Research on stray animal tort liability

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Abstract. With the increase of the total number of pets, abandoned pets have become more and more common, and gradually exposed the existing problems of stray animals in our country. This paper will discuss the concept of stray animal tort liability, the current situation of stray animals, the reference of excellent systems outside the region and the measures to improve stray animal tort liability in the four aspects of our country's stray animal tort liability, and explore a reasonable and scientific governance system combined with our country's actual situation, so as to truly protect the legitimate rights and interests of those infringed by stray animals.

Keywords: Stray animals, Infringement, Subject of responsibility

1. Introduction

The On October 16, 2023, a two-year-old child was seriously injured by an untethered pet dog in Chengdu, which caused widespread attention to the problem of pet infringement in a short period of time. At the same time, the problem of stray animal infringement also gradually emerged. With the rapid development of social productivity and rich material base, more and more people begin to pay attention to spiritual comfort consumption. In 2022, the number of cat owners will reach 20.71 million, 2.5 million more than last year, with an annual growth rate of 10.2%. In 2022, the number of dogs and cats in cities and towns in China will exceed 100 million, totaling 100.84 million, and the pet consumption market will reach 200 billion.

In such a large pet base, stray cats and dogs everywhere are the best confirmation of this set of data. The existing relevant law on stray animals in China is Article 1,249 of the Civil Code: "If an abandoned or escaped animal causes damage to others during the period of abandonment or escape, the original breeder or manager of the animal shall bear the tort liability." According to the provisions of the Civil Code, stray animals can be defined as "abandoned and escaped" animals.Through the analysis of the relevant cases of China Judgment Documents Network, the author found that in practice, stray animals are mainly divided into two categories: abandoned and escaped domestic pets and abandoned and escaped domestic pets' offspring. Therefore, the scope of the definition of stray animals is obtained, and the scope of the definition in practice is greater than the provisions of the Civil Code. At the same time, China's existing "Civil Code" article 1,249 stipulates that it is difficult to comprehensively deal with the problem of stray animal infringement in China, and reasonable regulation of stray animal infringement is imminent.

2. Rational analysis of the problem of regulating the infringement of stray animals

2.1. The direct necessity of controlling the infringement of stray animals

According to the data of the National Health Commission, in 2019, a total of 60 million rabies vaccines were issued. One person uses 5 vaccines to calculate that the number of people bitten by dogs in China reaches more than 12 million each year, and the trend is rising year by year. The rabies vaccination data positively reflects that the subjects harmed by pets in China every year should not be underestimated. Among the objects of rabies vaccination, they are mainly classified as pets injured by others, pets injured by themselves and stray animals [1]. China's Civil Code clearly stipulates the

subject of liability, and the infringed can claim their legitimate rights and interests to the court. On the contrary, in stray animal infringement cases, it is difficult for the infringed to fully claim their legal rights. By referring to the Rabies Vaccination Data from 2020 to 2022 released by Changping District Center for Disease Control and Prevention of Beijing, the author concluded that dogs and cats accounted for 93.94% of the total number of vaccinated animals, and the infringed party took 7.12% of the total rabies vaccination costs. Moreover, the trend is increasing year by year, and the annual increase of the data once again reflects the urgency and necessity of reasonably regulating the problem of pet raising, especially the problem of the infringement of stray animals.

2.2. The indirect necessity of controlling the infringement of stray animals

According to statistics, in 2022, more than 20 million young people living alone in China do not like to get along with others in real life[2],and they prefer to stay at home alone, which is the main group of pet consumption. Keeping pets at home has become a life trend. According to the 2023 China Statistical Yearbook, the national birth rate in 2022 will be 8.52 per thousand, falling below 10 per thousand for the first time, while the natural population growth rate in the same period is only 1.45 per thousand. Under the cold figure, it is suggested that raising pets will be the best way for human beings to relieve loneliness. Based on the proportional relationship between the number of infringing subjects and the result of infringement, we have reason to conclude that it is imminent to clearly assume the liability for stray animal infringement, and to study a regulation method for stray animal tort liability that conforms to China's national conditions.

On the face of it, it not only effectively protects the legitimate rights and interests of the infringed, but also allows the infringed to truly feel the law entering our ordinary people. As for the social level, it is more conducive to the construction of a harmonious and law-based society. Through the regulation of abandoned pets by law, the construction of ecological civilization in China's "five-in-one construction" is further promoted, and the harmonious coexistence between man and animal, man and nature is further promoted.

