Romans: PETERSON, V. *An evaluation of early Spitz/Pommeranian dogs images in Greek, Etruscan and Roman art*. 2011.

<http://www.pomeranianproject.com/earlyspitz.html>. The value of a dog for the Romans would also have been shown in the light of the dogs diet recommended by Flavius Arrianus. In the case of hunting dogs he advocated: for puppies to the ninth month, and in case of their illness - milk; for adult animals - fatty meat, chicken soup or pork with bread or baked liver; sometimes he advocated also the hunger strike (Arr. Cyn. 8). It contrasts with the diet of the majority of Romans, which was based mostly on grain. Cf. e.g. KOKOSZKO, M., JAGUSIAK, K., RZEŹNICKA, Z., WNIOŚKI, Z. Conclusions. In: KOKOSZKO, M. (ed.). *Dietetyka i sztuka kulinarna antyku i wczesnego Bizancjum (II-VII w.)*. Część II. *Pokarma dla ciała i ducha*. Łódź: Wydawnictwo Uniwersytetu Łódzkiego, 2014, pp. 448–455. Flavius Arrianus recommended even the owners to sleep with their hunting dogs to create the close ties between the master and dog; he criticized the joint lair for hunting dogs, especially when the dogs were lying in a small space and touching each other (Arr. Cyn. 9).

<sup>17</sup> AE 1994, 348: *Aeolidis tumulum festivae/ cerne catellae/ quam dolui inmodice/ raptam mihi praepete/ fato*. Available here: [http://db.edcs.eu/epigr/bilder.php?bild=\\$AE\\_1994\\_00348\\_1.jpg;\\$AE\\_1994\\_00348\\_2.jpg&nr=1](http://db.edcs.eu/epigr/bilder.php?bild=$AE_1994_00348_1.jpg;$AE_1994_00348_2.jpg&nr=1)

See e.g. GRANINO, C. M. G. Il sepolcro della catella Aeolis. *ZPE*. 1994, Vol. 100, p. 413–416. Taf. XXII–XXIII, who quotes also other examples of dog's tombs (usually made of precious gray marble). See also the blog of Peter Kruschwitz (<https://thepetrifiedmuse.wordpress.com>): The Master and Margarita (Posted on April 14, 2015); Every Dog Has His Day (Posted on June 20, 2015) and translations on: <https://www.thedodo.com/9-touching-epitaphs-ancient-gr-589550486.html>.

<sup>18</sup> See MOREY, D. F. *Dogs. Domestication and the Development of a Social Bond*. Cambridge University Press, Cambridge 2010, pp. 150–187 and LOSEY, R. J. Canids as persons: Early Neolithic dog and wolf burials, Cis-Baikal, Siberia. *Journal of Anthropological Archaeology*. 2011, Vol. 30, pp. 174–189.

<sup>19</sup> See e.g. the examples from Roman Britain: BODSON, L. Motivations for pet-keeping in Ancient Greece and Rome: a preliminary survey. In: PODBERSCEK, A. L., PAUL, E. S., SERPELL, J. A. (eds.). *Companion Animals and Us. Exploring the Relationships Between People and Pets*. Cambridge: Cambridge University Press, 2005, pp. 27–41; SMITH, K. *Guides, Guards and Gifts to the Gods. Domesticated Dogs in the Art and Archaeology of Iron Age and Roman Britain*. Oxford: Archaeopress, 2006, pp. 14–70.

tures.<sup>20</sup> It is symbolic that two guardian deities of Rome, *Lares praestites* were usually presented as two young men with the dog sitting between them, while their priests dressed in dog's leather were accompanied in religious ceremonies by the dog.<sup>21</sup> Great attention has been paid to the behavior of dogs and especially their barking or howling in magic practices.<sup>22</sup> The magical significance given to dogs is the reason that their images can be found on mosaics placed at the entrances of Roman homes, because dog (especially *Black dog*), or even its picture protected against bad omens or releases from drought: (the most famous relic of this type is from Pompeii which was further

<sup>20</sup> Similarly as the Greeks, through whom the Romans could also borrow participation of dogs in certain religious ceremonies. Cf. e.g. FRANKLIN, A. M. *The Lupercalia*. New York: Columbia University, 1921, pp. 74–80; BURRISS, E. E. The Place of the Dog in Superstition as Revealed in Latin Literature. *CPh*. 1935, Vol. 30, No. 1, pp. 32–42.

<sup>21</sup> Cf. e.g. WAITES, M. C. The Nature of the Lares and Their Representation in Roman Art. *American Journal of Archaeology*. 1920, Vol. 24, No. 3, pp. 241–261 and from modern studies: KACZOR, I. *Deus Ritus Cultus. Studium na temat religii starożytnych Rzymian*. Łódź: Wydawnictwo Uniwersytetu Łódzkiego, 2012, pp. 221–230, with further literature. These animals participated in many other rites and the dogs were also sacrificed during some public religious Festivals (Augurium canarium, Lupercalia, Robigalia - cf. e.g. DELATTE, L. Recherches sur quelques fêtes mobiles du calendrier romain (suite et fin). *AC*. 1937, Vol. 6, No. 1, pp. 93–101; TENNANT, P. M. W. The Lupercalia and Romulus and Remus Legend, *Aclass*. 1988, Vol. 31, pp. 81–93; BLAIVE, F. Le Rituel Romain des Robigalia et le Sacrifice du Chien dans le Monde Indoeuropéen. *Latomus*. 1995, Vol. 54, pp. 279–289). See also in general about Roman religion RÜPKE, J. (ed.). *A Companion to Roman Religion*. MA-Oxford: Blackwell Publishing, Malden, 2007, pp. 1–576, with further literature. Dogs could also play different roles and functions in the regional pagan cults. Cf. e.g. SMITH, K. *Guides, Guards and Gifts to the Gods. Domesticated Dogs in the Art and Archaeology of Iron Age and Roman Britain*. Oxford: Archaeopress, 2006, pp. 14–70; GOUREVITCH, D. Le Chien, de la thérapeutique populaire aux cultes sanitaires. *Mélanges d'archéologie et d'histoire*. 1968, Vol. 80, pp. 247–281; PETRILLI, A. La figure du chien de la mythologie à la magie antique. *Ephesia Grammata*. 2009, Vol. 3, pp. 19–24. [http://www.etudesmagiques.info/2009/EG\\_2009-02.pdf](http://www.etudesmagiques.info/2009/EG_2009-02.pdf); TRCKOVA-FLAMEE, A. The Cult of Sabazios. The Cult of a Gallo-Roman God on a Relief from Arlon/Aarlen (Belgium). *Anistoriton*. 2010, Vol. 12, No. 2, [http://www.anistor.gr/english/enback/2010\\_2e\\_Anistoriton.pdf](http://www.anistor.gr/english/enback/2010_2e_Anistoriton.pdf).

