

The conducted review of international legal documents concerning the above-mentioned issue showed that in the circumstances when modern non-international armed conflicts appear, international legal regulation connected with the necessity to protect both the victims of armed conflicts and natural environment, is not sufficient. Undoubtedly, international legal regulation concerning the protection of the victims of armed conflicts is closely connected with the principles and norms of international criminal law, in particular, with the principle of inevitability of punishment for the crimes committed. At the same time, the cooperation of the states in retrieval and punishment of the persons accused of military crimes remains one of the topical problems.

Understandably, international legal norms on natural environment protection during armed conflicts, taking into account what an armed conflict is, are aimed not at preventing harming natural environment in general, but at minimizing this harm. Nevertheless, international community should further elaborate new and more severe rules and principles to prevent doing severe harm to the natural environment, life and health of the citizens as a result of harming natural environment during armed conflicts, in particular, non-international armed conflicts.

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REGULATORY SUPPORT OF PROTECTION OF ANIMALS AGAINST CRUELTY: CASE RECORD

Problem definition and its relation to critical scientific and practical tasks. Modern development of the Ukrainian society is characterized as the time of task-oriented legal state development, implementation of challenging social and economic reforms which can not be imagined without strengthening of the legal order and protection of the proper morality level. Moral treatment of animals is a critical issue touching

upon interests and feelings of a great number of citizens, and reflecting upon ethic and social public life. Cruelty and abuse of living beings contributes to formation of indifference towards any suffering, creates aggression and violence towards the general public.

Foreign experience provides strong evidence of the fact that regulatory and public countering of improper treatment of animals is the important branch of general public preventive measures of criminality. Nowadays non-governmental animal advocating organizations who more than once managed to prevent improper treatment of animals and attained holding the guilty persons liable, become ever popular in Ukraine too. However, local legislative establishments in the branch are limited to a declarative Law of Ukraine "On Animal Abuse" and rather lenient — if compared to the European standards — criminal law sanction for cruelty towards animals. According to official statistics, the latter is rarely applied, as common law enforcement officers are still convinced that the ideas of the animal rights advocates are nothing else than a modern trend, which is deprived of deep historical background and real social danger.

Analysis of latest studies and publications. With the adoption of the new Criminal Code of Ukraine national scientists more and more often focus on the issue of the concept and improvement of the criminal protection of environment and animals in particular. Thus, certain aspects of the issue in question have been studied in the works by I.M. Dan'shyn, S.F. Denysova, L.S. Kuchanska, A.V. Landina, S.Y. Lykhova, V.K. Matviychuk, V.O. Navrotskiy, S.S. Yatsenko and others. On the level of PhD works the problem of animal abuse has been considered by I.S. Holovko, and Russian scholars I.I. Lobov, O.V. Saratova, V.S. Miroshnichenko and V.M. Kitayeva. Nevertheless, it is still far from being exhausted. Under the conditions of the public policy activation in the field of implementation of international law treaties on prevention of cruelty towards animals, further development of the criminal law and regulatory norms aimed both at strengthening of sanctions for animal abuse and at the elimination of impunity for cruel treatment of living beings is ever urgent.

This article focuses on the evolution of regulatory protection of animals against the improper treatment since ancient times until today in the foreign countries.

Summary of the key material of the research: the study of criminality in general and its separate instances in particular often starts with a historical insight into appearance and evolution of any regulatory prohibition. Famous Russian criminalist M.S. Tagantsev states that if one wishes to study any existing legal institute, in order to interpret it correctly, one should trace its historic development, that is the reasons due to which the prohibition appeared and modifications it underwent in the course of evolution¹⁰⁸. Furthermore, he noted that it is the criminal law which changes most often comparing to other legal branches, for all public cataclysms get reflected in the concepts of the crime and punishment¹⁰⁹.

