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## **PHILOSOPHICAL LEGAL GROUNDS OF THE REGULATION OF ANIMAL WELFARE IN INTERNATIONAL AND NATIONAL LAW**

The article describes philosophical, ethical and teoretical grounds of legal regulation of animal welfare. A part of attention paid to the international and national reglamentation of animal welfare. A research also deals with the analysis of the legal regulation in the area of the treatment of animals in Ukraine and perspectives of its development. Analysis of the Law of Ukraine «On the Protection of Cruelty to Animals» allows to conclude about an integrated approach to the protection of animals from abuse, the systematic nature of the rules and mechanisms for their implementation. Actually adoption of the Law of Ukraine formed a new legal institute associated to the treatment of pets. Previously, these matters were governed by separate norms of administrative and partly of the criminal law relating to criminal liability for cruelty to animals.

The issues of treatment of animals and their protection from cruelty attracted attention of many philosophers (A. Schweitzer, J. Locke, I. Kant), writers (B. Shaw), politicians (Abraham Lincoln), and lawyers. There has been a shift from the ideas on the intrinsic value of nature, necessity of its conservation, the value of any living organism to reasoning of the necessity for animal welfare as an integral part of the nature. Naturally, the majority of initial attention was paid to domestic and farm animals, but later the animals located in their natural environment have also become the object of protection.

The ideas of outstanding humanistic philosophers could not but touch such a sphere, as relation to nature as a whole, and treatment of animals in particular. The ethics of A. Schweitzer's «reverence for life», in which there is no distinction between higher and lower, or more valuable or less valuable life<sup>1</sup> gets the increasing development in the global community. For a deeply moral human being every form of life is sacred. A. Schweitzer paid special attention to the anthropomorphic overcome of the limitations of his predecessors, and to the dissemination of the Biblical commandment «do not kill» outside interhuman relations.

J. Locke and I. Kant saw a direct connection between cruelty to animals and violence directed on people<sup>2</sup>. Kant considered that «cruelty to

<sup>1</sup> Швейцер, А. (1973). *Культура и этика. Этика благоговения перед жизнью*. Москва: Прогресс.

<sup>2</sup> Локк, Дж. (1913). *Мысли о воспитании*. Москва: Книгоизд. К. И. Тихомирова.

animals is contrary to the human obligation to himself, because it kills the compassion for the sufferings of others, which is very helpful in relations with other people»<sup>1</sup>.

As earlier applied to human rights, the philosophical ideas of animal welfare were reflected in law, initially in domestic, and then in international. Similar processes occur currently to consolidate the standards for animal welfare – initially in the legislation of separate states (Germany, Austria, Great Britain, Finland), and then at the regional level (Council of Europe), in the activities of international non-governmental organizations. The next step should be a global (universal) level of standards of treatment of animals, where the protection of animals would be a requirement for a modern developed state because an important cooperation of States, their agencies, and international organizations for the protection of animals and providing them with a decent existence and welfare is increasingly growing now<sup>2</sup>.

Despite the existence of philosophical and ethical imperative of humane treatment of animals and its legal consolidation, a problem of cruelty to animals is still urgent. Cruelty to animals can appear in many ways, but the legal regulation aimed primarily at protecting animals from unnecessary suffering, mutilation, groundless killing and at creating decent living conditions and animal welfare.

Issues of relation to the nature have always been in the spotlight of philosophers, but only in the XX century they were embodied in a number of concepts and reflected in social relations. The humanization of social relations<sup>3</sup> to a certain degree contributed also to the humane treatment of animals<sup>4</sup>.

In the first half of the XX century the problems of animal protection against abuse actualized, and its main idea nominated the necessity of prohibition of animal experiments (vivisection). Many scientists and writers view that vivisection is contrary to the moral principles of the society and should be prohibited due to the animals' right to life and health. In the late XIX – early XX century in Great Britain the opinion against vivisection was expressed by such writers as A. Tennyson (who was the vice-president of the National Antivivisection Society) and

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<sup>1</sup> Кант, И. (1999). *Метафізическіе начала естествознания*. Москва: Мысль.

<sup>2</sup> Короткий, Т. Р., Химченко С. А. (2003). Правовое регулирование охраны домашних животных в Украине *Актуальні проблеми політики*, 16, 231-236.

<sup>3</sup> Короткий, Т. Р. (2008). Гуманізація міжнародного права *Наукові праці Одеської національної юридичної академії*, 7, 170-182.

<sup>4</sup> Буткевич, О. В., Короткий, Т.Р. (2013). *Передмова до Європейської конвенції про захист домашніх тварин*. Одеса: Фенікс, 3-5.

R. Browning; J. Golsuorsi, T. Hardy; this movement was supported by outstanding actors, artists. Bernard Shaw was also strongly against vivisection. Later this idea grew into a concept of animal rights.

