

LEGAL PROTECTION of ANIMALS

EDITORIAL TEAM

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Maria Curie-Skłodowska University Press

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Introduction

The present publication is the result of research on the state of animal protection legislation, which was presented at the International Scientific Conference “Domestic, European Union and International Standards in Legal Protection of Animals”, which took place on 17 October 2019 at the Faculty of Law and Administration of Maria Curie-Skłodowska University (MCSU) in Lublin.

The aim of the conference was to draw attention to the contradiction of some regulations introduced into the national legal framework, including those providing “enhanced” standards of animal protection, with higher-level standards; as well as to their conformity with social conditions, and to the fact that in many cases they are not enforced, therefore, they are of a superficial nature. Moreover, regulations state a different level of protection for domestic animals, homeless animals, livestock, laboratory animals, animals used for specific purposes and, finally, free-living animals. An invitation to participate in the discussion concerning this issue met with great interest of the scientific community, which resulted in various considerations on the current state of regulation setting legal standards for the protection of animals. The scope of these considerations reflects the complexity of issues related to animal protection. They refer to humanitarian protection, species protection as well as animal protection. Some research papers are devoted to the general status of the animal, others focus on detailed solutions and differences in the protection of individual species of animals, or on the differentiation of the principles of animal protection depending on the purpose given to them by humans.

These considerations resulted in a number of conclusions and observations, in particular in the field of the effectiveness of the current model of animal protection, its adaptation to the current state of veterinary knowledge, social and economic conditions, as well as compliance of the adopted solutions with the requirements of international and European Union law. We would like these conclusions to be at least the starting point for further discussion on optimizing the animal protection system. In this regard, it is significant that some of the considerations refer to the solutions which have already been adopted in the legal system of Ukraine. These considerations may become a valuable material for all kinds of comparative legal analyzes.

Presenting the publication to the reader, we would like to thank all those who have helped in the making of this book, in particular the contributors. We would like to

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The Use of Animals for Entertainment Purposes: The Requirements of Ukrainian Legislation and the Practice of Their Implementation

Features of the development and amendment of the legal provisions on the protection of animals from brutal treatment in Ukraine

A humane attitude to animals is one of the key markers of today's civilized society. The international and European community stated their willingness to protect animals from abuse. With this end in view, a number of basic laws and regulations were developed and adopted, among them the Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973), the European Convention for the Protection of Animals during International Transport (1968), the European Convention for the Protection of Vertebrate Animals used for Experimental and other Scientific Purposes (1986), the European Convention for the Protection of Pet Animals (1987), etc. A strong tendency to develop comprehensive legislation on animal protection is characteristic of almost all European states. As regards Ukraine, the last decade is marked by some progress in this direction. It includes the recognition of this problem as one of the objectives of the state policy, adoption of legislative acts, scientific research, organization of public demonstrations. The starting point in this process was the adoption in 2006 of the Law of Ukraine on the Protection of Animals

from Brutal Treatment¹ that combined the main provisions of international documents on the humane treatment of animals.

Nevertheless, despite being progressive, it is only the first stage in the transition from a complete lack of regulations on animal welfare to the approximation of Ukrainian legislation to European standards. For the present, the reality of humane animal treatment in Ukraine is far from being perfect. Academic papers cite both subjective and objective reasons for such a situation. Here belong, for instance, deficiencies in legal mechanisms, people's mentality, a low cultural level, including that of legal culture, insufficient experience of law enforcement agencies in enforcing legal liability, insufficient funding, etc.² Furthermore, there is a lack of serious theoretical underpinnings and systematic academic research to be used as a basis for developing corresponding legislation.