Regulatory protection of fauna is an exceptionally changeable and complex phenomenon, which is dependent on social and economic pattern changes and scientific and technological advance comprising the entire history of mankind. Religious regulations of the Ancient India steeped in allusions of inextricable connection of the men and wild life, in particular Jaina canons, and one of the oldest legal records — Dharma Shastra of Manu — contained the canonical norms of vegetarianism and nonviolence, and openly declared that "the one who allows killing animals, meat seller or meat buyer, the one who cooks meals from meat, serves it and eats it — all of them are murderers"¹¹⁰. Such an approach has been further developed by the Buddhist apologists to be regulatory formalized in the edicts of emperor Ashoka which prohibited eating of meat, killing of any living beings and blood sacrifices, and foresaw opening of road hospitals for the animals to be treated and fed¹¹¹. It should be mentioned that even nowadays the Buddhists' tolerance and charity attracts many followers concerned about prevention of cruel treatment of animals throughout the world.

¹⁰⁸ Таганцев Н. С. Курс русского уголовного права. Часть Общая. — СПб.: Тип. М. М. Стасюлевича, 1874. — Кн. 1. — С. 2.

¹⁰⁹ Таганцев Н. С. Русское уголовное право. Лекции. Часть общая: в 2 т. Т. 1. М.: Наука, 1994. — С. 105.

¹¹⁰ Законы Ману. Перевод С. Д. Эльмановича, проверенный и исправленный Г. Ф. Ильиным. — М.: Наука, 1992. С. 104–106.

¹¹¹ For more details, see: Ryder, Richard D. *Animal Revolution: Changing Attitudes Towards Speciesism* / Basil Blackwell Ltd. — Oxford, 2000. — 284 p.

One of the most important sources of the contemporary regulatory standards of humaneness undoubtedly is understanding of the Ancient Greek and Roman philosophers of nature, humans, society and the laws of being. It is Ancient Greece that gave birth to the first historic form of philosophy itself — physiophilosophy which is the science explaining regularities of nature in broader terms. Mythological and theogonical interpretation of the world together with the rules of careful attitude towards the environment was the ground for the thoughts of those days. For instance, commandments of Triptolemos, the hero of Eleusinian and Attic myths, declared three rules of decent life: respecting parents, appeasing gods with gifts and conservation of animals¹¹². The epoch of ancient Greeks also did not differentiate between the souls of animals and humans: thus, in Homer's *Odyssey* we read that the spirit has departed the slaughtered swine¹¹³. Pythagoras, the Classical thinker, believed in common origin of immortal spirits of animals and people from the anima that impenetrates the Universe, while his disciples embraced the principles of humanness and asceticism, justice and moderation, and considered good attitude towards animals to be the basis for moral behaviour of a human, and vegetarianism — the prerequisite of life. According to his contemporaries, Pythagoras sometimes bought the living fish and birds at the market to release them¹¹⁴.

As opposed to these suppositions, the anthropocentric Aristotle deprived animals of the minds and the right for moral defense, saying that "plants were created for animals, and animals — for people"¹¹⁵. Such an approach together with the greater part of Aristotle's philosophic heritage was eventually accepted by the European Mediaeval dogmatizers. Despite individual cases of limitation of falconry, bear-baiting and cockfighting, there was no comprehensive

¹¹² Clark, G. *Porphyry: On Abstinence from Killing Animals* / Duckworth. — London, 2000. — 220 p.

¹¹³ Циглер, Г. Э. Душевный мир животных / Г. Э. Циглер; пер. с нем. А. Г. Коноуса; под ред. и с вступ. ст. Н. Н. Ладыгиной-Котс. — М.: Земля и фабрика, 1925. — 144 с.

¹¹⁴ Taylor, Angus. *Animals and Ethics*. — Peterborough: Broadview Press, 2003. — P. 34.

¹¹⁵ Francione, Gary. *Animals, Property, and the Law* / Temple University Press, 1995. — P. 37.

legislative protection of animals against abuse, as only killing of someone else's animal as the object of private ownership right or as the result of trespassing of the hunting lands was liable to prosecution according to the European Medieval norms¹¹⁶. A spectacular example of the scholastic Medieval view were the trials of animals usually resulting in the death sentence for the "guilty" creature for spoiling of crops, infliction of injuries to other person, and most often — being suspected of the devilry communications. As Y. Kantorovich notes, animals were frequently disabled before the execution — the legs, ears and other body parts were cut off¹¹⁷.