<sup>22</sup> Dogs were sometimes joined with black magic and with chthonic deities (probably because the dogs were to devour the dead corps of humans - cf. GRAF, F. Genita Mana. In: CANCIK, H., SCHNEIDER, H. (eds.). *Brills New Pauly. Encyclopaedia of the Ancient World*. Leiden: Brill, 2004, pp. 755–756; RABINOWITZ, J. The 'Her' Story of the Great Witch-Goddess. Analyzing the Narratives of Hekate. Chapter III. *Amsterdam Electronic Journal for Cultural Narratology*. 2005, Vol. 2, [http://cf.hum.uva.nl/narratology/a05\\_rabinowitz\\_03.html#links](http://cf.hum.uva.nl/narratology/a05_rabinowitz_03.html#links). [subchapter: Dogs and Dirt]). Although dogs usually were guarding the pagan temples, some of them were forbidden to all dogs. Flamines diales, the priests of the most important god of Roman pantheon – Jupiter were subjected to many restrictions and privations including not touching the dogs or even calling dogs (Plu. RQ 111). Romans also observed the feast called *Supplicia canum* ("punishment of the dogs"), an annual sacrifice in which live dogs were suspended from a cross (*crux*) or forch (*furca*) and paraded. In the same procession, geese were decked out in gold and purple, and carried in honor. Ancient sources which explains the origin of the supplicia says that the geese were honored for saving the city during the Gallic siege of Rome in 390 BC. When the Gauls launched a nocturnal assault by stealth on the citadel, the geese raised a noisy alarm. The failure of the watch dogs to bark was thereafter ritually punished each year. See e.g. HORSEFALL, N. From History to Legend: M. Manlius and the Geese, *CJ*. 1981, Vol. 76, No. 4, pp. 298–311. The dogs were sometimes also included into the group animals, which were used in the archaic punishment called *poena cullei* ("penalty of the sack" - it was a type of death penalty imposed on a subject who had been found guilty of parricide; the punishment consisted of being sewn up in a leather sack, sometimes with an assortment of live animals: a cock, a dog, a monkey and a viper, and then being thrown into water). Cf. e.g.: DÜLL, R. Bruchstücke verschollener römischer Gesetze und Rechtssätze. In: *Studi in onore di Edoardo Volterra*. Milano: A. Giuffrè, 1971, p. 135; KUPISZEWSKI, H. Quelques remarques sur le parricidium dans le droit romain classique et postclassique. In: *Studi in onore di Eoardo Volterra*. Milano: A. Giuffrè, 1971, pp. 601–614; NARDI, M. *L'otre dei parricidi e le bestie incluse*. Milano: A. Giuffrè, 1980, passim; DĘBIŃSKI, A. Poena cullei w rzymskim prawie karnym. *Prawo Kanoniczne*. 1994, Vol. 37, pp. 133–146; JOŃCA, M. *Parricidium w prawie rzymskim*. Lublin: Wydawnictwo KUL, 2008, pp. 268–270.

endorsed with the inscription *Cave canem* - “beware the dog”<sup>23</sup>). By the way, as far as black dogs are concerned they are still considered to be aggressive in modern societies but color-based canine discrimination seems to be a disputable matter.<sup>24</sup>

Hence, the tombstones of dogs and their epitaphs testify to the emotional and personal relationship of Romans to their pets. Dogs were not at all affected by commodification, i.e. the transformation of them into commodities that affects some domestic animals, as cattle, pigs, goats, sheep etc. since the Neolithic times and which transformed the latter into the livestock.<sup>25</sup> The distinct legal status of dogs however has not been established in Roman law as it is today in the Western legal tradition in respect to all pets.<sup>26</sup> But there are some traces that dogs have been gradually losing their particular legal status - it seems that even the dog's position has been equalized with other domestic animals.

According to Roman law all animals were treated as things (*res*).<sup>27</sup> Dogs were domestic animals (*bestiae domesticae*) and quadruped (*quadrupes*)<sup>28</sup>, but they never belonged to

<sup>23</sup> Pompeii, Casa del Poeta Tragico. Cf. BERGMANN, B. The Roman House as Memory Theater: The House of the Tragic Poet in Pompeii. *The Art Bulletin*. 1994, Vol. 76, No. 2, pp. 225–256. See also: [https://commons.wikimedia.org/wiki/Category:Cave\\_canem\\_mosaic\\_\(Pompeii\)](https://commons.wikimedia.org/wiki/Category:Cave_canem_mosaic_(Pompeii)).

<sup>24</sup> The validity of “big, black dog syndrome”—whereby large, black dog breeds are reportedly spurned for adoption due to negatively perceived personality attribute is discussed e.g. by LEONARD, A. The plight of “Big black dogs” *American Animal Shelters: color-based canine discrimination*. *Kroeber Anthropological Society Papers*. 2011, Vol. 99, No. 1, pp. 168–183; WOODWARD, L., MILLIKEN, J., HUMY, S. Give a Dog a Bad Name and Hang Him: Evaluating Big, Black Dog Syndrome, *Society & Animals*. 2012, Vol. 20, pp. 236–253; GOLEMAN, M. Syndrom czarnego psa w schroniskach dla zwierząt. *Medycyna Weterynaryjna*. 2014, Vol. 70, No. 2, pp. 122–127.

<sup>25</sup> See MARCINIAK, A. *Placing Animals in the Neolithic Social Zooarchaeology of Prehistoric Farming Communities*. London: Left Coast Press, 2005, pp. 39–59, with further literature. The testimony of commodification in Roman times are for example the prices of livestock and fragments of the carcass in the Price edict of Diocletian. Cf. *Edictum Diocletiani de pretiis rerum venalium*. See also ILSKI, K. Ceny zwierząt w późnej starożytności. In: ILSKI, K. (ed.). *Człowiek w świecie zwierząt – zwierzęta w świecie człowieka*. Poznań: Wydawnictwo Naukowe UAM, 2012, pp. 19–31. For the modern attitude in the case of cattle and horses see e.g. BARATAY, É. *Zwierzęcy punkt widzenia. Inna wersja historii*. Gdańsk: Wydawnictwo w Podworku, 2014, pp. 57–166.

<sup>26</sup> See e.g. *European Convention for the Protection of Pet Animals*, 13.11.1987 or *Polish Animal Protection Act*. 21.08.1997. See JACKSON, B. Liability for Animals: An Historico-Structural Comparison. *The International Journal for the Semiotics of Law*. 2011, Vol. 24, pp. 259–289; GOETTEL, M. *Sytuacja zwierzęcia w prawie cywilnym*. Warszawa: Lex a Wolters Kluwer business, 2013, passim. Those legal rules are close to the biocentrism, a political or ethical stance which asserts the value of non-human life in nature. See EMMENEGGER, S., TSCHENTSCHER, A. Taking Nature's Rights Seriously: The Long Way to Biocentrism in Environmental Law. *Georgetown International Environmental Law Review*. 1994, Vol. 6, pp. 545–592.; SUNSTEIN C. R., NUSSBAUM M. C. (ed.). *Animal Rights. Current Debates and New Directions*. Oxford: Oxford University Press, 2005, passim. Today *Global Animal Law* is even discussed: see the articles published in recent issue of *Transnational Environmental Law*: 2016, Vol. 5, No. 1. About Czech Law see further.