As stated by the Law, it is aimed at protecting animals from suffering and death due to cruel treatment, protecting their natural rights and consolidating social morality and humanity. The Law of Ukraine on the Protection of Animals from Brutal Treatment encompasses all animals: farm, domestic and wild. In fact, it laid the foundations for separate legislation on animal protection and welfare. Nevertheless, there arises a question about branch affiliation. According to Ukrainian academic literature, it is part of environmental law.³ The problem is that Ukrainian environmental law protects only wild animals. Environmental law in Ukraine is grounded in the Law of Ukraine on Fauna aimed at regulating the use of wild animals, conservation and restoration of their populations (in the context of biodiversity preservation). The philosophy of this law is based on Soviet approaches to the regulation and protection of fauna as part of nature. Currently, Ukrainian environmental law does not contain provisions on animal welfare and their protection from cruel treatment which is confirmed by the analysis of textbooks and other academic sources as well as by lack of relevant academic research in the field of environmental law. The provisions of the legislation

¹ Law of Ukraine of 21 February 2006 on the Protection of Animals from Brutal Treatment, VVR, 2006, No. 27, p. 990, as amended.

² T. Korotkij, *Organizacionno-pravovye aspekty zashchity zhyvotnyh ot zhestokogo obrashcheniya v Ukraine* [The Legal-Organizational Aspects of the Protection of Animals from Cruel Treatment in Ukraine], [in:] *Reshenie problemy bezdomnyh zhyvotnyh v Ukraine gumannym sposobom – vazhnejshaya sostavlyayushchaya razvitiya evropejskogo goroda i blagopoluchiya ego zhitelej* (tezisy mezhdunar. konf) [A Humane Solution to the Problem of Stray Animals in Ukraine is an Important Constituent of the Development of European Cities and their Citizens (proceedings of the international conference)], Simferopol 2011, p. 16 (in Ukrainian).

³ T. Korotkij, *Organizacionno-pravovye voprosy zashchity zhyvotnyh v Ukraine: rol yuristov v institucionalizacii dvizheniya po zashchite zhyvotnyh* [The Legal-Organizational Aspects of Animal Protection in Ukraine: the Role of Lawyers in Institutionalizing the Movement for Animal Protection], "Ukrainian Journal of International Law. International Legal Standards for the Treatment and Protection of Animals and the Practice of Ukraine" 2013, p. 36 (in Ukrainian).

on animal protection from cruel treatment are partly analyzed by scholars of administrative and criminal international law.

The understanding of basic approaches to animal treatment has likewise to be discussed. The conception of animal welfare is the most acceptable to the international, European and national law of European states. For instance, the European Convention for the Protection of Pet Animals of 1987 defines the principles of animal welfare: nobody shall cause a pet animal pain or suffering, nobody shall abandon a pet animal, any person who keeps a pet animal shall be responsible for its health and welfare and provide accommodation, care and attention with regard to its ethological needs, etc.⁴ Soviet states commonly rephrase “animal welfare” as “the protection of animals from cruel treatment”. According to Ukrainian scholars, it can be explained by the fact that Soviet legislation on animal management is of prohibitive nature and that Ukrainian law generally leans towards the protection of human moral interests rather than the protection of animals from cruelty⁵. For instance, pursuant to item 1.1 of the Regulations on the Use of Animals for Entertainment Purposes, they are aimed, first and foremost, “at ensuring human life and health” and then “at protecting animals from suffering and death due to cruel treatment and protecting their natural rights”.⁶ The secondary importance of animal welfare and their protection from cruel treatment is one of the features of Soviet legal and social systems. The only provision governing the protection of animals from cruel treatment in the Soviet period was included in the Criminal Code of the Ukrainian SSR and introduced only in 1988. For the present, Ukrainian law, including environmental law, requires changes to the conception of animal protection prioritizing not the value of animals for humans and ecosystems but the idea of animals having consciousness and feeling emotions.

Legislative regulation of the use of animals for entertainment purposes in Ukraine

Arts. 7–9 of the European Convention for the Protection of Pet Animals (1987) contain provisions on the conditions of animal training, commercial breeding and trade, establishment of animal shelters, use of pet animals for advertising, entertainment and other similar events. The Law of Ukraine on the Protection of Animals from Brutal Treatment defines more specifically and distinctly the conditions of animal

⁴ The European Convention for the Protection of Pet Animals of 13 November 1987, ETS No. 125.

⁵ N. Zubchenko, *Mizhnarodno-pravove spivrobotnytstvo derzhav u sferi zabezpechennia dobrobutu tvaryn ta yikh zakhystu vid zhorstokoho povodzhennia* [International Legal Collaboration between States on Animal Welfare and the Protection of Animals from Cruel Treatment], Odesa 2016, pp. 60–61 (in Ukrainian).