In the XVI-th century protestant Reformation became the catalyst for numerous changes in social life, including the sphere of regulatory protection of animals. The first regional legislative mandate of proper animal treatment not as the objects of foreign property right, but as the living creatures was the Act of Irish Parliament on the prohibition of plowing with the help of a plough attached to the tail of a horse and careless sheep shearing in 1635¹¹⁸. The mentioned doings were punished with a certain fine or with the term of imprisonment stipulated by the local legislative authorities. Over time puritanical communities of Britain and first North-American colonies also approved a series of similar acts aimed at protection of cattle from baiting and some kinds of entertainment (particularly, cockfighting and bull-baiting). On the world outlook level the foundation of these norms was then in the puritanical interpretation of the Bible according to which animals were given to men to be accountably owned as opposed to the Catholic one where animals appeared to be absolutely owned¹¹⁹.

¹¹⁶ Medieval Prohibitions Against Cruelty to Animals [Электронный ресурс]. — Режим доступа: www.animalrightshistory.org/animal-rights-medieval-law.htm. — Заголовок з экрана.

¹¹⁷ Канторович Я.А. Процессы против животных в средние века / Я.А. Канторович. — СПб.: Юрид. 6-ка, 1897. — С. 3–4.

¹¹⁸ Ryder, Richard D. Animal Revolution: Changing Attitudes Towards Speciesism / Basil Blackwell Ltd. — Oxford, 2000. — P. 49.

¹¹⁹ Preece R., Fraser D. The Status of Animals in Biblical and Christian thought: A Study in Colliding Values [Электронный ресурс] / R. Preece, D. Fraser // Society and Animals. — 2000. — № 8. — Режим доступа: http://www.animalsplatform.org/assets/library/419_s832.pdf. — Заголовок з экрана.

Unfortunately, the mandates of these norms remained on paper only, as the representatives of judicial power usually rejected the complainants guided by the deep-seated belief in the absolute belonging of the cattle to property, and thus referring to animal abuse as crimes against property. Not least of all this negative practice resulted from the widespread stand of mechanicalism developed by R. Descartes: he claimed that animals are just simple mechanisms unable to feel and consequently ideal instruments for most cruel scientific experiments¹²⁰. Luckily this concept was denied both by his contemporaries and representatives of the new epoch — the Enlightenment.

In the end of the XVIII — the beginning of XIX-th centuries there existed many various views on the definition of the nature of animals and frame of human rights and obligations towards other living beings. Scientists' stands varied starting from challenging acknowledgement of the animals as subjects of the intrinsic right up to the destructive criticism of the animal rights defenders¹²¹. Moderate process of legislative formalization of limitations of the sadist attitude gained momentum in Great Britain. It was there where the attitudes to understanding of *jus animalium* were developed¹²². Thus, in 1822 after a number of failures the English Parliament at last voted the first all countrywide regulatory legal act directed at prevention of cruelty to animals with expanded list of animals. This was the Act to Prevent the Cruel and Improper Treatment of Cattle according to which "if any person or persons shall wantonly and cruelly beat, abuse, or ill-treat any Horse, Mare, Gelding, Mule, Ass, Ox, Cow, Heifer, Steer, Sheep, or other Cattle... shall forfeit and pay any Sum not exceeding Five Pounds, not less than Ten Shillings...and if the person or persons so convicted shall refuse or not be able forthwith to pay the Sum forfeited, every such Offender shall...be committed to the House of Correction or some other Prison...for any Time not exceeding Three Months"¹²³.

¹²⁰ Animal Consciousness. Historical background [Электронный ресурс] // Stanford Encyclopedia of Philosophy. — 2012. — Режим доступа: <http://plato.stanford.edu/entries/consciousness-animal/#hist>. — Заголовок з экрана.

¹²¹ Див.: Рассел Б. История западной философии. В 3 кн.: 3-е изд., испр. / Подгот. текста В.В. Целищева. — Новосибирск: Изд-во Новосиб. ун-та, 2001. — С. 173

¹²² Note. Lat. — animal rights.