<sup>27</sup> Cf. e.g. Dig. 6.1.1.1: *Ulpianus libro 16 ad edictum. pr. Post actiones, quae de universitate propositae sunt, subicitur actio singularum rerum petitionis. 1. Quae specialis in rem actio locum habet in omnibus rebus mobilibus, tam animalibus quam his quae anima carent, et in his quae solo continentur.* (“Ulpian, *Edict*, book 16: After the actions available in respect of collecting the whole, we come to the action for claiming individual things. 1. This particular action *in rem* is used both in regard to all movable things, whether animate or inanimate, and in regard to land.”).

<sup>28</sup> See e.g. JACKSON, B. Liability for Animals in Roman Law: An Historical Sketch. *Cambridge Law Journal*. 1978, Vol. 37, No. 1, pp. 122–143; PALMIRSKI, T. How the commentaries to *de his qui deiecerint vel effuderint* and *ne quis in suggrunda edicts* could be used on the ground of *edictum de feris*. *RIDA*. 2006, Vol. 53, pp. 323–334; ONIDA, P. P. *Studi sulla condizione degli animali non umani nel sistema giuridico romano*. Torino 2012, pp. 145–146 (*bestiae domesticae*), pp. 155–164 (*quadrupes*). See about dogs in detail RAGONI, F. A. D. *Actio legis Aquiliae, actio de pauperie, edictum de feris: responsabilità per danno cagionato da cani*. *Diritto@storia*. 2007, Vol. 6, [http://www.dirittoestoria.it/6/Tradizione-romana/Ragoni-Responsabilit-danno-cagionato-da-cani.htm#\\_ftn12](http://www.dirittoestoria.it/6/Tradizione-romana/Ragoni-Responsabilit-danno-cagionato-da-cani.htm#_ftn12), with further literature.

the archaic group called *res Mancipi*, which consist of lands and houses on Italic soil, beasts of burden, slaves, and rustic and praedial servitudes.<sup>29</sup>

The oldest way to sue the animal's owner in the Roman law was *actio de pauperie*. It was an action with which the owner of a domestic animal could be held delictually liable for damage caused by the animal, rooted already in the Twelve Tables, issued ca 450 BC.<sup>30</sup> The most significant aspect of the action was that it gives rise to strict liability, which was exceptional in the Roman law; the owner could free himself from liability by giving of the animal to the victim.<sup>31</sup> But no one knows when exactly *actio de pauperie* were applied to the dogs. Some scholars are sure that it happened in the late Roman Republic (509-27 BC)<sup>32</sup>, but the direct information about such a possibility is given by Roman jurisprudence not until the late principate (27 BC-284 AD).<sup>33</sup>

<sup>29</sup> Cf. GALLO, F. Studi sulla distinzione fra 'res Mancipi' e 'res nec Mancipi'. Con una 'nota di lettura' di Fernando Zuccotti. *RDR*. 2004, Vol. 4,

<http://www.ledonline.it/rivistadirittoromano/allegati/dirittoromano04gallostudi.pdf>, with further literature.

<sup>30</sup> Leg. XII. Tab. 8.6.: si quadrupes pauperiem <faxit>... ("if a quadrupes <cause> loss..."), Text according to CRAWFORD, M. H. (ed.). *Roman Statutes*. London: Institute of Classical Studies, 1996, pp. 680-681 (other reconstructions, placed as Leg. XII. Tab. 8.5 or 8.6 – *ibid.*, pp. 555-571). See the vast number of studies concerning leges duodecim tabularum and the reconstructions of its text: DILIBERTO, O. *Bibliografia ragionata delle edizioni a stampa della Legge delle XII Tavole (secoli XVI-XX)*. Roma 2001, *passim*; HUMBERT, M. (ed.). *Le Dodici Tavole. Dai Decemviri agli Umanisti*. Pavia: Ius Press, 2005, *passim*.

<sup>31</sup> Cf. e.g. WATSON, A. The Original Meaning of Pauperies, *RIDA*. 1970, Vol. 17, pp. 357-367; ZIMMERMANN, R. *The Law of Obligations. Roman Foundations of the Civilian Tradition*. Oxford: Clarendon Press, 1996, pp. 1096-1107; POLOJAC, M. L'actio de pauperie ed altri mezzi processuali nel caso di danneggiamento provocato dall'animale nel diritto romano. *Ius Antiquum*. 2001, Vol. 1, No. 8, pp. 81-87; ONIDA, P. P. *Studi sulla condizione degli animali non umani nel sistema giuridico romano*. Torino 2012, pp. 164-168, pp. 193-195, pp. 322-351 (about dogs: pp. 350-351). The case of damage caused by wild animals, at least for the classical epoch, could be probably added to the so-called *obligationes quasi ex delicto*. See in detail PALMIRSKI, T. *Obligations quasi ex delicto. Ze studiów nad źródłami zobowiązań w prawie rzymskim*. Kraków: Wydawnictwo UJ, 2004, pp. 127-129; PALMIRSKI, T. How the commentaries to de his qui deiecerint vel effuderint and ne quis in suggrunda edicts could be used on the ground of edictum de feris. *RIDA*. 2006, Vol. 53, pp. 323-334, with further literature.

<sup>32</sup> JACKSON, B. Liability for Animals in Roman Law: An Historical Sketch. *Cambridge Law Journal*. 1978, Vol. 37, No. 1, pp. 130-135, with further literature.

<sup>33</sup> Dig. 9.1.2.1: *Paulus libro vicessimo secundo ad edictum. pr. Haec actio non solum domino, sed etiam ei cuius interest competit, veluti ei cui res commodata est, item fulloni, quia eo quod tenentur damnum videntur pati. 1. Si quis aliquem evitans, magistratum forte, in taberna proxima se immisisset ibique a cane feroce laesus esset, non posse agi canis nomine quidam putant: at si solutus fuisset, contra.* ("Paul, Edict, 22: This action is available not only to an owner but to anyone who has an interest, for example, a person to whom the damaged property was lent or to a cleaner, because they are likely to be held liable on their own account. 1. If someone is fleeing from somebody, perhaps from a magistrate and rushes into the nearest shop and is there injured by a ferocious dog, some authorities maintain that action cannot be brought in respect of the dog, though they think otherwise if the dog were at large." See about Paulus (ca 160-230 AD). MASCHI, C. A. La conclusione della giurisprudenza classica all'età dei Severi. Iulius Paulus. *ANRW*. 1976, Vol. 15, pp. 668-707; SPENGLER, H. D. *Dogmatik, Systematik, Polemik. Untersuchungen zu Stil und Methode des Iulius Paulus*. München 1998, *passim*. Dig. 9.1.1.5: *Ulpianus libro octavo decimo ad edictum. Sed et si canis, cum duceretur ab aliquo, asperitate sua evaserit et alicui damnum dederit: si contineri firmius ab alio poterit vel si per eum locum induci non debuit, haec actio cessabit et tenebitur qui canem tenebat.* ("Ulpian, Edict, 18: Take the case of the dog which, while being taken out on a lead by someone, breaks loose on account of its wildness and does some harm to someone else: If it could have been better restrained by someone else or if it should never have been to that particular place, this action will not lie on and the person who had the dog on the lead will be liable."). See about Ulpian (?-223 AD). HONORÉ, T. *Ulpian. Pioneer of Human Rights*. Oxford: Oxford University Press, 2002, *passim*, with further literature. D. 9.1.1.5. is discussed in detail by ZIETSMAN, J. C. Vicious dogs: a case study from 2000 BC to 2000 AD. *Akroterion*. 2000, Vol. 45, pp. 75-87. See about Roman jurisprudence in general esp. KUNKEL, W. *Die römischen Juristen. Herkunft und soziale Stellung*. Böhlau Verlag, Köln-Weimar-Wien, *passim* and in more popular way LITEWSKI, W. *Jurisprudencja rzymska*. Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego, 2000, *passim*.