3. The current situation of the infringement of stray animals in China

3.1. Lack of interim relief measures

The statistical data concluded that most of the infringed received injury, the infringed's medical expenses and subsequent treatment costs are first borne by the infringed. Even if the subsequent court decision is borne by the public administration or the bona fide feeders, these are all subsequent remedial measures. Of course, we cannot rule out this assumption. If the infringed is in financial difficulties, the sequelae caused by the failure to timely rescue and treatment after the infringement or the irreversible consequences, who should bear the subsequent joint and several liabilities[3] ? According to the stray animal infringement cases published in China's Judicial documents network in the past five years, the victims of stray animal infringement cases are mainly children under the age of 12. If the children are not timely contacted with the real breeders and managers of stray animals after being infringed by stray animals according to the existing provisions of China's Civil Code, Only the guardian of the infringed child shall bear the corresponding costs[4] . For the infringed "second strike" this is obviously undesirable and unreasonable. During the trial of stray animal tort cases in China, it is obvious that China does not provide corresponding temporary emergency measures, and the lack of such measures seriously affects the infringed person's right to body, right to health and even right to life.

3.2. Excessive differences in court rulings

The analysis of stray animal infringement cases collected in the past five years found that the court's judgment on cases of the same nature and belonging to stray animal infringement and harm is quite different. Through the integration of specific stray animal infringement cases through the judgment document network, it is concluded that Chinese courts' confirmation judgments on stray

animal infringers are mainly divided into the following three types: First, the bona fide feeding is the subject of responsibility. Second, managers of public places bear responsibility. Third, by the infringed bear their own. The differences in court rulings are too large to regulate social issues uniformly, which can be clearly felt according to the above analysis of three typical [5]stray animal infringement cases stray animal infringement cases of the same nature are only because the judge is responsible for stray animal infringement the difference of any subject's identification results in great difference.

Such a big difference in results completely violates the predictable feature of law as stipulated in jurisprudence. Without clear and unified content, it is difficult for people to predict the legal consequences of certain behaviors of themselves or others, and it is difficult to play the role of education and regulation of law [6].

4. The exploration of excellent foreign experience - taking Germany as an example

4.1. With reference to Germany to formulate and develop perfect pet industry norms

Germany, as the birthplace of the civil law system, is the theoretical basis and important source of many countries' legal codification and reference. According to the statistics of the US Global Times, Germany is the country with the lowest frequency of animal infringement cases and the lowest rate of stray animals. This is mainly attributed to the Animal Protection Law promulgated by Germany [7].In the "dog raising Law" promulgated in Germany, the source of pets is clearly stipulated. No matter the first or the second pet source method, it is very effective to record the relevant information of pets and owners. Through the regulation of pet breeding sources and the injection of electronic chips, the identification of the liable subject of stray animals infringement in Germany is very clear, and there will be no difficulties in the identification and search of the liable subject. It is of great reference significance for our country to control stray animal tort from the source.

4.2. Adopting the concept of "preserving persons"

Article 833 of the German Civil Code: "If an animal causes death to a person, or injures his body or health, or damages an object, the animal keeper shall be obliged to compensate the victim for the damage resulting therefrom; If the damage is caused by poultry prescribed for the trade, professional activity or livelihood of the animal breeder, and the animal breeder exercised all the care necessary in the trade in the supervision of the animal, or if the damage would have occurred even if such care had been exercised, the obligation to compensate does not arise ".Generally speaking, what is a person to protect depends on whether the animal is under the control of the person at the time, and the cost of raising the animal is to meet the interests of the parties. As for the subject of liability for damage caused by dangerous acts of animals, the German Civil Code stipulates that it is the guarantor, rather than the owner, the possessor, the usualist or the lessee, the custodian, etc., and there is also a fierce debate on the identification standard of the guarantor.

A person who uses animals in the operation or household of an animal breeder in order to satisfy his own purposes in this way for a long time; Some people think that animals are beneficial to themselves, provide shelter and feeding for animals, bear the costs, care about the well-being of animals, and bear the risk of animal loss. However, at present, there is a basic consensus that the standard of animal conservators is that they have interests in raising animals and have the ability to decide and control animals.