¹²³ Act to Prevent the Cruel and Improper Treatment of Cattle 22d July 1822 [Электронный ресурс] // *Statutes of the United Kingdom of Great Britain and Ireland*,

The same year first judicial trial of the persons who abused the animals was held to end up with the judgment of conviction and amercement of the guilty¹²⁴.

British legislation in the sphere changed many times in due course, and by the beginning of the XX-th century there appeared a whole series of acts directed at prohibition of cruelty to all kinds of animals in broader sense (not only the cattle); there was also the special act on protection of the captive wild animals against abuse. Since then those civic activists of the Western European countries and USA concerned about cessation of the tortures and abuse of the living beings launched powerful campaign to support the humane treatment of animals, creation and further implementation of existing regulatory prohibitions.

In the late XIX-th century S. Fisher, a doctor from Petersburg, noted that the legislation of that period foreseeing liability for animal abuse differed in various countries in the set of attributes required for finding the delict to be the punishable offence of the animal¹²⁵. In particular, these attributes included: the "publicity" of abuse, "arousing of moralist reproaches of witnesses", "cruelty", "malicious intent", and "needlessness of the tortures". Thus, e.g. most often cruel treatment of animals witnessed by other people was considered "public". In case of "arousing of moralistic reproaches of witnesses" the sharp contrast of the crime to moral public spirit was concerned. "Malicious" torture was called the one caused just for the sake of torture to satisfy the torturer with the victim's pain. "Rude and cruel" treatment was considered the one when the guilty was aware that he was causing sufferings to the animal, but did not take it into account¹²⁶. According to the aforementioned criterion, the author divided the countries that established liability for animal abuse into six groups.

George IV. — 1822. — Режим доступа: <http://books.google.com.ua/books?id=6L5uAAAIAAJ&printsec=frontcover&hl=uk>. — Заголовок з екрана.

¹²⁴ Guerrini A. *Experimenting with Humans and Animals: From Galen to Animal Rights* // Anita Guerrini. — Baltimore, Maryland: John Hopkins University Press, 2003. — P. 58.

¹²⁵ Фишер С. *Человек и животные. Этико-юридический очерк.* — СПб, 1899. — С. 16.

¹²⁶ Див.: Фишер С. Указ. праця. — С. 16.

Austria and Germany made up the first group; their legislation demanded prosecution for public torturing of animals and violation of moralistic feelings. According to German legislation of those times, the fine of 150 DM or imprisonment was imposed on the person maliciously torturing the animals either in public or in a way that causes moralistic resentment, or rudely and cruelly treats them¹²⁷.

The second group included France and the Swiss canton of Ticino the laws of which stipulated criminal responsibility for public cruel treatment of domestic animals¹²⁸. It shall be noted that the French law of 1850 also stipulated 1 to 5 days imprisonment as punishment in case of repetition of the crime¹²⁹.

To the third group belonged the cantons of Fribourg, Neuchatel and Valais regulatory basis of which demanded the publicity of delict only and did not differentiate between the domestic and wild animals¹³⁰.

The legislation of the fourth group (Swiss cantons of Berne, Garus, Graubunden, Zurich and Zug) stipulated violation of the moralistic feeling as the prerequisite of prosecution¹³¹.

Into the fifth group of states S. Fisher included Norway, Sweden, Denmark, Finland and the Netherlands in the laws of which the word "torture" is accompanied with such adjectives as "cruel", "rude" and "malicious"¹³².

The researcher is of the opinion that the best legislation in the branch of protection of animals against tortures is that of Great Britain, Belgium, Italy, the USA, Canada, Australia and some Swiss cantons where responsibility occurred for pointless torturing of animals without any additional attributes¹³³.

With time protection of animals in the world underwent frequent improvements and alterations towards further humanness of the

¹²⁷ Фишер С. *Человек и животные. Этико-юридический очерк.* — СПб, 1899. — С. 17.

¹²⁸ Див.: Фишер С. Указ. праця. — С. 17.