Dogs were not also situated among *pecudes*, the domestic animals which lived in flocks: owners of them were responsible for the damages caused by the animals according to *Lex Aquilia*, issued cca 286 BC, which provided compensation to the owners of property injured by someone's fault.<sup>34</sup>

The damages made by dogs used as the tool by their owners were situated among *pecudes'* damages only thanks to the interpretation of the law made later by Roman lawyers.<sup>35</sup> They introduced also the possibility of getting the compensation by dog's owner on the basis of *lex Aquilia*.<sup>36</sup>

In the late Roman Republic some amendments concerning the responsibility of the animal's owner were established by *aediles curules* in their edict.<sup>37</sup> It stipulated the responsibility for the consequences of the damage caused by dangerous animals at markets, which were subject to the jurisdiction of that officer and the dogs were for sure situated among them.

<sup>34</sup> See about the law e.g. ZIMMERMANN, R. *The Law of Obligations. Roman Foundations of the Civilian Tradition*. Oxford: Clarendon Press, 1996, pp. 953–1049; MACLEOD, G. Pigs, Boars and Livestock Under the *Lex Aquilia*. In: CAIRNS, J. W., ROBINSON, O. F. (eds.). *Critical Studies in Ancient Law. Comparative Law and Legal History*. Oxford–Portland Oregon: Hart Publishing, 2001, pp. 83–92; ONIDA, P. P. *Studi sulla condizione degli animali non umani nel sistema giuridico romano*. Torino 2012, pp. 174–185 and pp. 186–193 (*pecudes*); WOŁODKIEWICZ, W. Rzymskie początki współczesnej odpowiedzialności za szkody na mieniu. *Palestra*. 2007, Vol. 11–12, pp. 187–191, with further literature. See also about the date of its issue ŚWIĘCICKA, P. “*Lex Aquilia de damno*” – problemy z datacją ustawy. *Krakowskie Studia Prawnicze*. 2008, Vol. 2, pp. 17–32, with further literature.

<sup>35</sup> Dig. 9.2.11.5: *Ulpianus libro 18 ad edictum. Item cum eo, qui canem irritaverat et effecerat, ut aliquem morderet, quamvis eum non tenuit, Proculus respondit Aquiliae actionem esse: sed Iulianus eum demum Aquilia teneri ait, qui tenuit et effecit ut aliquem morderet: ceterum si non tenuit, in factum agendum.* (“Ulpian, Edict, 18: Again, Proculus gave an opinion that the Aquilian action lies against him who, though he was not in charge of dog, annoyed it and thus caused it to bite someone; but Julian says the *lex Aquilia* only applies to this extent that it applies to him who had the dog on a lead and caused it to bite someone; otherwise, if he were not holding it, an actio in factum must be brought.”). The separate question is the case of *dolus* - Dig. 4.3.7.6: *Ulpianus libro 11 ad edictum. Si quadrupes tua dolo alterius damnnum mihi dederit, quaeritur, an de dolo habeam adversus eum actionem. Et placuit mihi, quod Labeo scribit, si dominus quadrupedis non sit solvendo, dari debere de dolo, quamvis, si noxae deditio sit secuta, non puto dandam nec in id quod excedit.* (“Ulpian, Edict, 11: If your quadruped through another's fraud or malice has caused me loss, the question is asked whether I have against the latter the action for fraud. And I have decided, in accordance with what Labeo writes that if owner of the quadrupes is not solvent, the action for fraud ought to be given, although, if noxal surrender has followed, I do not think that it should be given even for the amount by which the loss exceeds [the value of quadruped].”).

<sup>36</sup> Gai. Inst. 3.217: *Capite tertio de omni cetero damno cavetur. itaque si quis servum vel eam quadrupedem, quae pecudum numero est, vulneraverit sive eam quadrupedem, quae pecudum numero non est, velut canem, aut feram bestiam, velut ursum, leonem, vulneraverit uel occiderit, hoc capite actio constituitur.* (...) “In the third chapter, provision is made for all other kinds of damage. (...)” “In the third chapter, provision is made for all other kinds of damage. Therefore, if anyone wounds a slave, or a quadruped included under the head of cattle; or even one which is not so included, as for instance, a dog; or wounds or kills a wild beast, for example, a bear, or a lion; an action is authorized by this chapter. (...)”. See also analogically D. 9.2.29.6: *Ulpianus libro 18 ad edictum. Hac actione ex hoc legis capite de omnibus animalibus laesis, quae pecudes non sunt, agendum est, ut puta de cane. sed et de apro et leone ceterisque feris et avibus idem erit dicendum.* (“Ulpian, Edict, 18: One can sue by the action under this chapter of the *lex Aquilia* for damage to all animals which are not classed as cattle, for example, damage to dogs; and the same may be said of boars and lions and all other beasts and birds.”).

<sup>37</sup> Most important are D. 9.21.1.40–42; I. 4.9.1. See e.g. ONIDA, P. P. *Studi sulla condizione degli animali non umani nel sistema giuridico romano*. Torino 2012, pp. 172–174; PALMIRSKI, T. Odpowiedzialność za szkody wyrządzone przez zwierzęta według ‘edictum de feris’. *Czasopismo Prawno-Historyczne*. 2007, Vol. 59, No. 1, pp. 173–186 with further literature.

