

Comprehensive Analysis of Innovations in the Criminal Legislation of Ukraine on the Protection of Animals from Cruel Treatment

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ABSTRACT

The paper reveals the content of the main changes in the Ukrainian legislation on the protection of animals from cruel treatment. With the development of society and changes in international regulation, attitudes toward animal cruelty have transformed. This study first of all takes into account the latest amendments to the Criminal Code of Ukraine, adopted in 2021. The provisions of international, criminal and basic legislation on animal protection are analyzed. Both modern problems and social preconditions of committing such actions by criminals are investigated. In comparison with foreign practice of animal protection the conclusion on a modern condition of studying of a question is swarmed and offers concerning improvements.

Keywords: *criminal offenses, criminal offenses against morality, cruelty to animals, animal protection.*

1. INTRODUCTION

The problem of implementing the security function criminal law is essentially based on a scientific solution criminalization and decriminalization using scientific tools as criminal law and criminology. As part of the study the question of scientific interest is the study of the criteria of criminalization and decriminalization, which are distinguished by both domestic and foreign scientists and taking into account the best experience in the formation of criminal law policy. Solving the question of the theoretical foundations of the security function criminal law will develop a kind of coordinate system, in within which both criminal law policy and practical activities of law enforcement agencies.

After all, not in Ukraine yet an effective mechanism has been developed that allows to unambiguously determine whether this or that illegal act reaches the limits of criminal liability, or application of the possibilities of criminal law to counteract those or other encroachment is optimal to minimize the harmful effects of a particular categories of offenses. Development of practical scientific recommendations in will have both important theoretical significance and help in this area practical increase of the level of legal technique of the Criminal Code.

O.O. Zhytny (2014) emphasizes that the criminal law of the state, given its history conditioned functions to provide protection and regulation of the most important public relations in the state, should not and cannot be left out processes of globalization, and should be used within its capabilities in a set of measures to control them and minimize their negative effects [1, 2].

Despite the fact that the problem of animal cruelty is not new, it unfortunately does not lose relevance. As in the legislation animals first of all have the status of a thing, it is necessary to emphasize especially that is object of criminal legal protection in this case.

The legislator classifies this crime as crimes against morality. This group of norms of criminal law of Ukraine also includes, for example, norms on protection of freedom of religion. Great importance here is the understanding of the logic of the legislator. As Lykhova (2021) points out, in crimes against religion the "feelings" of the person and the psychological component connected with it have great value [3]. In this case, in the study of the punishment of cruelty to animals, also in the first place are not protected animals, and human feelings. Along with this, cruelty to animals is a good example for the study of the protective function of criminal law.

This is facilitated by the supranational nature of the encroachment itself. It is this internationality and supranationalism that to some extent has in common with corruption offenses. As Akimova (2020) points out that the risk of corruption crimes is interstate in nature, the nature of encroachments is similar for many countries [4-6]. Animal cruelty also has a lot in common in different countries. Factors of national specificity are mostly not significant enough and are often religious in nature.

Given the above, and given the recent changes in the legislation of Ukraine, which have affected both the responsibility for ill-treatment of losses as a criminal offense and the basic legislation, the study of this issue in the Ukrainian context has become very relevant.

The purpose of this work can be considered a comprehensive legal analysis of innovations in the criminal legislation of Ukraine on combating cruelty to animals, the preconditions for their adoption and prospects for use.

2. RESEARCH METHODOLOGY

As Lykhova (2019) points out that the leading theory of methodology in Ukrainian jurisprudence is normativism. Ukraine, as a post-socialist country, largely uses a Marxist approach to scientific methods [7].

In the field of social and legal sciences, this scientific trend is particularly noticeable. It is the orthodox empirical [8-10] concept that underlies such a methodological approach. At the general theoretical level in Ukraine, the methodology of law is studied mainly in the framework of the theory of state and law. That is, methods of studying legal phenomena in Ukraine are formed within the framework of a special approach. At the same time, scientists mostly do not pay special attention to the study of the phenomena of legal methodology. For most scientific articles, it is typical to simply list certain research methods without specifying their main provisions and without referring to specific authors. This article uses the traditional methodology as a basis. Among them, in particular such methods as comparative method, historical, formal-dogmatic, formal-logical.