⁶ The Order of the Ministry of Agrarian Policy of Ukraine of 13 October 2010 on Adoption of the Regulations on the Use of Animals for Entertainment Purposes, OV, 2010, No. 100, p. 102.

management with regard not only to the above-mentioned requirements but also contains provisions on veterinary care, transportation, etc. (Arts. 10, 11 of the Law). The conditions of the use of animals for entertainment and other activities are stated by Art. 25 of the Law. These provisions are analogous to those of the Convention. Art. 25 of the Law includes the following bans and obligations: “Showings of animals at exhibits, in zoos shall be allowed on condition that hygienic, veterinary and sanitary rules and regulations are observed. Animals shall be protected from injury, pain, mutilation, death at sporting and entertainment events, video and photo shoots. Animal training shall be conducted on condition that: animals are protected from beatings, intimidation, removal of canine teeth, claws, etc.; animals are not forced to perform traumatic actions. Animals that cannot adapt to captivity, enclosed areas and training shall not be used for entertainment, sporting events, other leisure activities. Any person who keeps an animal unfit for circus, sports and other entertainment purposes shall observe all the conditions of animal management as required by the Law. Blood sports, sporting and entertainment events that involve harassment, killings, observation of the death agony of animals, use of animals for killing other animals shall be prohibited”.

To further specify the general provisions of the Law, the following subordinate regulations were adopted: the Regulations on the Use of Animals for Entertainment Purposes (2010), the Procedure for Management and Breeding of Wild Animals in Captive or Semi-Captive Settings (2010), the Regulations on Transportation of Animals (2011), the Rules and Regulations on Keeping Dolphins in Captive Settings (2012). For instance, pursuant to item. 2.8 of the Regulations on the Use of Animals for Entertainment Purposes, any person who uses an animal at entertainment events shall be obliged: to ensure the necessary conditions to satisfy its biological and individual needs, as required by the Law of Ukraine on the Protection of Animals from Brutal Treatment; to provide care, humane treatment, attention, sufficient nutrition and constant access to water for this animal; to observe the sanitation and hygiene standards at the place where the animal is kept (a place of a permanent stay) and the standards of cohabitation; to clean its excrement; to ensure a timely provision of veterinary services for the animal (medical examination, treatment, vaccination, etc.); to have veterinary documents; to immediately inform a veterinary institution of any disease of the animal.

The signing of the Ukrainian-EU Association Agreement in 2014 prompted further steps in approximating Ukrainian legislation to the EU legislation. It involves a gradual introduction and adoption of laws and regulations in compliance with the EU law. The Association Agreement also provides for the approximation of Ukrainian legislation to the EU standards. As stated in item 4 of Chapter 4 “Sanitary and phytosanitary measures”, the Agreement is aimed at reaching a mutual understanding concerning the standards of animal keeping and management. The standards of animal keeping and management provide the foundation for animal protection, developed and applied by the Parties in proper compliance with the standards of the World Organization

for Animal Health and come within the purview of the Agreement.⁷ Since 2015, the Law of Ukraine on the Protection of Animals from Brutal Treatment has included the ban on the creation and operation of mobile menageries, mobile zoos and mobile exhibits of wild animals as well as dolphinariums without natural seawater. In 2017, amendments were made to this Law, to the Criminal Code and the Code on Administrative Offences for Improper Introduction of the Conditions of Humane Treatment of Animals, including greater administrative and criminal liability for cruel treatment of animals. The amendment of significant importance was made to Art. 1 of the Law of Ukraine on the Protection of Animals from Brutal Treatment to include a specific official definition of “mobile menageries” as specially equipped temporary buildings, vehicles, mobile cages, enclosures, other mobile constructions used by cultural institutions, circuses, mobile zoos, touring centers and other persons or organizations for keeping and transporting wild animals in order to use them for entertainment purposes (of public and private character) and for non-scientific public showings and exhibits.