Because of the contradictions concerning the responsibility of the dog's owners, some scholars are sure that between the Twelve Tables and the amendments of aedilian edict there were issued distinct legal enactments regarding dogs – *Lex Pesolania de cane*, but this legal enactment would be only the historical myth.<sup>38</sup>

Despite gradual Christianization of the Roman Empire the rules of Roman law had binding force to the end of Roman rule in Western Europe and later on in Byzantium.<sup>39</sup> It must be emphasized that Christianity, following some Greek philosophical traditions (especially Aristotle's idea that human beings are superior to animals because human beings have the capacity for using reason to guide their conduct and that the function of animals is to serve the needs of human beings), established in the end the drastic contradiction between a man and animals because the latter are merely instruments and exist for the sake of human beings that direct their actions.<sup>40</sup> We should know also that “the Israelites disliked dogs and they regarded them as ‘unclean’ lowly creatures (...) and may have found dogs to be useful for guarding flocks, they never considered them to be pets or companions”, what partially affected the opinions of Christians concerning those animals.<sup>41</sup> Thus, the sense of the strong ties between man and animals, and the peculiar position of dogs, presented in the earlier history of mankind, was abandoned altogether with the rise of Christianity. But Roman law rules regarding the status of animals, and at this point also dogs were repeated in Europe after the revival of Roman law in the Middle Ages and affected European Legal Tradition regarding the liability of animals and their owners.<sup>42</sup>

## 2. THE CONCEPT OF THE PROTECTION OF AN ANIMAL WITHIN CZECH LAW

Roman Law perceived an animal strictly as a thing. The same view of the position of an animal was shared by the Czechoslovakian Civil Code (enacted 1964). In modern times,

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<sup>38</sup> Its existence is confirmed only by postclassical *Pauli Sententiae* from the late third century, followed by *Lex Romana Burgundionum* from the sixth century in this regard. See *Pauli Sententiae* 1.15.1 and *Lex Romana Burgundionum* 13.1. See JACKSON, B. Liability for Animals in Roman Law: An Historical Sketch. *Cambridge Law Journal*. 1978, Vol. 37, No. 1, pp. 128–130; ONIDA, P. P. *Studi sulla condizione degli animali non umani nel sistema giuridico romano*. Torino 2012, pp. 170–171 with further literature. The studies concerning *Lex Pesolania* were collected at: <http://droitromain.upmf-grenoble.fr/Leges/Pesulania.htm>.

<sup>39</sup> About the dog in Byzantine culture, which was much closer to the Greeks in this respect see KOTŁOWSKA, A. *Zwierzęta w kulturze literackiej Bizantyńcyków - Αναβλέψατε εις τα πετεινά*. Poznań: Wydawnictwo Naukowe UAM, 2013, pp. 111–125, pp. 135–147.

<sup>40</sup> See WILSON, S. Animals and Ethics. The Internet Encyclopedia of Philosophy (IEP), 2001, [http://works.bepress.com/scott\\_wilson/3/](http://works.bepress.com/scott_wilson/3/) <http://www.iep.utm.edu/anim-eth/>; GILHUS, I. S. *Animals, Gods and Humans. Changing Attitudes to Animals in Greek, Roman and Early Christian Ideas*. London – New York: Routledge, 2006, pp. 262–270. See also HALDAR, P. Zoologian Jurisprudence. *The International Journal for the Semiotics of Law*. 2011, Vol. 24, pp. 291–306.

<sup>41</sup> RAISOR, M. J. *Determining the Antiquity of Dogs Origins. Canine Domestication as a Model for the Consilience between Molecular Genetics and Archaeology*. Oxford: Archeopress, 2005, p. 66. Regarding the issue of dog's domestication the work is almost obsolete. Cf. further. About Christianity and animals in general see also further.

<sup>42</sup> See e.g. ZIMMERMANN, R. *The Law of Obligations. Roman Foundations of the Civilian Tradition*. Oxford: Clarendon Press, 1996, pp. 1107–1118; JACKSON, B. Liability for Animals: An Historico-Structural Comparison. *The International Journal for the Semiotics of Law*. 2011, Vol. 24, pp. 259–289.

the topic has been addressed by Peter Singer<sup>43</sup> in particular. Animals should have specific rights, different from the rights possessed by human beings, but of a special, animal-like nature. According to S. Komárek, the biggest impediment is posed by the perception of legal personality as adopted from Roman Law. “The term ‘animal’ is misleading to some extent and it covers creatures that differ from each other substantially.”<sup>44</sup> Moreover, the argument that the main difference between a human being and an animal dwells in the latter’s possession of reason, proves to be feeble as even human beings of no reason such as the insane or small children are endowed with ‘human rights’.<sup>45</sup> The extent of consideration for animals tends to be lesser than our consideration for other people, nevertheless, it should not reach the zero limit.<sup>46</sup> Such a conception of animal rights is hindered by the legal definition of the term “right”, which, according to the Czech Civil Code, must be recognized by one’s reason. Furthermore, according to the legal definition only a human being can be referred to as a rights-holder.<sup>47</sup> Through the interpretation of this provision we can conclude that a rights-holder can be anyone who is able to distinguish between right and wrong, and who is at the same time endowed with free will and therefore can use his/her discretion to choose between right and wrong. As animals lack such ability, we cannot speak of them as having will. Any living creature which can feel pain must not be treated wantonly, but that in itself does not mean that such living creatures possess rights.<sup>48</sup> The acknowledgement of animal “rights” is denied by a Czech philosopher Prof. Erazim Kohák: “Unequivocally, extra-human creatures (commonly referred to as ‘animals’,...) have an unalienable urge to live - and we, human beings who can make choices, shall treat this urge with respect and consideration.”<sup>49</sup> According to E. Kohák the Civil Code provides for the protection of animals, nevertheless, it protects them in the same way as property, their protection against torture is “very limited and inconsistent”. No protection is provided for in terms of research and commercial use of animals.<sup>50</sup> L. Obrovská infers that a human being’s duty is to protect and fulfill the needs of animals - the need of food, water, sleep, movement, rest, etc. In her opinion, failure to meet these needs shall be considered as maltreatment.<sup>51</sup> Using one’s reason is not the deciding factor. The key role is played by the ability to suffer.”<sup>52</sup>

<sup>43</sup> SINGER, P. *Osvobození zvířat*. Praha: Práh, 2001, p. 9.

<sup>44</sup> As stated by KOMÁREK, S. In: JOCH, R., KOMÁREK, S. *Lidská práva i pro šimpanze? A Duel*. An interview in magazine *Respekt* from June 23, 2006. (Available on the Internet at <https://www.respekt.cz/duel/lidska-prava-i-pro-simpanze>).

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

<sup>47</sup> Section 19 of New Civil Code.

<sup>48</sup> As stated by JOCH, R. In: JOCH, R., KOMÁREK, S. *Lidská práva i pro šimpanze? A Duel*. An interview in magazine *Respekt* from June 23, 2006. (Available on the Internet at <https://www.respekt.cz/duel/lidska-prava-i-pro-simpanze>).

<sup>49</sup> KOHÁK, E. *Má člověk (potažmo kůň či strom) právo žít?* [http://www.animalrights.webz.cz/pravo\\_zit.htm](http://www.animalrights.webz.cz/pravo_zit.htm).

<sup>50</sup> *Ibid.*

<sup>51</sup> OBROVSKÁ, L. *Právní pojetí zvířete v právu římském a moderním*. In: STOUKALOVÁ, K. (ed.). *Soudobé reflexe římského práva. Římské právo v moderních kodifikacích*. Praha 2015, p. 95.

<sup>52</sup> SINGER, P. *Osvobození zvířat*. Praha: Práh, 2001, p. 9.

### 3. THE CZECH LEGAL ORDER AND THE PROTECTION OF AN ANIMAL

Such perception is the point of departure for the Czech legal order. The tradition dating back to the Austro-Hungarian era<sup>53</sup> lays the foundation for public law legal rules against cruelty towards animals within contemporary Czech law. The attention paid to the ban of cruel treatment of animals manifests itself through the state of facts constituting a crime under Section 302 of the Criminal Code (cruelty to animals: “the person treating an animal in an especially cruel or tormenting manner”).