Nolasco (2010) [11] maintains that: (1) points to the special role in scientific work of the analysis of works of scientists and court decisions which are estimated on importance and urgency, instead of statistically. That is, 5 standard decisions in the same cases of local courts are not as significant as one unique decision of the highest judicial body of the state. Therefore, inductive methods are still particularly important for legal science and underlie scientific work. However, this does not mean that the actual legal research excludes sociological research in the field of law, they successfully complement each other.

Sunstein (1993) [12] points out that in jurisprudence reasoning, in order to maintain the principled sequence of principles and not to indulge in unnecessary theorizing, but also not to carry out excessive detail, must be built on a low or medium level of abstraction.

Berring (1994) [13] singles out the understanding and imitation of the main ideas and principles that guide scholars and judges in the study of a particular case as the basis of legal research.

Fully agreeing with the stated opinion about the inductive nature of legal research should take into account the specifics of Ukrainian legal research. According to the inductive methodology, scientific knowledge begins with the observation and statement of facts. Once the facts are established, the process of their generalization begins and advancing theory. The reverse method is the method of deduction, when the hypothesis is tested by facts. This study, which is a classic theoretical legal study, will also use mainly the methods of induction and deduction, as traditional for this type of research.

However, in order to reveal the national specifics of criminal law, a tool traditional for the criminal law of Ukraine, called "composition of a criminal offense", will be additionally used. This concept includes the object of the crime (social values that are under protection, the object of encroachment and the victim), the objective side (action or inaction, consequence and connection between them, as well as the way, place, time, situation and circumstances), subject (person) who commits a crime), the subjective side (which includes guilt in the form of intent or negligence, as well as the motive of purpose and motivation).

3. LITERATURE REVIEW

Researchers from different countries pay a lot of attention to various aspects of protecting animals from cruelty.

Mogbo (2013) [14] points out when it comes to dogs and cats, people's perceptions of the term animal cruelty are similar. However, if we talk about other groups of animals (for example, agricultural), activists and farmers this issue in very different ways.

Balieva (2020) in a research of animal cruelty in Bulgaria, conducted a survey that showed that there were significant differences in the perception of animal feelings and perceptions of animal cruelty in different demographic groups [15].

Tayyab and Faraz (2020) [16] conclude that animal cruelty involves inflicting harm, injury or killing of an animal in an inhumane manner. The act of cruelty can be intentional such as deliberately kicking, burning, stabbing, beating, shooting or it can be neglect such as depriving an animal of shelter, water, food and veterinary care. There are five freedoms of animals that are essential and discrete part of animal welfare: freedom from thirst

& hunger, freedom from discomfort, freedom from pain injury, or disease, freedom from fear & distress, freedom to express normal behavior. There are several types of animal cruelty actions: animal abuse, animal neglect, animal exploitation, animal testing.

Navarro (2016) [17] states that animal cruelty often occurs when humans have used animals for the purposes of sport, profit, and entertainment, three motivations that are often inextricably linked. Offenses related to breeding, factory farming, trading in endangered species, poaching, blood sports, and cultural festivals are among the types of crimes often motivated by sport, entertainment and/or profit.

At the same time, cruelty and animal abuse are important risk factors. Such factors often precede the commission of serious and dangerous criminal offenses, for example as assault, domestic violence, and homicide. Bestiality (sexual gratification) in this context is a particularly dangerous factor. Therefore, combating animal cruelty is important for the early detection and prevention of other crimes as well [18].

McClellan (2007) indicates the connection between violent family experiences in childhood and subsequent violent actions. It is worth noting that it is often replicated in violent serial rapes, sexualized homicide, and serial homicides [19].

Glanville (2019) [20] who has studied animal cruelty in Australia, points to the general nature of the problem. Animal mistreatment is common, underreported, and mostly neglect.

Newberry, M. (2017). indicates a link between animal cruelty and impulsivity. In particular, proves that various forms of animal cruelty are associated with specific aspects of impulsivity which emphasizes the importance of studying this form of criminal behaviour as multidimensional [21].