Although significant progress has been made in the legal regulation of the protection of animals from cruel treatment, it has to be noted that the existing legal mechanisms are not absolutely effective. Academic publications have a considerable number of suggestions about amendments to certain mechanisms of regulating animal management.⁸ Furthermore, over the last few years, due to the deregulation of Ukraine’s economy and certain economic relations, many permit documents have been cancelled. For instance, Ukrainian legislation provided for a permit-issuing procedure for organizing events involving animals, but in 2016, such a permit was cancelled. The issue of control and imposing sanctions for violating the corresponding bans is problematic. Pursuant to Chapter 4 of the Regulations on the Use of Animals for Entertainment Purposes, dedicated to ensuring the observance of the above-mentioned regulations, public organizations that clearly do not have administrative powers to terminate violations and impose sanctions are responsible for exercising this type of control. The chapter does not provide information on the state authorities as regulatory bodies. The list of such regulatory authorities and their powers are included in Chapter 5 of the Law of Ukraine on the Protection of Animals from Brutal Treatment.

⁷ Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, OJ, 2014, L 161/3.

⁸ D. Kalmykov, *Perspektyvy vdoskonalennia rehuliatyvnoho zakonodavstva v chastyni zakhystu tvaryn vid zhorstokoho povodzhennia* [The Prospects for Amending the Regulatory Legislation on the Protection of Animals from Cruel Treatment], “Law Forum” 2013, No. 1, pp. 367–378, <http://archive.nbu.gov.ua/e-journals/FP/2013-1/13kdovgp.pdf> [access: 01.10.2019] (in Ukrainian); M. Berehelia, *Administratyvno-pravove rehuliuвання zakhystu tvaryn vid zhorstokoho povodzhennia, yaki vykorystovuiu liudyna pid chas provedennia zakhodiv* [The Legal-Administrative Regulation of the Protection of Animals from Cruel Treatment at Entertainment Events], “Actual Problems of Native Jurisprudence” 2017, No. 3, pp. 88–90 (in Ukrainian).

Actual problems of the practice of humane treatment of animals in entertainment purposes

As of today, another issue that poses a problem not only for Ukraine in the context of ensuring animal welfare and their protection from cruel treatment is the regulation of circuses, including mobile circuses featuring animals. In mobile circuses, as a rule, animals are devoid of the possibility to show their typical behaviour and interact with other representatives of their species; they are kept in confined spaces, transported for long periods, demonstrated to public without proper security measures. The basis for the regulation of this issue is Art. 9 of the European Convention for the Protection of Pet Animals (1987), but it can be applied only indirectly to the participation of wild animals in circus acts. In Ukraine, it is authorized for stationary zoos to use wild animals, but they have to comply with the rules and standards of keeping animals in captivity. Despite the fact that the use of animals by mobile circuses is not directly prohibited by law, they are not allowed to transport animals, since all mobile constructions for transporting or keeping wild animals for further use in performances are considered mobile menageries whose operation is prohibited, as mentioned above. The problem is, a lack of proper control and a statutory ban on this type of activity leads to the existence and touring of mobile circuses featuring animals. There are currently more than 20 stationary zoos and no less than 8 mobile zoos that keep and feature wild animals in their performances.⁹

It is becoming more common for city councils to ban the operation of mobile circuses in their cities. Such bans are approved and currently in effect on the territory of Kyiv, Lviv, Lutsk, Chernihiv, Rivne, Kryvyi Rih and dozens of other cities. The legitimacy of these resolutions has been repeatedly approved by courts. One of the recent examples of positive court rulings is the ruling of the Eighth Administrative Court of Appeal (Lviv) that upheld the resolution of the Rivne City Council on the prohibition of mobile circuses using animals. On 6 February 2019, a panel of judges heard an appeal of the Rivne City Council against the ruling of the Rivne Regional Administrative Court of 8 October 2018 on the lawsuit filed by the private enterprise “The Production Centre »Tours in Ukraine«” to the Rivne City Council against the unlawful Resolution on the Ban on Mobile Circuses with Animals in the City of Rivne. The Court of Appeal upheld the appeal of the Rivne City Council, having ruled that the appealed resolution was adopted within the powers granted to the local authorities by Ukrainian legislation and does not infringe, by any means, on the rights and legal interests of “The Production Centre »Tours in Ukraine«”. According to the Court of Appeal, a mobile menagerie is a constituent part of a mobile zoo, used for keeping and transporting wild animals in order to use them for circus performances. Based

