



Legal Approaches to the Concept “Animal Welfare” in Ukrainian and Foreign Doctrine

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Abstract. Problems of international legal regulation of animal welfare and protection of them from cruelty in modern society is becoming increasingly important. Legal regulation of the animal welfare and their protection from cruelty needs improvement, international instruments on the treatment of animals should be implemented to the laws of Ukraine, it is necessary to raise awareness of ordinary citizens on the scope of the welfare of animals - all these questions urgently need to be resolved. A small number of studies devoted an attention to the problems of international legal regulation of animal welfare and protection from cruelty. However, it should be emphasized that scientists had paid attention to international law regulating the treatment of animals, while foreign researchers laid the foundations of theoretical research areas of animal welfare and protection from cruelty. Research topics animal welfare and protection of them from cruelty is fairly new to the Ukrainian school of international law. Only in the early 2000s began the first attempts of forming issues of animal welfare and protection of them from cruelty at former Soviet states as a scientific field. Fundamental research on the status of animals held in criminal law science due to the fact that the domestic legal doctrine recognizes only the concept of protecting animals from cruelty. Humanization of international relations could not affect the formation of humane treatment of animals. But Ukraine, for example, has a number of issues of animal welfare and protection of them from cruelty, mistreatment of stray animals, abuse of animals in zoos, the movement of dog-hunters, problem of use of animals in experiments and so on. This problem creates a need to solve some problems in national legislation and practice. The current issue is also the convergence of Ukrainian national legislation with EU law.

Keywords: animal welfare; protection of animals from cruelty; international law; Ukraine; European Union

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1. Introduction

It should be mentioned that the doctrine of Ukrainian environmental law did not recognize (or with a very conservative point of view recognize) the

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sphere of legal regulation of providing of animal welfare and protection of animals from cruel treatment in the frames of this branch of law. This is evidenced by the complete absence in both textbooks and monographs on environmental law, as well as reference to the scientific specialty, of the problems of animal welfare and protection them from cruel treatment. With passing the Law of Ukraine "On the protection of animals from cruel treatment", and with ratification of Convention, it became possible to talk about a complex legal institution, which belongs to the Environmental Law.

2. The Treatment of Animals and their Protection

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 life¹ 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.

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.

Modern development of international environmental law indicates more nature-centric character of this area of law (Butkevich, 2013, p. 6). Thus the concept of treatment of animals gradually moved from the premise "animals - part of the environment" to the idea of "animal - an independent object of protection of their life, procreation and prosperity"(Boreiko, 2012, p. 11). On this emphasized researchers of international environmental law

"modern international treaties and decisions of international courts establish certain restrictions on human activities, thus recognizing the limitation of rights in favor of the external world to man from positions of bio-centrism"(Medvedeva, 2015, p.52, 20). As Olga Butkevich marked, gradually in all primary and secondary sources of international law established regulations on the protection of animals outside the context of their value to humans, as well as individual life forms. Protection of animals assumes the form of a common concern of humankind; some provisions to protect certain species acquire the character of erga omnes norms (Butkevich, 2013, p. 6).

Forming a single universally accepted definition of "animal welfare" is an important key to successful planning and development of the relevant scientific field, the development and adoption of laws and regulations and proper implementation.

Broom D. M. and Johnson K. G. as grounds of definition of "animal welfare" distinguished:

- animal welfare should be characterized as the state of the animal, not what it gets. A person by his actions can improve animal welfare, but the action itself or used resources are not welfare;
- the definition of animal welfare should provide its many dimensionality - to have the opportunity to assess animal welfare;
- the level of welfare should be determined scientifically based methods and be free of subjectivity;
- animal welfare should be considered unsatisfactory if the animal can not cope with the negative environmental factors;
- no pain and suffering should be the basis of animal welfare (Broom, 1993, p. 143).

Almost all scholars tend to believe that animal welfare is defined as the state and the conditions under which animals can behave according to their nature and needs (Ohl, 2012).

Thus, the concept of animal welfare involves the establishment of scientifically justified levels to ensure the interests of animals, securing by national laws and international norms. There are several approaches to determining the meaning of "animal welfare"(Millman, 2009, p. 89). In our view, they should be divided into veterinary and environmental approaches that together constitute a comprehensive legal (regulatory) approach.

