

**ANIMAL LAW IN KAZAKHSTAN,  
RUSSIA, AND WORLDWIDE:  
COLLECTION OF ESSAYS**

**Editors: Maria Baideldinova,  
Federico Dalpane, Daria Chernyaeva**

**ALMATY  
2021**

**UDC 349**  
**LBC 67.0**  
**B 15**

**Editors: Maria Baideldinova,  
Federico Dalpane, Daria Chernyaeva**

**B16 Animal Law in Kazakhstan, Russia, and Worldwide:  
Collection of Essays.** Almaty: LEM, 2021. – 224 b.

Cover art and illustrations by Yelena Glazova

**ISBN 978-601-239-634-8**

© Baideldinova M., Dalpane F,  
Chernyaeva D., 2021

## PROFESSIONAL BIOGRAPHIES OF THE EDITORS

**Maria Baideldinova** holds an LL.M from Christian-Albrechts University of Kiel (Germany) and a PhD from Scuola Superiore Sant’Anna (Italy). She is a professor of private law at KIMEP University (Kazakhstan) and the author of the first Animal Law course in the ex-Soviet space. As member of the Chamber of legal consultants KazBar and a pro-bono legal consultant of Kazakhstan’s animal protection NGO “KARE-Zabota”, Maria promotes the reform of animal-related legislation in Kazakhstan.

**Federico Dalpane** studied political and legal philosophy at the Universities of Bologna, Frankfurt am Main, and Berlin (Humboldt). He earned a doctorate in History of political thought at Scuola Superiore Sant’Anna (Italy), and teaches at KIMEP University (Kazakhstan). He is member of the International Center for Animal Law and Policy of the Autonomous University of Barcelona.

**Daria Chernyaeva**, LL.M, PhD, is Head, Life Sciences Law Subdepartment – Law Faculty, National Research University “Higher School of Economics” (Moscow, Russia), and Academic director, Master’s program “Pharmaceutical and Biotechnol-

ogy Law” – Law Faculty, National Research University “Higher School of Economics” (Moscow, Russia). She is the architect of the animal law teaching at the Law Faculty of the NRU HSE, and the founder of the first subdepartment in this part of the world that officially mentions the teaching and research of animal law among its objectives. Her academic interests include: legal status of animals; the law and ethics of animal testing; law and ethics in animal handling and human-animal relations. She is involved with non-profits working in animals/pets protection.

# CONTENTS

## I. General Background

*Maria Baideldinova and Federico Dalpane*

Animal Welfare in the Regulations of the Eurasian  
Economic Union and in the Legislation of Kazakhstan . . . 11

*Aisulu Sailaukhanova and Joseph Luke*

Legal Personhood of Animals . . . . . 31

*Alina Davar, Joseph Luke*

Cruel Treatment of Animals in Kazakhstan:  
Theory and Practice . . . . . 61

## II. Animals in Agriculture

*Lyudmila Shegay*

The Unknown: How Are Farmed Animals Suffering  
in Factory Farms? . . . . . 111

## III. Wildlife, Hunting and Sports

*Denis Alexeyevich Erygin*

Legal Regulation of the Use of Animals in Sports  
Competitions in Russia and Foreign Countries:  
Main Trends and Problems . . . . . 143

## IV. Animals, Medicine and Science

*Maria Slobodianuk*

The Scientific and Ethical Aspects of Animal Cloning . . . 171

## V. Animals and Religion

*Ekaterina Ivanovna Sinchilo*

Comparative Analysis on the Issue of Euthanasia  
in Islam and Hinduism: Ethical and Legal Perspectives . . . 193

## PREFACE

This book is a small collection of essays on animals and the law. The essays discuss a wide range of subjects: the legal standing of animals, animal abuse, and the legal regulation of the use of animals in different areas. The authors represent different jurisdictions: Russian Federation, Republic of Kazakhstan, and USA.

This is the first English-language book on Animal law published in Kazakhstan, as Animal law is a very recent discipline in this part of the world.

Internationally, however, many authors have undertaken multiple attempts to define Animal law. Clearly, Animal law does not belong to, and does not represent a sub-branch of any of the traditional branches of law. It has a specific object of regulation, specific values, and is focused on specific aspects of human-animal interaction. It is an interdisciplinary branch of law, which “in contrast to, for instance, environmental law [...] distances itself from anthropocentrism but focuses rather on *the animal*”.<sup>1</sup>

---

<sup>1</sup> Walhberg, B. (2019, August 28). An attempt to define animal law. *Global Journal of Animal Law*, 7. <https://ojs.abo.fi/ojs/index.php/gjal/article/view/1659>.