Birău (2017) believes that cruel treatment of animals is a negative social phenomenon, which is particularly affected by low living standards. Economic imbalances, poverty and poor quality laws exacerbate animal cruelty. At the same time, awareness of the dangers posed by animal cruelty improves the level of general civilization of the country [22].

4. RESULTS

Association Agreement between Ukraine and the European Union contains two EU directives in the field of protection nature that Ukraine must implement: Directive 92/43/EU of 21 May 1992 On the conservation of natural habitats and of wild fauna and flora [23] (hereinafter called Directive 92/43) and Directive 2009/147/EU of the European Parliament and of the Council of 30 November 2009 On the conservation of wild birds [24] (hereinafter called Directive 2009/147). In fulfilment of the undertaken obligations, the Law of

Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning the Implementation of Provisions of Certain International Agreements and Directives of the European Union in the Field of Protection of Fauna and Flora" was adopted [25] (hereinafter called – the new law). This new law comes into force on November 8, 2021 and will be applied at the time of publication.

Directive 2009/147 in Art. 8 provides that Member States shall prohibit the use of all means, methods or techniques used for large-scale or indiscriminate capture or killing of birds or those which may cause local extinction of species, in particular the use of the methods listed in point (a) of Annex IV (Traps, bird glue, hooks, live birds - blind or crippled, which are used as bait, tape recorders, electroshock devices, artificial light, mirrors, target lighting devices, night hunting sights, equipped electronic image magnifier or image converter, explosives, nets, traps, baits with poison or painkiller, semi-automatic or automatic weapons with a magazine designed for more than two rounds) [24].

Directive 92/43 in Art. 12 provides that Member States shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV (a) in their natural range, prohibiting: (a) all forms of deliberate capture or killing of specimens of these species in the wild;(b) deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration;(c) deliberate destruction or taking of eggs from the wild;(d) deterioration or destruction of breeding sites or resting places [23].

According to the new version of the article, cruel treatment of animals belonging to vertebrates, including homeless animals, violation of the rules of transportation of animals, if such actions have led to bodily injury, mutilation or death of the animal, inciting animals against each other, committed with hooligan or selfish motives, as well as propaganda, public calls for actions that show signs of cruelty to animals, dissemination of materials calling for such actions shall be punished. The main difference from the previous version is 1) the addition of a new way of committing a crime - violation of the rules of transportation of animals, if such actions have resulted in bodily injury, mutilation or death of the animal, 2) addition of propaganda of animal cruelty as a new way of committing a crime, 3) exclusion of an indication of the intentional nature of animal cruelty. A qualified type of crime, which previously is the commission of a crime in the presence of a minor or juvenile. As a particularly qualified type of crime, a new method has been added - violence against an animal aimed at satisfying sexual desire. Part 4 has also been added, which specifically punishes the cruel treatment of animals for the purpose of creating images, works, film, video, audio products, or the sale or distribution of images, works, film, video, audio products that promote animal cruelty.

From a theoretical point of view, regarding the object of this offense, it is worth agreeing with Mogbo (2013) [14] that it is the idea of people about certain standards of behaviour of people with animals. These standards differ at different stages of development of society, in different groups of people and for different animals. Thus, in the basic structure of a criminal offense the victim is absent. Instead, an animal that is subjected to cruel treatment is the subject matter of a criminal offense. That is, cruel treatment of animals is incompatible with the requirements of morality and humanity, causes moral harm to humans.

As for the understanding of the objective side of the criminal offense, in this case it can be committed both by action and inaction. In the main part of the criminal offense there is no direct indication of the harm caused to the animal at the article. However, in reality the situation in this case is not so clear-cut. After all, the new window makes changes to Art. 89 of the Code of Administrative Offenses [25], which establishes liability for cruelty to animals - abuse of animals, including homeless, which caused their suffering, physical pain, suffering, but did not cause injury, mutilation or death, leaving animals at random, as well as other violations of the rules of keeping, handling and transportation of animals provided by law. Therefore, by way of exception, it can be stated that the result of a criminal offense must be the infliction of bodily harm, injury or death to the animals. At the same time, the death of an animal in itself (for example, slaughtering a pig for meat, if the relevant requirements are met) is not cruel treatment.