The concept of animal rights was proposed in the second half of the XX century, and today has several interpretations. T. Regan proves the animal rights from the position of logic because, in his view, animals have the right to the needs and realization of their natural purpose. According to T. Regan, as animals have moral status (i.e., the status of a «being»), they also have the rights<sup>1</sup>. P. Singer considers the fundamental principle of moral philosophy – equal respect to interests – as applicable in respect of animals<sup>2</sup>. Doctor of Theology E. Linzy defends animal rights from the standpoint of the Christian religion. He examines three aspects of the relationship to animals: respect for life, a living being, man's responsibility to animals and the animal rights<sup>3</sup>. E. Linzy based his arguments on the philosophy of A. Schweitzer, further substantiating his arguments referring to the religious texts. The most in-depth research of the status of animals was carried out by Dr. Richard Ryder, President of the Royal Society for the Prevention of Cruelty to Animals, in the book «Animal Revolution» (1989). R. Ryder traces the history of the movement to protect animals, starting from the history of man's relationship to animals in ancient civilizations and ending with the modern concept of animal rights<sup>4</sup>.

Thus, we can conclude that the concept of the need of animal welfare system found its philosophical and ethical substantiation and consolidation in the first half of the twentieth century, and formed the basis for a social movement to protect animals and the justification of the need of legal regulation of animal protection.

At the present stage, the topic of humane treatment of animals has significantly actualized. The improvement in the quality of legal acts in this sphere of regulation has been noted, that directly leads to an increase of scientific interest in the subject matter, and not only among domestic but also foreign researchers.

<sup>1</sup> Regan, T.(2003). *Animal Rights, Human Wrongs: An Introduction to Moral Philosophy*. Lanham, MD: Rowman & Littlefield Publishers.

<sup>2</sup> Singer, P. (1998). *Ethics Into Action: Henry Spira and the Animal Rights Movement*. Rowman and Littlefield Publishers Inc.

<sup>3</sup> Garner, R. (2005). *The Political Theory of Animal Rights (Perspectives on Democratization)*. Manchester University Press.

<sup>4</sup> Ryder, R.D.(2000). *Animal Revolution: Changing Attitudes Toward Speciesism*. London: Berg Publishers.

Historical and ethical and philosophical aspects of the treatment of animals were the subject of research for a long time, a significant contribution of Russian scientists in this field should be noted. From about the middle of the XIX century, in the Russian Empire there was a question of treatment of animals and many famous philosophers, politicians, lawyers expressed their opinion on this matter. For example, works of P.V. Bezobrazov<sup>1</sup>, V.V. Byhovsky<sup>2</sup>, J.O. Lewandowski<sup>3</sup>, published in the late XIX – early XX century, are interesting and draw attention to the existence of the rights of animals and developing of compassion and humanity. In addition, a number of modern scientists and researchers – V. Agafonov, E. Bogatova O. Butkevych, V. Kopilyan, T. Korotkiy and others, – work on the specified problem, considering various aspects of: ethical and philosophical foundations of the treatment of animals, legal regulation of the treatment of animals, including international law, the responsibility for the inhumane treatment of animals.

It is important to note that the establishment of an international legal regulation of the treatment of animals was not immediate. Initially, the most progressive states (in the aspect of humanization of social relations) began to adopt legislation on the treatment of animals, their protection against abuse. Then, in order to bring national legislation to uniformity, many states began to bring their legislative practice to the single model. This phenomenon became the main trend of the regionalization of legal regulation, and only then the legal regulation shifted into the international sphere, where a universal level of legal regulation of treatment of animals appeared.

At the universal level in this area there is a number of international non-governmental organizations – the World Society for the Protection of Animals, the World Organization for Animal Health, and in their framework the documents on the protection of animals could be accepted. These documents are neither normative nor binding, their effectiveness is grounded on the ethical imperatives. As a rule, they contain recommended practices and standards. However, at the level of international intergovernmental organizations of a universal nature currently there are no documents aimed at protecting animals from cruelty.

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<sup>1</sup> Безобразов, П. В. (1903). *О правах животных*. Москва: Печатня А.И. Снегиревой.

<sup>2</sup> Быховский, В.В. (1897). *Наше законодательство о жестоком обращении с животными и желательные в нем изменения*. Москва : Моск. отд-ние Рос. о-ва покровительства животным.

<sup>3</sup> Левандовский, Я.О. (1879). *Последствия жестокого обращения с животными*. Санкт-Петербург: тип. Р. Голике.

The second level is a level of regional acts. At this level, there is a number of international agreements on treatment of animals. The most advanced in this regard is the law of the Council of Europe and the European Union. The third, the national level has a great diversity of approaches, because there is not enough uniform practice of States on the treatment of animals and their protection from abuse. The most advanced and progressive legislation is represented by certain European states.

As already noted, at the universal level, even in the form of soft law, there are no international legal standards on the protection of animals from cruelty yet. 2000. The subject of international treaties for the protection of wildlife, protection of biodiversity is different. Nevertheless, we consider it necessary to quote Art. 1 p. A of the Earth Charter 2000 «1. Respect Earth and life in all its diversity. a. Recognize that all beings are interdependent and every form of life is valuable regardless of its worth to human beings»<sup>1</sup>.