In our view, ideally Animal law should be a synonym of “Animal protection law”.<sup>2</sup>

The Russian Federation has recently adopted an animal protection act, whereas in Kazakhstan the draft of an analogous act is still under consideration of Parliament. In both countries, the body of animal protection norms is still small. In this situation, we cannot limit the definition of Animal law to those few norms. Therefore, we state that, at least for the purposes of this book, Animal law is understood as *any* norm which directly or indirectly impacts on animal interests. In other words, in this book Animal law will be defined as a branch of law, which regards animals and human-animal interaction, with an emphasis on the protection of animals from cruelty and unnecessary pain.

This collection of essays draws attention to the most problematic issues of theory, legal regulations and practical application of

---

<sup>2</sup> See also in this regard: Brels, S. (2019, August 29). Animal law: Towards a global definition? *Global Journal of Animal Law*, 7. <https://ojs.abo.fi/ojs/index.php/gjal/article/view/1669>, or: Sochirca, N. (2019, August 29). What is animal law? *Global Journal of Animal Law*, 7. <https://ojs.abo.fi/ojs/index.php/gjal/article/view/1660>, who defines Animal law as “a system of rules aiming to protect animals by the regulation of animals’ life and of activities involving them, as well as by dealing with their interaction among themselves or with others, liable to legal enforcement and penalties”.

the existing *Animal law*. It is suitable for academics and practitioners who are interested in the matter and is recommended as additional reading in undergraduate courses of *Animal law*.



# **I. GENERAL BACKGROUND**



Maria Baideldinova and Federico Dalpane

ANIMAL WELFARE IN THE REGULATIONS  
OF THE EURASIAN ECONOMIC UNION AND  
IN THE LEGISLATION OF KAZAKHSTAN



### *Abstract*

Agricultural animals have always occupied an important place in the economy of Kazakhstan. The legislation that protects the welfare of agricultural animals, however, is very recent and subject to frequent change. Over the last few years, about 100 new acts regarding animals have been enacted. This chapter links this surge in legislative activity with Kazakhstan's participation in regional and global trade agreements. In 2010 Kazakhstan, together with Russia and Belarus, formed the Eurasian Customs Union, which now forms the main pillar of the Eurasian Economic Union (EAEU), which entered into force in 2015. Along with all other goods and services, the EAEU regulates the trade of agricultural animals and products of animal origin among the member states. These circumstances certainly impacted on Kazakhstan's legislation concerning animals. Kazakhstan's accession to the World Trade Organization (WTO) in 2015, however, is probably the main driver of legislative change in this area. Acceding to the WTO urged the adoption of a more systematic approach to agricultural animal welfare, and a rapid, sweeping update of the legislation.

**Key words:** animal welfare, five freedoms, animals in agriculture.

### **Introduction**

The Eurasian Economic Union (EAEU) is a regional trade agreement (RTA) that entered into force among Belarus, Kazakhstan, and Russia on January 1, 2015. Later in 2015, Armenia and

Kyrgyzstan joined the union. The EAEU represents the latest stage of a gradual process of economic integration among some post-soviet states, which started in the early 1990s. The EAEU, in fact, is probably the most advanced form of regional organization out of a series of entities created in the former Soviet space such as for example the Commonwealth of Independent States, the GUAM Organization for Democracy and Economic Development, and the Collective Security Treaty Organization. The former President of Kazakhstan Nursultan Nazarbayev is credited with launching the idea in a speech delivered at the Moscow State University in 1994.

The experience of the European Economic Community and of the European Union was particularly influent on the shaping of the EAEU and on the previous forms of Eurasian economic integration. In comparison with the European Union, however, the Eurasian Union remains closer to the intergovernmental mode of governance.<sup>3</sup> Indeed, the member states have repeatedly emphasized that neither the EAEU nor the customs union

---

<sup>3</sup> Blockmans, S., Hrant, K., & Vorobiov I. (2012). *Towards a Eurasian Economic Union: The challenge of integration and unity* (CEPS Special Report No. 75). Centre for European Policy Studies. [http://www.ceps.eu/system/files/CEPS\\_Special\\_Report\\_No\\_75\\_-\\_Towards\\_a\\_Eurasian\\_Economic\\_Union.pdf](http://www.ceps.eu/system/files/CEPS_Special_Report_No_75_-_Towards_a_Eurasian_Economic_Union.pdf).

among all its member states shall represent any sort of threat for the political sovereignty of each member state.<sup>4</sup> The existence of the EAEU, however, allows its member states to negotiate as a single trading bloc with the WTO and other entities. The Eurasian Economic Union represents an integrated single market of over 180 million people and a gross domestic product of over 4 trillion U.S. dollars.