Under the term “an animal” we understand, to a limited extent, a vertebrate (apart from a human being). The Criminal Code defines torture as an act causing pain - either intensive or repeated. Killing a dog by throwing it down from a significant height was classified as cruelty to an animal.<sup>54</sup> Under Section 303 of the Czech Criminal Code a crime is constituted if an animal is maltreated as a result of negligence. From the perspective of this paper, a significant fact to be taken into account is that killing an animal in a tormenting manner constitutes not only the crime of cruelty to animals but also the crime of damage to property. An animal can also become a subject of a crime of theft or embezzlement. That indicates the dual perception of an animal within the Czech legal order.

Besides the Criminal Code provisions there exists a special legal regulation: Act on the Protection of Animals against Cruelty (Act No. 246/1992 Coll.)<sup>55</sup> The act defines “an animal” as any vertebrate except for a human being”. An animal fetus or embryo is not considered an animal.<sup>56</sup> The act states that animals are living creatures with the ability to feel pain and suffering. The act aims at the protection of animals against torture and unreasonable killing.<sup>57</sup>

The term “cruelty to animals” comprises mainly causing pain, a cruel way of putting an animal away, forcing an animal towards performance exceeding its strength, training of an animal or a public performance ending up by the animal’s death or injury. Cruel treatment also includes removal of claws, teeth, venom gland or mutilation of vocal cords and also the administration of improper substances, e.g. as doping. The law also provides for a detailed regulation of the conditions for animal transport. It expressly forbids “abandonment of an animal with the intention to get rid of it.” Whoever keeps an animal shall secure its welfare.”<sup>58</sup> An animal designated for breeding shall not be sold to a person under 15 years of age without parental consent.<sup>59</sup>

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<sup>53</sup> For an analysis of the historical regulation see OBROVSKÁ, L. Právní pojetí zvířete v právu římském a moderním. In: STOUKALOVÁ, K. (ed.). *Soudobé reflexe římského práva. Římské právo v moderních kodifikacích*. Praha 2015, p. 95.

<sup>54</sup> JELÍNEK, J. a kol. *Trestní právo hmotné. Obecná část. Zvláštní část*. Praha: Leges, 2016, pp. 794–795.

<sup>55</sup> A great deal of subordinate legislation concerning the protection of animals in specific areas has been issued. More on their interpretation in DAMOHORSKÝ, M. *Právo životního prostředí*. Praha: C. H. Beck, 2010, p. 409.

<sup>56</sup> Section 3a of Act No. 246/1992 Coll.

<sup>57</sup> Section 1 par. 1 of Act No. 246/1992 Coll.

<sup>58</sup> DAMOHORSKÝ, M. *Právo životního prostředí*. Praha: C. H. Beck, 2010, p. 409.

<sup>59</sup> *Ibid.*, p. 410.

#### 4. THE CONCEPTION OF AN ANIMAL WITHIN CZECH PRIVATE LAW

In recent years, Czech private law has undergone an evolutionary jump in the form of the new Civil Code. The previous regulation did not state the definition of the term “animal” and an animal was considered as a movable asset. For instance, according to the Supreme Court of Justice an abandoned dog is an abandoned thing.<sup>60</sup> The same, according to the judgment of a Czech court a harmful act exercised upon an animal is seen as damage to property.<sup>61</sup> The term “animal” would appear in relation to purchase agreements - in animals the law provided for a longer period for defect complaints. (Section 599, par 1 and Section 602, par 1 of the Civil Code 1964).

The new Civil Code does not perceive an animal as a thing any more.<sup>62</sup> The statement of reasons expressly mentions the separation with the “Roman Law dogma of animals being mere ‘mooing instruments’”.<sup>63</sup> This regulation was inspired by Section 285a ABGB (Austrian Civil Code) and Section 90a BGB (German Civil Code). The commentary states that it reflects the general change in the relation of human beings towards nature.<sup>64</sup> The commentary broadens the definition of the term “animal” beyond the scope of the Criminal Code in that it considers arthropods or mollusks to be living animals as well. Contrary to criminal law the Czech Civil Code acknowledges the abandonment of an animal (Section 1048 new Civil Code). The terminology of the Civil Code is based on Roman Law terminology in that it distinguishes between e.g., tamed animals, wild animals, animals without a master, etc. In spite of the fact that an animal is not a thing, Czech law does not recognize its legal personality. Nevertheless, although an animal is not a thing, it is the subject of legislation - the Civil Code expressly regulates the assumption of proprietary rights to an animal through appropriation, acquisition of the rewards of an animal, chasing an animal on somebody else’s property etc. Nevertheless, in such cases the Civil Code draws on the previous legal regulation and does not bring any significant changes.<sup>65</sup>

A dead animal is considered a thing under civil law. This perception has brought about much criticism as it means that killing an animal by a stranger would result in the enrichment of the animal’s owner as he/she would gain ownership of a thing which he/she had not owned before.<sup>66</sup> Also, the definition significantly broadens the scope of “animals” connected with rights and duties (e.g. to report a lost animal to the municipality).<sup>67</sup> This duty could then relate to petty animals such as e.g. insects.<sup>68</sup> Another legal problem concerns the liability towards an animal. The Czech civil law provides for objective liability and only a breeder who proves that due care had not been neglected in the course of

<sup>60</sup> The Supreme Court 28 Cdo 3563/2008.

<sup>61</sup> The Supreme Court 4T Do 489/2013.

<sup>62</sup> Section 494 of Act No. 89/2012 Coll.

<sup>63</sup> ELIÁŠ, K. et al. *Nový občanský zákoník s aktualizovanou důvodovou zprávou a rejstříkem*. Praha: Sagit, 2012, p. 226.

<sup>64</sup> KOUKAL, P. *Občanský zákoník I. Obecná část*. Praha: C. H. Beck, 2014, p. 1747.

<sup>65</sup> OBROVSKÁ, L. Právní pojetí zvířete v právu římském a moderním. In: STOUKALOVÁ, K. (ed.). *Soudobé reflexe římského práva. Římské právo v moderních kodifikacích*. Praha 2015, p. 97.

<sup>66</sup> KINDL, M., ROZEHNAL, A. *Nový občanský zákoník. Problémy a úskalí*. Plzeň: Aleš Čeněk 2014, p. 95.

<sup>67</sup> Section 1058 par. 1 of Act No. 89/2012 Coll.

<sup>68</sup> KINDL, M., ROZEHNAL, A. *Nový občanský zákoník. Problémy a úskalí*. Plzeň: Aleš Čeněk 2014, p. 125.

supervision over an animal can be exonerated from it. Such an option is not available to a fancier.<sup>69</sup>

To sum up, the new Civil Code attempts to bring forward a new conception of an animal. However, the general provision stating that an animal is not a thing has caused much confusion in the field of juridical science for in concrete provisions of the Civil Code an animal has still been perceived as a thing. Further, the legal rules of public law are still based on a narrower conception of an animal, which is confined to vertebrates only.