International non-governmental organizations, especially the World Society for the Protection of Animals (WSPA) engaged in international activities in the field of protection of animals. The aim is to ensure the WSPA animal welfare and eradication of animal cruelty. The organization fights against the abuse of animals into general and its specific manifestations. In addition, the WSPA advises governments and lobbying for legislation on humane treatment of animals. In particular, the WSPA leads the campaign for the signing by the UN member states of the Universal Declaration on Animal Welfare.

At the regional level, the most developed system of protection of animals from cruelty is in Europe. In Europe, there are two types of legal regulation on the regional level – at the level of supranational institutions, which is the European Union and at the level of international organizations with specific objectives – the Council of Europe.

The activity of Council of Europe in the field of the protection of animals goes back to the 60s of the XX century, when the creation of international agreements relating to the welfare of animals was first initiated. In the period from 1965 to 1990 five major conventions for the protection of animals (European Convention for the Protection of Animals during International Transport of 1968 (revised in 2003) [1], the European Convention for the Protection of Animals kept for Farming 1976 [2], the European Convention for the Protection of Vertebrates Animals used for Experimental and other Scientific Purposes 1986 [3], the

<sup>1</sup> Earth Charter (26 June 2000). < <http://www.earthcharterinaction.org/content> > (2014, april, 10).

European Convention for the Protection of Pet Animals 1987 [4]) were formulated and entered into force. These conventions of the Council of Europe based on the anthropological approach, focused on the fact that for his own well-being, a person may, and sometimes must use animals, but he has a moral obligation to provide in reasonable frames, animal health and welfare, and in each particular case not to make them subjects to excessive risk. Most member states of the Council of Europe have signed these conventions, expressing their support for the policy of the Council of Europe with regard to animal welfare.

The Council of Europe ensures the establishment of standards for the treatment of animals and their protection from abuse by adopting recommendation provisions of international conventions and controls its implementation. Political and technical progress made in the establishment of standards in this area depends on close cooperation with Member States, the Council of Europe and non-governmental organizations representing veterinarians, defenders of animals, farmers and scientists. Conventions for the animal protection, approved by the Council of Europe, became the first international agreements containing principles of transportation, breeding and killing of animals, as well as their use in experiments or at home. These conventions are used in almost all states of the Council of Europe as a basis for national legislation documents<sup>1</sup>.

National legislation of states form the third level of regulation. All elements of the system are in the interaction and mutual influence on each other. Ukraine is no exception, since February 21, 2006 it adopted the Law «On the Protection of Cruelty to Animals». It was a significant step towards the establishment of really humane and civilized society in Ukraine. Adoption of the law reflected a qualitative shift in the public consciousness, when the problem of protecting animals from cruelty moved into the category of socially significant.

Analysis of the Law allows to conclude about an integrated approach to the protection of animals from abuse, the systematic nature of the rules and mechanisms for their implementation. Actually adoption of the Law of Ukraine formed a new legal institute associated to the treatment of pets. Previously, these matters were governed by separate norms of administrative and partly of the criminal law relating to criminal liability for cruelty to animals.

In criminal and administrative legislation of Ukraine for quite a long time, there are provisions on liability for cruelty to animals, which are

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<sup>1</sup> Stevenson, P. (2004). *European Union Law on the welfare of farm animals. In A global perspective on animals in the legal system.* California Western School of Law, 124-125.



not practically used. This can be attributed to several factors: the reluctance of law enforcement agencies to engage in insignificant and no prospective for them investigations; lack of practice and procedure of the investigation of such cases; low social value and the passivity of people with respect to this type of crime; low level of legal culture and the inability to actively defend their rights. At the same time rules on liability, including public authorities and officials for cruelty to animals, for creating the conditions for animal cruelty, for failure to take action to prevent cruelty to animals need to be improved. An important issue is to develop a mechanism for removal of pets in case of maltreatment.

Besides the issues related to improving the effectiveness of realization of the Law there is a need to improve some of its provisions.

First, there is a need of clarification and making additional qualifying features in the determination of cruelty to animals, which include: the poisoning of animals, farm animals overload, transport, which leads to suffering and stress of animals, obtaining meat, skin or organs of pets, propaganda of cruelty to animals.

Secondly, securing compulsory registration of pets, establishing legal responsibility for the absence of such registration and liability for abandonment or loss of the animal is required to increase the liability of owners of animals is.

Third, in our opinion, it is necessary to provide the licensing of breeding dogs and cats, which will dramatically improve animal welfare in nurseries and reduce the number of occasional sales of progeny from pets.

Fourth, despite the fact that the law is an indication of the priority of humane methods to control the number of stray animals (articles. 16, 23, 24), the actual mechanism for the implementation of these methods and sterilization priority over animals' sacrifice are not spelled out.

On November 1, 2013, the Law of Ukraine «On ratification of the European Convention for the Protection of Pet Animals» from September 28, 2013 entered into force. Ratification of the Convention has significantly brought together the national law of Ukraine and the Law of Council of Europe; this action demonstrated Ukraine's readiness to comply with high European standards in order to protect and provide not only human rights, but also the generally accepted standards for the treatment of animals. However, despite all the efforts of legislators and theorists, the practical problem of humane treatment of animals is still acute.