5. Discussion on the optimization path of the current situation of stray animal infringement

5.1. Regulation of stray animal infringement at the source - electronic chip implantation

5.1.1. The necessity of electronic chip implantation

According to the survey of the pet industry white paper on the number of cats and dogs raised in cities and towns in China from 2019 to 2022, the per capita pet ownership rate in China has increased by 5.6% per year, which is an astonishing growth rate. In the context of such a large population base in China, every data increase will cause a wide butterfly effect [8]. It is obvious that the butterfly effect brought by the increase in pet ownership in China is the substantial increase in the number of stray animals, and the increase in the number of stray animals is the premise and basis of stray animal infringement cases.

5.1.2. Feasibility of electronic chip implantation

Pet electronic chip technology has been very mature, as early as 1999[9],China's high-end golden arowana, red arowana breeders in order to ensure that the quality of the fish bred in their own fishing farms can be identified, they began to inject electronic chips into the golden arowana, red arowana extract, the chip only rice grain size will not affect the health of pets. At the same time, the chip cost is low and can be used continuously for 18-20 years, most people may think that the chip implantation is high-tech and may be difficult to operate, but it is not, China's chip implantation is like a vaccine, with a syringe into the skin can complete the implantation of electronic chips. And the injection of chips in high-grade ornamental fish has been fully popularized in the ornamental fish industry, which also confirms the feasibility of the comprehensive promotion of pet electronic chip implantation in China. With the significant increase in the infringement of stray animals around the country, many places in China have issued relevant regulations to promote the implantation of pet electronic chips [10]. With the successful implantation of electronic chips in pilot areas further confirms the important role of electronic chips in reducing stray animal infringement cases from the source and the necessity of subsequent promotion.

5.2. Improving temporary relief measures -- establishing relief funds

There is still a major problem in the infringement of stray animals in China and who should pay the medical expenses immediately after being infringed. We can consider this problem from the perspective of the infringed person or the infringed person's family. When one is physically injured because of his or her own fault, there is no immediate relief measure after being injured, no matter how to pursue the responsibility in the future. When the infringement occurs, the medical expenses must be paid by themselves first, which is both physical and psychological torture for the infringed who has the ability to pay in advance or does not have the ability to pay in advance. The role of law is to protect human rights and safeguard the legitimate rights and interests of every citizen [11]. According to the current Civil Code of our country, there is no perfect temporary relief measures for stray animal tort cases, so it is necessary to formulate a temporary relief measure matching our current law.

With reference to China's traffic accident infringement, China has developed supporting temporary relief measures after the traffic accident hit-and-run, traffic accident relief fund, traffic accident relief fund refers to: when the traffic accident occurs, can not find the infringing subject or the infringing subject escapes, the road traffic management department pays the medical expenses of the infringed first, so as to ensure that the infringed get assistance in time. This system is a supplement to the compulsory motor vehicle traffic accident liability insurance system, and aims to ensure that when the victims of road traffic accidents cannot get compensation according to the compulsory traffic insurance system and the infringer, they can obtain timely rescue or appropriate compensation through the assistance of the fund . For the victims of traffic hit-and-run, the traffic accident relief fund is no different from the "help in the snow" and "saving straws", and plays an important role in

safeguarding the legitimate rights and interests of the infringed in traffic infringement.In fact, in stray animal infringement cases, the situation in which no tort liability subject can be found is highly similar to the situation in which no tort liability subject can be found after a traffic hit-and-run. China's relevant authorities can draw on the traffic accident relief fund to develop a temporary relief system that is matched with stray animal infringement cases, so as to safeguard the life and health rights of the infringed in the first time.

6. Conclusions

With the rapid development of China's economy and society, stray animal tort cases will become more and more common. Through legislation, judicature and law enforcement to regulate a complete set of stray animal tort liability determination mechanism, not only the people's desire, but also an important part of the construction of China's socialist legal system, at this stage to form a complete set of stray animal tort case resolution mechanism, requires the joint efforts of the state, society and citizens. Through the source regulation, relief protection, responsibility establishment and other specific levels of guidance and management of stray animal infringement in China, for the subsequent establishment of a perfect stray animal infringement regulation system, laying the foundation and escorting.

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