The conception of the term “animal” differs greatly in the Roman law and in the modern Czech regulation. The Roman law understood animals as “objects of law” (res) while the Czech law have a special attitude towards all of the animals. Despite this legal (or conceptual) difference the real praxis of the life of ordinary Czech citizens prove that there is the special attitude only to the dogs (costly healthcare for dogs, special – and very expensive nutrition for dogs, even the special places for dogs to stay are very common in the Czech Republic). There is even a special TV channel solely dedicated to dogs and cats.

So we can conclude that the Romans and the Czechs have similar attitude to (takes the care of) the dogs. And therefore we can ask a question. What are the roots of this similar values or attitude towards the dogs? According to our point of view, the answer is to be found in human prehistory.

It must be taken into account that our understanding of many attitudes of the Romans (and also the modern people) towards dogs, together with their peculiar legal status is affected by the fact that they were first domesticated animals.

Up to today there have been many contradictions when it exactly happened. First, we should know that according to modern genetic research, dogs are not the descendants of wolves but both species possess common extinct antecessor.<sup>70</sup> The domestication of dogs took part probably independently a few times in Europe and Asia, and that different populations of wolves were involved in it.

In light of the controversial archaeological evidence the early examples of the hypothetical dog’s domestication did not lead at the beginning to the establishment of close psychological ties between man and dog. The paleontological excavations in Belgium, Ukraine, Russia and Czech Republic dated cca thirty thousand years ago, proves

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<sup>69</sup> Ibid., p. 126.

<sup>70</sup> Cf. LARSEN, G. et al. Rethinking dog domestication by integrating genetics, archeology, and biogeography. *Proceedings of the National Academy of Sciences USA*. 2012, Vol. 109, No. 23, pp. 8878–8883; FREEDMAN, A. H. Genome Sequencing Highlights the Dynamic Early History of Dogs. *PLoS Genetics*. 2014, Vol. 10, No. 1. Therefore obsolete in part are not only canonical work of KELLER, C. *Naturgeschichte der Haustiere*. Berlin: P. Parey, 1905, pp. 71–103 but even modern studies (e.g. CROCKFORD, S. J. A commentary on dog evolution. Regional variation, breed development and hybridisation with wolves. In: CROCKFORD, S. J. (ed.). *Dogs Through Time. An Archaeological Perspective*. Oxford: Archaeopress, 2000, pp. 295–316; MOREY, D. F. *Dogs. Domestication and the Development of a Social Bond*. Cambridge: Cambridge University Press, 2010, pp. 12–86; CUMMINS, B. D. *Our Debt to the Dog. How the Domestic Dog Helped Shape Human Societies*. Durham: Carolina Academic Press, 2013, pp. 3–18; ZWOLSKA, P. *Pies. Antyczny przyjaciel*. Kraków: Avalon, 2014, p. 105; MIKLÓSI, Á. *Dog Behaviour, Evolution, and Cognition*. Second Edition. Oxford: Oxford University Press, 2015, pp. 124–152).

that those animals were perhaps then sacrificed and beaten but not treated as friends or companions by ancient hunter-gatherers.<sup>71</sup>

Therefore the brilliant hypothesis of Pat Shipman is probably, that *Homo sapiens sapiens*' partnership with the first domesticated wolf-dogs led to the removal and extinction of *Homo sapiens neanderthalensis*.<sup>72</sup> On the contrary, Neanderthals contributed to the DNA of modern humans, including most non-Africans as well as a few African populations, through interbreeding. The recent genetic studies suggests that modern humans may have mated with at least two groups of ancient humans: Neanderthals and Denisovans and approximately 20% of the Neanderthal gene pool is present in a broad sampling of non-African individuals, though each individual's genome is on average only 2% Neanderthal.<sup>73</sup> The close relationship of man with dog born in the context of the episodes of domestication probably came much later. However, contrary to the view that a man domesticated dogs as useful hunting companions and the vigilant guardians of human habitats – the myth popularized by Konrad Lorenz, the father of ethology in his popular book “So kam der Mensch auf den Hund” (*Man Meets dog*) – the process was certainly more complicated.<sup>74</sup>

It was probably started by some less fearful wolves, who by stealing the food from the habitats of hunter-gatherers in Eurasia, gradually adjusted to the ecological niche created by humans, and this approach led to the increased ability of the wolves to survive.<sup>75</sup>

<sup>71</sup> GERMONPRÉ, M. Fossil dogs and wolves from Paleolithic sites in Belgium, the Ukraine and Russia: osteometry, ancient DNA and stable isotopes. *Journal of Archaeological Science*. 2009, Vol. 36, pp. 473–490; GERMONPRE, M., LAZNICKOVA-GALETTOVA, M., SABLIN, M. V. Paleolithic dog skulls at the Gravettian Předmostí site, the Czech Republic. *Journal of Archaeological Science*. 2012, Vol. 39, pp. 184–202. There are however contradictions concerning those excavations and their value. See MOREY, D. F. In search of Paleolithic dogs: a quest with mixed results. *Journal of Archaeological Science*. 2014, Vol. 52, pp. 300–307; GERMONPRÉ, M. Palaeolithic dogs and Pleistocene wolves revisited: a reply to Morey (2014). *Journal of Archaeological Science*. 2015, Vol. 54, pp. 210–216; MOREY, D. F., JEGER, R. Paleolithic dogs: Why sustained domestication then? *Journal of Archaeological Science*. 2015, Vol. 3, pp. 420–428.

<sup>72</sup> SHIPMAN, P. *The Invaders. How Humans and Their Dogs Drove Neanderthals to Extinction*. New York: Harvard University Press, 2015, pp. 1–288. She promotes the idea that human-animal interaction was the major factor in the evolution of genus Homo. SHIPMAN, P. *The Animal Connection. A New Perspective on What Makes Us Human*. New York: W.W. Norton & Co, 2011, pp. 204–220. This idea is also disputed. See SHIPMAN, P. The Animal Connection and Human Evolution. *Current Anthropology*. 2010, Vol. 51, No. 4, pp. 519–553, with discussion.

<sup>73</sup> See recently in popular form PÄÄBO, S. *Neanderthal Man: In Search of Lost Genomes*. New York: Basic Books, 2014, passim. and e.g. VILLA, P., ROEBROEKS, W. Neandertal Demise: An Archaeological Analysis of the Modern Human Superiority Complex. *PLoS ONE*. 2014, Vol. 9, No. 4; QIAOMEI, F. An early modern human from Romania with a recent Neanderthal ancestor. *Nature*. 2015, Vol. 524, pp. 216–219; MENDEZ, F. L. The Divergence of Neandertal and Modern Human Y Chromosomes. *The American Journal of Human Genetics*. 2016, Vol. 98, No. 4, 2016, pp. 728–734. doi: <http://dx.doi.org/10.1016/j.ajhg.2016.02.023>. About *Homo sapiens neanderthalensis* see also CONARD N. J., RICHTER J. (eds.). *Neanderthal Lifeways, Subsistence and Technology. One Hundred Fifty Years of Neanderthal Study*. New York: Springer, 2010, passim.