⁹ *Analytical Note. The Use of Wild Animals in Circuses*, <http://epl.org.ua/announces/analytychna-zapyska-vykorystannya-dykyh-tvaryn-v-tsyrkah/> [access: 01.10.2019].

on a comprehensive analysis of the contents of the legal provisions, the regulation of the protection of animals from cruel treatment also belongs to the competence of local authorities. Therefore, the ban on mobile zoos with animals and menageries in the city of Rivne is within the powers of the local government in protecting animals from cruel treatment, based on Parts 2 and 3 of Art. 28 of the Law of Ukraine on the Protection of Animals from Brutal Treatment.¹⁰

In general, local governments play an important role in the system of the legal regulation of animal protection. For instance, The Support Programme for Affected Wild and Exotic Animals and Birds in Lviv for the Years 2019–2023 was approved by the Resolution of the Lviv City Council of 8 November 2018.¹¹ Pursuant to item 2.2, the priorities of the Programme are as follows: creating conditions for the operation of municipal and private shelters for affected wild and exotic animals and birds; providing guaranteed professional veterinary care for affected wild and exotic animals and birds; rehabilitation of affected wild and exotic animals; ensuring a return of wild animals to their natural habitat; doing public awareness-raising work, etc. In the majority of cities, the Regulations on Animal Keeping and Management are approved and in effect.

The driving force for dealing with specific cases related to the cruel treatment of animals and the introduction of measures for their protection is the public, represented by public organizations and movements. It can be illustrated by several examples. For instance, on 15 September 2019, the All-Ukrainian March for Animals¹² took place in Kyiv, uniting like-minded people from 24 cities. It is the third year this march takes place upon the initiative of the humanist movement UAnimals; people from all over the country participate in it. Among the requirements of activists are statutory bans on the use of animals in circuses and dolphinariums, on the exploitation of animals for begging and photo shooting. This event represents public readiness for change and great public demand for resolving issues of the protection of animals from cruel treatment. With the help of a famous Ukrainian actress's open letter and wide public support, in February 2019, the police expropriated two Red List birds that had been used for taking photos with tourists for years and handed them over to the national park.¹³

¹⁰ *The Court Upheld the Ruling on Banning Mobile Circuses with Animals*, <http://yur-gazeta.com/golovna/sud-viznav-zakonnim-rishennya-pro-zaboronu-peresuvnih-cirkiv-z-tvarinami.html> [access: 01.10.2019].

¹¹ The Resolution of the Lviv City Council of 8 November 2018 on Adoption of the Support Programme for Affected Wild and Exotic Animals and Birds in Lviv for the Years 2019–2023, [https://www8.city-adm.lviv.ua/inteam/uhvaly.nsf/\(SearchForWeb\)/3579266D21FFDD4FC225834B00336AC9?OpenDocument](https://www8.city-adm.lviv.ua/inteam/uhvaly.nsf/(SearchForWeb)/3579266D21FFDD4FC225834B00336AC9?OpenDocument) [access: 01.10.2019].

¹² *The All-Ukrainian March for Animals – 2019*, <https://www.facebook.com/events/киев-парк-шевченко/всеукраїнський-марш-за-тварин-2019/760066621054797/> [access: 01.10.2019].

¹³ *The Red List Birds Have Been Saved: Wild Birds that Had Been Used for Business Activities for Years in Yaremche Have Been Freed*, <https://mi100.info/2019/03/01/chervonoknyzhnyh-ptahiv-vryatuvaly-v-yaremche-zvilnyly-dykyh-ptahiv-yakyh-rokamy-vykorystovuvaly-dlya-biznesu/> [access: 01.10.2019].