This chapter highlights the EAEU's impact on Kazakhstan's legislation on animals. The EAEU's regulations on animals reflect the EAEU's declared intent to meet the standards required by the WTO.<sup>5</sup> We show how the EAEU and its standards have induced a surge in domestic legislative activity. The resulting acts represent a marked improvement over the previous legislation, but still fail to provide an explicit definition of animal welfare.

---

<sup>4</sup> Popescu, N. (2014). *Eurasian Union: The real, the imaginary and the likely* (Chaillot Paper No. 132). European Union Institute for Security Studies. [https://www.iss.europa.eu/sites/default/files/EUISSFiles/CP\\_132.pdf](https://www.iss.europa.eu/sites/default/files/EUISSFiles/CP_132.pdf).

<sup>5</sup> Lurić, A., & Kalinina, M. (2015). Protecting animals in international trade: A study of the recent successes at the WTO and in free trade agreements. *American University International Law Review*, 30(3), 431–487. <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1848&context=auilr>.

## 1. EAEU Animal Welfare Standpoints

It is understood that the EAEU's concerns with animal products are not motivated by pure empathy with animals, and that the animal welfare guarantees afforded by the EAEU regulations are only indirect and instrumental. It is widely recognized that poor animal husbandry produces animal products of lower quality and in extreme cases wholly unsuitable for human use. Therefore, we are not surprised that, in the EAEU document cited below, every reference to animal welfare or to good conditions of animal husbandry is always finalized to human health. We can define this as the traditional, "anthropocentric" approach to animal welfare.

### *1.1. Treaty on the Eurasian Economic Union*

The fundamentals of animal welfare for Kazakhstan within the EAEU are indicated in the Treaty on the Eurasian Economic Union, signed in Astana on May 29, 2014.<sup>6</sup>

For instance, article 56 (1) provides that sanitary, veterinary and phytosanitary and quarantine measures be applied on the basis of results of scientific research, and only to the extent that is neces-

---

<sup>6</sup> Treaty on the Eurasian Economic Union (English version), May 29, 2014. [https://docs.eaeunion.org/docs/en-us/0017353/itia\\_05062014\\_doc.pdf](https://docs.eaeunion.org/docs/en-us/0017353/itia_05062014_doc.pdf).

sary to protect human life and health, animals and plants. So, animal health, which is an integral part of animal welfare, is declared as one of the concerns of the organization.

Further, the document underlines that sanitary, veterinary and phytosanitary quarantine measures implemented in the framework of the Union are based on international and regional standards, guidelines, and (or) recommendations, except when, based on appropriate scientific studies, health, animal health and quarantine phytosanitary measures should be introduced, which provide a higher level of sanitary, veterinary and sanitary quarantine or phytosanitary protection than measures based on the relevant international and regional standards, guidelines, and (or) recommendations.

Art. 56 (2) also provides that, in order to ensure sanitary and epidemiological welfare of the population, as well as animal health, quarantine phytosanitary security in the framework of the Union pursue a coordinated policy in the application of sanitary, veterinary and sanitary and phytosanitary quarantine measures, while art. 56 (5) provides that a coordinated approach in the identification, registration and traceability of animals and products of animal ori-



gin be used in accordance with the acts of the Commission. Below we will see that the Republic of Kazakhstan, indeed, has recently adopted several acts on the registration and identification of animals, which are clearly related to these EAEU norms.

### *1.2. Decision of the Council of the Eurasian Economic Commission № 94*

This is another EAEU document carrying animal welfare provisions. It is a very detailed and comprehensive act, which regulates the food safety of animal products (meat, fish, dairy products etc.) at every stage of their production. It contains provisions on: the traceability of animals used for production of animal products; general hygiene rules for slaughter-houses and slaughter points; equipment and materials used for slaughter facilities; the process of audit of food quality and observance of the standards conducted by member countries; Hazard analysis and critical control points (HACCP) etc. Remarkably, this document operates with the term “animal welfare”– even if rarely and without defining it specifically.