¹²⁹ Krstić N. *Animal Protection from Killing and Abuse in the European and Serbian Criminal Law / Novak Krstić // Facta Universitatis. — Law and Politics, 2012. — Vol. 10. — № 1. — P. 48.*

¹³⁰ Див.: Фишер С. Указ. праця. — С. 17.

¹³¹ Див.: Фишер С. Указ. праця. — С. 18.

¹³² Див.: Фишер С. Указ. праця. — С. 19.

¹³³ Див.: Фишер С. Указ. праця. — С. 19.

management of domestic animals and cattle, regulation of biotom, prohibition of dog and cockfighting, of cruel methods of circus education, etc. Nowadays Western European countries demand that their residents carefully observe such regional acts as European Convention for the Protection of Pet Animals, European Convention for the Protection of Experiment Animals and European Convention for the Protection of Animals during International Transport etc. However, in our opinion, particular attention should be paid to regulatory support of protection of animals against cruel treatment in the countries of the Central and Eastern Europe (Albania, Bulgaria, Bosnia and Herzegovina, Macedonia, Poland, Romania, Serbia, Slovakia, Slovenia, Hungary, Croatia, and Czech). Close historical, social and cultural connections as well as adaptation of the post-socialist legislation to the EU standards within short period of time is a substantial reason for the native legislator to focus on the achievements and errors of the neighbouring countries.

Thus, as compared to the national similar act, the Law on Protection of Animals against Abuse in Czech Republic regulates every detail of management of various animal groups differentiated not only by the type of their use by men (cattle, wild, domestic, experimental, etc.), but also by their peculiarities — disables animals, handicapped animals, pets looked after permanently by human and those not permanently looked after, etc.¹³⁴. The conditions of making sacrifice possible or those when it turns into crime (including while hunting) are by no means less detailed. The developed shelter network gave the country the opportunity not to use the Trap-Test-Vaccinate-Alter-Release (TTVAR) method. Polish animal protection act is severe and is directed not only onto protection of animals against abuse and provision of proper conditions of their management, but onto promotion of responsible attitude of human towards animals and prevention excess quantity of pets and consequently their turning into ownerless as well¹³⁵. Since 1997 in Poland it has been prohibited to

¹³⁴ Метельова Т.О. Практика та результати зоозахисного руху в країнах ЦСЄ / Т.О. Метельова // Віче. — 2013. — № 20. — С. 17–25.

¹³⁵ Ustawa o ochronie zwierząt — Internetowy System Aktów Prawnych [Електронний ресурс]. — Режим доступу: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19971110724>. — Заголовок з екрана.

breed animals for sale and distribute them at markets, fairs, by means of trade enterprises and facilities, etc. Municipal authorities shall provide the ownerless animals with shelters, care about the free-living cats including feeding them, as well as ensure alerting of animals at the shelters and searching for the owners for them.

It shall be noted too that international law is rather fragmentary in the field of regulation of human-animals' relationships as of today. Unfortunately, there is no unified law of international standard that would comprise basic principles of animal treatment obligatory for Russia and China in particular, the legislation of which is considered to be far from perfect in terms of protection of animals against abuse¹³⁶.

Conclusions. The history of regulatory support of animal protection against abuse roots in the remote past and needs to be studied and developed. The perspectives of further studies in the field are the issues of evolution of the Ukrainian legislation regarding protection of animals against improper treatment and implementation by the national legal and law enforcement agencies of the European Conventions ratified by Ukraine.

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PROBLEMS OF LEGAL REGULATION OF RELATIONS ARISING IN THE SPHERE OF HOMELESS ANIMALS

The theme of homeless animals is not new, but today there are many still open problematic issues in this area. They include inhumane treatment of animals, lack of shelter, lack of appropriate financing, and others, one of the causes of which is the absence of adequate legal regulation of investigated relationships. For example, today there are many gaps in the legal regulation of the identification and registration, euthanasia of animals, control and financing measures in the sphere of stray animals.

¹³⁶ Лобов И.И. Уголовная ответственность за жестокое обращение с животными: автореф. дис. ... канд. юрид. наук: 12.00.08 / И.И. Лобов; М.: [б. в.], 2000. — С. 3.