Another problem of current importance is the operation of dolphinariums. Currently, there are about 15 dolphinariums in Ukraine. Each of them keeps from three to six common bottlenose dolphins. For instance, the Kharkiv Dolphinarium “Nemo” has four dolphins, the Berdiansk Dolphinarium – 33, the Truskavets Dolphinarium “Oscar” – 64. Unofficial sources say that no less than 40 to 60 common bottlenose dolphins are held in captivity in Ukraine. Due to the fact that an official record is not kept, exact figures are unknown; the same goes for the replacement of dolphins.¹⁴ As mentioned above, the Rules and Regulations on Keeping Dolphins in Captive Settings are currently in effect in Ukraine. They contain detailed requirements for swimming pools and enclosures, requirements for water quality, standards for feeding and transporting mammals. For instance, according to the Rules and Regulations, a swimming pool for a dolphin is required to have the following measurements: the minimum depth of swimming pools as well as the average depths of enclosures in a natural sea area with a natural incline of the seabed – 3.5 m; the minimum surface area for a shoal of one to five dolphins – 275 m²; the minimum extra surface area for every new dolphin – 75 m²; the minimum length of a swimming pool (enclosure) – 7.3 m; the minimum total water volume for a shoal of one to five dolphins – 1,000 m³. By law, dolphinariums are obliged to use natural seawater. In the meantime, such ideally formulated precepts remain only on paper due to a lack of proper government control. In such cases, public environmental organizations are at the forefront again. At the end of 2018, the ruling of the Supreme Court of Ukraine on the case of “the protection of dolphins” received much publicity. More specifically, it concerned the dissolution of the dolphinariums that violated the conditions of keeping dolphins. The case is unusual because the lawsuit was filed by a public environmental charity organization, whose right to file this type of lawsuit was confirmed by the Supreme Court of Ukraine. Furthermore, the Court recognized that the state authorities provide insufficient protection for animals used for entertainment purposes.¹⁵

Conclusions

I would like to conclude by saying the following:

1. Ukrainian legislation on the humane treatment of animals and their protection was developed in the last decade and is being amended to implement the requirements of the corresponding international and European law.

¹⁴ *The Number of Dolphins Kept in Captivity in Ukraine*, <http://epl.org.ua/announces/skilky-delfiniv-utrymuyut-v-nevoli-v-ukrayini/> [access: 01.10.2019].

¹⁵ *The Ruling of the Supreme Court of 11 December 2010, Case 910/8122/17*, <https://verdictum.ligazakon.net/document/78977479> [access: 01.10.2019].

2. The laws and regulations governing the conditions of using animals for entertainment purposes are represented by the provisions of the Law of Ukraine on the Protection of Animals from Brutal Treatment and several subordinate regulations. Nevertheless, a number of important legal requirements related, for instance, to a permit-issuing procedure for these activities are currently cancelled or are not specified enough.

3. Resolutions of local governments and court rulings are of considerable importance in introducing a statutory ban on the use of animals for entertainment.

4. An important role in increasing the level of animal protection is played by animal rights organizations that raise the problem of the improper treatment of animals by owners in mobile menageries, dolphinariums, for other commercial purposes; do extensive awareness-raising work; contribute to the development of public world view and conscience; exert pressure on the state and local governments.

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Abstract: The present study is aimed at analysing the legal mechanism for the regulation of the use of animals for entertainment purposes under Ukrainian legislation. The analysis encompasses the legislation on the protection of animals from cruelty and ensuring their humane treatment. The specific features of the development and amendment of the legal provisions on the prevention of animal abuse in Ukraine are studied. The main requirements of the Law of Ukraine on the Protection of Animals from Brutal Treatment related to the use of animals for entertainment and their specification in subordinate legislation (the Regulations on the Use of Animals for Entertainment Purposes; the Rules and Regulations on Keeping Dolphins in Captive Settings) are interpreted. The conclusion is made with regard to the development of the corresponding system of legal regulation in Ukraine in the last decade and the introduction of international and European requirements. The study provides examples of the violation of the legislation on the operation of mobile circuses or dolphinariums. The positive experience of adopting bans and regulating animal keeping and management during entertainment events in cities by local governments and courts is analyzed. The importance of public influence and attention to this issue in the context of specific examples of public involvement and the participation of public environmental organizations in animal protection activities (including in courts of law) is emphasized.

Keywords: protection of animals; cruel treatment of animals; the Law of Ukraine on the Protection of Animals from Brutal Treatment; use of animals for entertainment purposes