Animal welfare can be regarded as the extent of their interests into account (Würbel, 2009). The ideal should be the level of animal welfare in which fully met all their interests - an abundance of water and food, comfortable

environment, freedom from disease and the ability to identify behavior-specific animal species (Koziy, 2012, p. 130).

Thus, the concept of animal welfare concerns a wide range of aspects of life of animals. Ensuring the welfare of animals it is necessary to begin from study the characteristics of animal physiology, behavior. In view of these factors should be built the strategy of human behavior in the process of creating living conditions for animals and coexistence of humans and animals. Regulatory aspects of animal welfare are formalized of this notion in any regulations. The law reflected both the above approaches.

At the same time, we can distinguish legal (regulatory) approach, combining veterinary and environmental approaches, and enshrined in most legal documents on the treatment of animals.

In general, the term "animal welfare" is ambiguous. Different regulations interpret the term differently. For example, considering the animal welfare and relying on major European Convention on the treatment of animals, animal welfare should be determined according to the following documents.

In domestic law, there is differentiation of approaches to the definition of animal welfare in every state in this concept fit its content, including both physical characteristics and psychological. In this case a particular legal act focuses towards a particular characteristic, placing it under a priority.

For example, the UK animal welfare act 2006 puts priority on the physical condition of the animals, while animal welfare act of Switzerland 1978 focuses on the mental health of the animal.

The law regulates animal welfare in three aspects: breeding, transport and slaughter of animals. The main principle of treatment of animals in the legislation of States is not to cause unnecessary suffering to animals. The principle of "no suffering" makes the category of "animal welfare" basic for national and international law.

3. Conclusions

It should be said about the comprehensive national regulation of animal welfare. Some European states seeking to change attitudes to animals in more humane, fix their status at the constitutional level. In particular, the first requirement of animal welfare at the constitutional level enshrined Switzerland. In 1994, a referendum held in Switzerland changed the status of animals from "things" into "sentient beings." In 1999, the Swiss Constitution established the powers of the state to ensure the welfare of

animals kept on farms (Art. 80 of the Federal Constitution of the Swiss Confederation).

In 2002 Germany supplemented the Constitution provisions on animal welfare, thereby becoming one of the first states that fixed rules on the treatment of animals at the constitutional level (Article 20a). The peculiarity of this provision is giving animals the basic rights (right to life and health). Thus, the category of "animal welfare" gradually assumes the character of the principle of law, the statutory receiving both national law and internationally.

In general, the Ukrainian doctrine considers the treatment of animals primarily as protection from abuse. This is anthropocentric approach that is targeting more legislation to protect public morals, human senses than the prevention of cruelty to animals. Regarding animal welfare, in this case there is nature-centric approach that is primarily prevents negative attitudes towards animals, and then protection of human interests.

4. References

- Boreiko, V. E. (2012). *Философы зоозащиты и природоохраны. К.: Киевский эколого-культурный центр, Ассоциация зоозащитных организаций Украины. Philosophers of animal protection and nature protection. Kiev.*
- Broom, D. M. & Johnson, K. G. (1993). *Stress and animal welfare*. Springer: Science & Business Media.
- Butkevich, O. V. (2013). Поводження з тваринами та їх захист в контексті міжнародного права/Treatment of animals and their protection in the context of international law. *Ukrainian Journal of International Law/Укр. часопис міжнар. Права*, pp. 5-11.
- Koziy, V. I. (2012). *Добробут тварин (історичні, наукові та нормативні аспекти). Біла Церква/Animal welfare (historical, scientific and normative aspects). Bila Tserkva.*
- Medvedieva, M. (2015). The principles of environmental ethics in international treaty and court practice in *Actual problems of international relations*, no. 1(124).
- Millman, S. T. (2009). Animal welfare – Scientific approaches to the issues in *Journal of Applied Animal Welfare Science*, vol. 12 (2), pp. 88-96.
- Ohl, F.; Van der Staay, F. J. (2012). Animal welfare: At the interface between science and society. *The Veterinary Journal*, vol. 192(1), pp. 13-19.
- Würbel, H. (2009). Ethology applied to animal ethics. *Applied animal behaviour science*, vol. 118(3), pp. 118-127.