Being one of the basic EAEU documents that regulate the making of products of animal origin, the Decision n. 94 indicates

the basic sources of the regulation. Paragraph 17 provides that in assessing foreign official surveillance inspectors must use the evaluation criteria defined in the Terrestrial Animal Health Code and in the Aquatic Animal Health Code by the Office International des Epizooties (OIE), and in documents of the Commission Codex Alimentarius and other international standards and guidelines recognized by the World Trade Organization.

We concentrate our attention on animal welfare standards, even when they are not the direct objective of the provisions, but are instrumental to guarantee the quality of the final product.

For instance, regarding water animals, including fish, section II of the Annex 3 to the document, which regulates the production of aquatic animal products, including fish products, provides the necessity to ensure the minimization of damage to aquatic animals, including fish and reduction in the incidence of damage at the time of collection of farmed fish and aquatic invertebrates (aquaculture).

Regarding dairy products, the document recognizes that poor conditions, inadequate or poor-quality nutrition, veterinary care deficiencies lead to a deterioration of the quality of such products,

and orders “to take care of the animals and use appropriate methods of animal husbandry” (section XII).

Section XIII, which regulates transportation of animals provides that “during delivery and transportation of animals they should be handled carefully without causing unjustified physical pain”.

Ironically, the above-mentioned use of the term “animal welfare” appears in the context of slaughter facilities, regulated by section XIV of the document: slaughter facilities must have hygienic places for animals to stay in and the size of these places must ensure good animal welfare. The document also provides that it is prohibited to delay the slaughter without a significant reason. However, before the slaughter the animals should be given time to rest, if such a need arises because of their conditions. Stunning, bleeding, skinning, eviscerating and the purification must be carried out without undue delay. This norm indicates the presumption that animals are stunned before the slaughter.

The few norms cited above indicate that the basic EAEU documents that regulate animal products production provide for certain guarantees of animal welfare, even if indirectly, that is, as means

to protect public health. The next section of this article describes how Kazakhstan's legislation is changing as a reaction to these novelties.

## **2. Kazakhstan's New Domestic Legal Acts**

Kazakhstan's legislation regarding animals comprises hundreds of acts of various nature. This legislation was until very recently rather outdated, especially in the sense that it adopted a strictly "anthropocentric" approach, where any measure of care for animals was only required as a means to ensure (human) public health.<sup>7</sup> Concerns for animal welfare for the sake of animals were until only few years ago either absent or, in some exceptional cases, only implicitly presupposed.

Over the last few years, however, Kazakhstan has adopted about 100 new legal acts that regard animals. Most deal with agricultural animals. We suppose that this surge in legislative activity is connected to Kazakhstan's accession to the WTO and to the EAEU's declared intent to comply with the correspondent WTO standards, and to harmonize the domestic legislation with the international standards.

---

<sup>7</sup> Baideldinova, M., & Dalpane, F. (2013). Animal law in Kazakhstan: A Survey. *Global Journal of Animal Law*, 2. <https://ojs.abo.fi/index.php/gjal/article/download/1298/1608>.

Most provisions in these new legal acts regard the identification of animals, veterinary documentation, and state subsidies for the agriculture, including animal husbandry. Two of them, however, introduce a wholly new approach to animal welfare that innovates even in comparison with the EAEU's regulations.

### *2.1. New Principles for the Treatment of Animals*

Most of the legal acts considered above contain only traces of animal welfare norms, which are mostly finalized to public health concerns. In other terms, they still follow the traditional “anthropocentric” approach. The following two legal acts, instead, establish a wholly new approach to animal welfare, which amounts to a small revolution:

#### *a) Rules on the treatment of animals<sup>8</sup>*

Although a rather brief document, Kazakhstan's “Rules on the treatment of animals” of 2014 contain new groundbreaking provisions, which represent a big leap towards the guaranteeing of animal welfare. First, they introduce and define terms, which are new to Kazakhstan's legislation on animals, such as euthanasia and

---

<sup>8</sup> Affirmed by the Order of the Acting Minister of Agriculture of the Republic of Kazakhstan of December 30, 2014, № 16-02/701.

bio-sterilization. Second, they use the term “animal welfare” probably for the first time ever in the legislation of Kazakhstan, as well as the term “humane treatment” in the context of the treatment of animals. Third, paragraph 5 of the “Rules”, which regulates obligations of natural persons and legal entities towards animals in their possession, is clearly based on the “Five freedoms” of animal welfare.<sup>9</sup> Moreover, it sets forth principles of treatment of animals in previously underregulated spheres like animal testing and animals used for entertainment.