It will be mandatory to establish a link between the actions of the perpetrator and the consequences. That is, the crime is material, not formal, although in this case it is not obvious.

The methods of committing this criminal offense as the main component are: 1) cruel treatment of animals belonging to vertebrates 2) violation of the rules of transportation of animals, if such actions have led to bodily injury, mutilation or death of the animal, 3) for hooligan or selfish motives, 4) propaganda, public appeals to commit acts that have signs of animal cruelty, 5) dissemination of materials with appeals to commit such acts.

The methods of committing qualified and especially qualified corpus delicti are additionally: 1) committing acts with special cruelty, 2) actively, 3) violent actions against an animal aimed at satisfying sexual passion, 4) creating images, works, movies, videos, audio products, or the sale or distribution of images, works, film, video, audio products that promote animal cruelty.

The most common way to commit a crime can be considered in this case the actual action, which is the content of this criminal offense - not detailed cruel treatment of animals belonging to vertebrates, including

stray animals. In many respects, this method of committing a criminal offense is of a blanket nature: in particular, there is a reference to the Law of Ukraine "On Protection of Animals from Cruelty" [26].

Articles 7 and 9 of this law formulate a provision on the proper keeping of animals, which excludes cruelty. That is, detention without complying with these requirements, on the contrary, will be cruelty. The conditions of keeping animals must correspond to their biological, species and individual characteristics. Animal housing conditions must meet their natural needs for food, water, sleep, movement, contact with their peers, natural activity and other needs. That is, at this time it is necessary to understand that each species of animal has its own, scientifically sound housing conditions, which the owner must know and follow. And what is the norm for one species of animal will be cruel to another. From the authors' own experience, we can give a simple example of the difference in the content of different species of rodents. For example, keeping a detouring rat alone is cruel because it is a stable animal. At the same time, hamsters are strictly lonely, and keeping several of them in one cage is cruel treatment because it provokes fights to the death between them. That is, these Directives do not contain clear international obligations as to which specific actions should be further criminalized.

Tayyab and Faraz (2020) [16] divided several types of animal cruelty actions: animal abuse, animal neglect, animal exploitation, animal testing. Navarro (2016) [17] states that offenses related to breeding, factory farming, trading in endangered species, poaching, blood sports, and cultural festivals are among the types of crimes often motivated by sport, entertainment and/or profit. At the same time scientists state that sexual gratification: bestiality is a special method of animal cruelty.

According to Art. 22 of the Criminal Code of Ukraine, the subject of this crime can be any physical person from 14 years [27].

Scientists generally believe that animal cruelty can only be committed with a deliberate form of guilt. However, in reality this issue is debatable, because the actual cruel treatment of animals by improper keeping them is also possible with carelessness, due to ignorance of the conditions of keeping animals and their own carelessness.

The motivation of this crime is mostly of no qualifying importance. However, among the motives of distinguish both certain deviations of personality and low moral qualities (Newberry, M. (2017). [21]), and purely material motives (Navarro (2016) [17]).

5. CONCLUSIONS

Cruel treatment of creatures is an interstate character. This crime meets the criteria of criminalization and requires legal counteraction. Amendments to this article

are in line with Ukraine's international obligations. Cruel treatment of animals is incompatible with the requirements of morality and humanity, causes moral harm to humans. New redaction of Art. 299 of the Criminal code of Ukraine provides a number of changes. The main difference from the previous version is 1) the addition of a new way of committing a crime - violation of the rules of transportation of animals, if such actions have resulted in bodily injury, mutilation or death of the animal, 2) addition of propaganda of animal cruelty as a new way of committing a crime, 3) exclusion of an indication of the intentional nature of animal cruelty. A qualified type of crime, which previously is the commission of a crime in the presence of a minor or juvenile.

As a particularly qualified type of crime, a new method has been added - violence against an animal aimed at satisfying sexual desire. Part 4 has also been added, which specifically punishes the cruel treatment of animals for the purpose of creating images, works, film, video, audio products, or the sale or distribution of images, works, film, video, audio products that promote animal cruelty. As for the understanding of the objective side of the criminal offense, in this case it can be committed both by action and inaction. The result of a criminal offense must be the infliction of bodily harm,

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