<sup>74</sup> LORENZ, K. *So kam der Mensch auf den Hund*. Wien: Dr. G. Borothea-Schoeler, 1949, passim. The book was translated into more than 300 languages. See: <http://www.worldcat.org/>. See also other Austrian scholar named Lorenz who is following unconsciously Konrad Lorenz' ideas: LORENZ, G. *Tiere im Leben der alten Kulturen. Schriftlose Kulturen, Alter Orient, Ägypten, Griechenland und Rom*. Wien-Köln-Weimar: Böhlau, 2000, pp. 23–25.

<sup>75</sup> See about different theories concerning dogs domestication: MOREY, D. F. *Dogs. Domestication and the Development of a Social Bond*. Cambridge: Cambridge University Press, 2010, pp. 12–86; CUMMINS, B. D. *Our Debt to the Dog. How the Domestic Dog Helped Shape Human Societies*. Durham: Carolina Academic Press, 2013, pp. 3–18; MOREY, D. F., JEGER, R. Paleolithic dogs: Why sustained domestication then? *Journal of Archaeological Science*. 2015, Vol. 3, pp. 420–428.

Foxes, raccoons, bears, and of course the wolves do this today. But contrary to modern wild animals, those antecessors of Paleolithic dogs were much more social animals, equipped incidentally by evolution with the skills to recognize the emotions of humans, another social animal; modern dogs are better in this regard even than our closer relatives – both species of Chimps.<sup>76</sup> Gradually individuals from such groups of wolves became entirely dependent on the presence of people, who, in turn, sometimes hugs juveniles of these dogs, initially as domestic pets and eventually started using their skills, especially in guarding and hunting.

People preferred individuals of those ‘wolf-dogs’ with a lower level of aggression, and they reproduced more frequently, passing this trait to future generations. The next step was the evolution of dog’s phenotype: reduction of body size, especially of the skull and a lighter framework of the body, which is called “domestication syndrome” because it affect all domesticated animals.<sup>77</sup>

In the case of dogs the domestication and the change of phenotype most probably happened quickly. The proof of the possible pace of change in canines comes from the research of Institute of Cytology and Genetics in Novosibirsk. Since 1950s the institute began selectively breeding domesticated foxes by choosing the tamest and friendliest individuals from fur farms and within a few generations, it was able to breed foxes that not only tolerated human contact but actually sought out humans, displaying the tail-wagging and face-licking affection familiar to every dog owner.<sup>78</sup>

A combination of these factors has facilitated overcoming the barriers of interspecies mistrust between humans and dogs. It brings a number of benefits to man, but first to our four-legged companions.<sup>79</sup>

The acceleration of the dog’s domestication was probably affected by the first steps of Neolithic revolution: according to the latest genetic research the ancient origin of domestic dogs was southern East Asia 33 000 years ago, while around 15 000 years ago, a subset of

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<sup>76</sup> BEARD, M. *Laughter in Ancient Rome: On Joking, Tickling, and Cracking Up*. Berkeley-Los Angeles-London: University of California Press, 2014, pp. 46–48. Is right while noting dogs in her book concerning the laugh in antiquity. See also DOUGLAS, M. Do dogs laugh? A cross-cultural approach to body symbolism. *Journal of Psychosomatic Research*. 1971, Vol. 15, pp. 387–390.

<sup>77</sup> Cf. e.g. KOWALSKA, D., GUGOLEK, A. Zmiany domestykacyjne i behawioralne wskaźniki adaptacyjne zwierząt futerkowych. *Wiadomości Zootechniczne*. 2013, Vol. 15, No. 1, pp. 31–40; WILKINS, A. S., WRANGHAM, R. W., FITCH, W. T. The “Domestication Syndrome” in: *Mammals: A Unified Explanation Based on Neural Crest Cell Behavior and Genetics. Genetics*. 2014, Vol. 197, No. 3, pp. 795-808. The „domestication syndrome” seems affecting also man himself: at least in the last tens of thousand years men became more female what is the sign of the decreasing level of testosterone. The lower level of this hormone led to the diminishing of aggression among the members of human bands, allowing men to cooperate better, what seems to be the key to the evolutionary success of *Homo sapiens sapiens*. Cf. CIERI, R. L. Craniofacial Feminization, Social Tolerance, and the Origins of Behavioral, Modernity. *Current Anthropology*. 2014, Vol. 55, No. 4, pp. 419–443.

<sup>78</sup> See the webside of the institute: <http://www.bionet.nsc.ru/booklet/index.html>.

<sup>79</sup> Although the domestication of dogs was not the major factor in the acceleration of the development of human social organization. So: SCHLEIDT, W. M., SHALTER, M. D. Co-evolution of Humans and Canids. An Alternative View of Dog Domestication: *Homo Homini Lupus?* *Evolution and Cognition*. 2003, Vol. 9, No. 1, pp. 57–72.

ancestral dogs started migrating to the Middle East, Africa and Europe, arriving in Europe about 10 000 years ago.<sup>80</sup>

Dogs became even more necessary for humans in those days; they added to the previous roles of the pet or companion during hunting, the important position of the vigilant guardian of man's wealth, which was collected more intensively by farmers than by hunter-gatherers. And those roles are still kept by dogs today in spite of that our closest friends are from a genetic point of view only wolves, with which a dog can have fertile offspring.<sup>81</sup>

Dogs allowed themselves, however, to be confined mostly to the eating of food supplied to them by a man, let humans take care of, returning an extraordinary devotion to their owners and forming a symbiotic relationship with humans.<sup>82</sup> This process started early enough that it does not matter too much the cultural differences between modern societies and the Romans. Thus, in the case of the relations between the Romans and their dogs, it is not coincident that we understand most of them,<sup>83</sup> and some rules of Roman law concerning dogs still inspires the modern legal rules concerning them, also in Czech law.

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<sup>80</sup> GUO-DONG, W. Out of southern East Asia: the natural history of domestic dogs across the world. *Cell Research*. 2016, Vol. 26, pp. 21–33. The transition to a sedentary life could take part in some parts of the world before 15 000 – 10 000 years ago. Cf. SNIR, A. The Origin of Cultivation and Proto-Weeds, Long Before Neolithic Farming. *PLoS ONE*. 2015, 10.7 e0131422. doi:10.1371/journal.pone.0131422.

<sup>81</sup> See 'Wolfdog': <https://en.wikipedia.org/wiki/Wolfdog>.

<sup>82</sup> The behavioral differences between dogs and wolves genetic changes are possibly due to species-specific differences rather than only on the experience. See e. g. KUBINYI, E., VIRÁNYI, Z., MIKLÓSI, Á. Comparative Social Cognition: From wolf and dog to humans. *Comparative Cognition & Behavior Reviews*. 2007, Vol. 2, pp. 26-46.

<sup>83</sup> Contrary to ZWOLSKA, P. *Pies. Antyczny przyjaciel*. Kraków: Avalon, 2014, p. 105.