---

<sup>9</sup> The “Five freedoms” is a formula that originated with a UK government report in 1965 to describe the minimum conditions that should be guaranteed to animals to avoid unnecessary suffering. Subsequently, the concept enjoyed a worldwide diffusion as a concise definition of “animal welfare”. The “Five freedoms” are:

- *Freedom from Hunger and Thirst* – by ready access to fresh water and a diet to maintain full health and vigour.
- *Freedom from Discomfort* – by providing an appropriate environment including shelter and a comfortable resting area.
- *Freedom from Pain, Injury or Disease* – by prevention or rapid diagnosis and treatment.
- *Freedom to Express Normal Behaviour* – by providing sufficient space, proper facilities and company of the animal’s own kind.
- *Freedom from Fear and Distress* – by ensuring conditions and treatment which avoid mental suffering”.

Farm Animal Welfare Council. (2009, April 16). Five Freedoms. Retrieved October 2, 2016, from <http://webarchive.nationalarchives.gov.uk/20121007104210/http://www.fawc.org.uk/freedoms.htm>.

*b) Rules on keeping animals in captivity and semi-captivity*<sup>10</sup>

Another brief document, which is clearly informed by the concept of “Five freedoms”.

According to these “Rules”, the following must be guaranteed to animals kept in captivity or semi-captivity:

1) Space necessary for resting, moving, and assuming natural positions (burrows, nests, shelters, sheds, pools, etc.).

2) The possibility, when necessary, of satisfying their needs in motion, sleep, natural behavior, contacts with natural environment, eating and drinking.

3) Feeders, drinking bowls, roosts and other equipment necessary to satisfy their natural needs.

4) Food and drinking water.

5) Animal husbandry and veterinary measures.

These two new legal acts relinquish the traditional “anthropocentric” approach to animal welfare for a more modern approach. Hopefully they will inform also future legislation on animals.

---

<sup>10</sup> Affirmed by the Order of the Minister of Agriculture of the Republic of Kazakhstan of February 25, 2015, № 18-03/125.

### 3. Other Legal Acts, Which Contain Animal Welfare Norms

The following newly enacted legal acts do not represent much of a deviation from the traditional anthropocentric approach to animal welfare. Many of them replace older ones with only few minor changes.

*a) Rules of railway transportation and Rules of auto transportation*<sup>11</sup>

These “Rules” establish requirements for the transportation of animals, such as minimum and maximum temperature, position of animals inside the vehicle that is necessary for their safe transportation, necessary space and equipment etc. They also provide for an obligation of the transporter to provide food and water to animals while transported (during longer transportations) and sufficient ventilation of the vehicle.

To be sure, these requirements can hardly be called animal “welfare” - they are rather bare survival necessities (for instance, the auto transportation rules provide for an obligation of the transporter to let the animals drink water at least once a day in winter and at least twice a day in summer - paragraph 258). Still, the es-

---

<sup>11</sup> Affirmed by the Orders of the Minister of Investments and Development of the Republic of Kazakhstan of April 30, 2015, № 545 and № 546 respectively.



establishment of these rules in a legal act is a positive development of animal legislation.

*b) Rules of commercialization of animals<sup>12</sup>*

This document does not provide direct rules for animal welfare or animal keeping, but it contains the obligation to the identification of animals, which is necessary to ensure traceability and, hence, to afford some protection of animals against abandonment and maltreatments. It also provides for the obligation of the seller to vaccinate the animals (an obligation to vaccinate is not a legislative novelty by itself. However, this rule means that a non-vaccinated animal may not be sold, which is an important novelty).

*c) Veterinary (veterinary-sanitary) requirements for the objects of industry, which are involved in breeding, commercialization of animals<sup>13</sup>*

This is a very detailed document, which in separate chapters, describes the specifics of keeping and rearing of various kinds of agricultural animals, the equipment necessary for that, conditions, such as temperature, humidity, space, admissible construction materials etc. These norms allow affirming that factory farming in

---

<sup>12</sup> Affirmed by the Order of the Minister of Agriculture of the Republic of Kazakhstan of December 19, 2014, № 16-04/679.

<sup>13</sup> Affirmed by the Order of the acting Minister of Agriculture of the Republic of Kazakhstan of May, 29, 2015, № 7-1/498.

Kazakhstan is not possible without violating these norms. To the opposite, there is a presumption that the animals are pastured in open spaces, when the climate permits.

*d) Others*

Apart from those indicated above, here are other examples of legal acts regarding animals, which came into force around the date of Kazakhstan's accession to the WTO. These acts regard documentation in the sphere of use of animals, veterinary standards, quarantine etc., all of which indirectly concern the animals' welfare. Legislative activity in the sphere of animal law has been extended also over other areas where animals are used, so in the selection of legal acts presented above we have included also those that regard wildlife use. In most cases, these legal acts replace analogous older ones, in some cases with very minor changes:

1) Rules of organization of slaughter of animals, designated for further commercialization.<sup>14</sup>

2) Rules on planning and conducting of veterinary measures against especially dangerous diseases of animals.<sup>15</sup>

---

<sup>14</sup> Affirmed by the Order of the Minister of Agriculture of the Republic of Kazakhstan of April, 27, 2015, № 7-1/370.

<sup>15</sup> Affirmed by the Order of the Minister of Agriculture of the Republic of Kazakhstan of June 30, 2014, № 16-07/332.

- 3) Rules on quarantining of animals.<sup>16</sup>
- 4) Rules on identification of agricultural animals.<sup>17</sup>
- 5) Rules on creation and state record of zoological collections.<sup>18</sup>
- 6) Guidelines on state protection of animal world.<sup>19</sup>
- 7) Rules of hunting.<sup>20</sup>
- 8) On approval of the maximum permissible load rates on a total area of pastures,<sup>21</sup>
- 9) and many others.

---

<sup>16</sup> Affirmed by the Order of the Minister of Agriculture of the Republic of Kazakhstan of December 30, 2014, № 7-1/700.

<sup>17</sup> Affirmed by the Order of the Minister of Agriculture of the Republic of Kazakhstan of January 30, 2015, № 7-1/68.

<sup>18</sup> Affirmed by the Order of the Minister of Agriculture of the Republic of Kazakhstan of February 20, 2015, № 18-03/118.

<sup>19</sup> Affirmed by the Order of the Minister of Agriculture of the Republic of Kazakhstan of February 27, 2015, № 18-03/146.

<sup>20</sup> Affirmed by the Order of the Minister of Agriculture of the Republic of Kazakhstan of February 27, 2015, № 18-03/157.

<sup>21</sup> Affirmed by the Order of the Minister of Agriculture of the Republic of Kazakhstan of April 14, 2015, № 3-3/332.

#### **4. Conclusion**

Numerous legal acts that impact on animal welfare were enacted in Kazakhstan in the last few years. We suppose that this surge in legislative activity is connected to Kazakhstan's accession to the WTO and to the declared intent of the EAEU to meet the WTO food safety standards. The new regulations represent a substantial improvement over Kazakhstan's previous legislative framework, although they still fall short of introducing an explicit, clear definition of animal welfare. The new regulations, on the other hand, have extended the scope of animal law beyond the traditional area of agricultural animals, to also include wildlife, animals in circuses, zoos etc. In this chapter we have highlighted the most important of these new acts with particular regard to animal welfare.

We expect the internationalization of trade to have a beneficial effect on animal welfare in Kazakhstan and possibly in all of the EAEU member states.

## Bibliography

- Baideldinova, M., & Dalpane, F. (2013). Animal law in Kazakhstan: A Survey. *Global Journal of Animal Law*, 2. <https://ojs.abo.fi/index.php/gjal/article/download/1298/1608/>
- Blockmans, S., Hrant, K., & Vorobiov I. (2012). *Towards a Eurasian Economic Union: The challenge of integration and unity* (CEPS Special Report No. 75). Centre for European Policy Studies. [http://www.ceps.eu/system/files/CEPS Special Report No 75 - Towards a Eurasian Economic Union.pdf](http://www.ceps.eu/system/files/CEPS_Special_Report_No_75_-_Towards_a_Eurasian_Economic_Union.pdf)
- Farm Animal Welfare Council. (2009, April 16). Five Freedoms. Retrieved October 2, 2016, from <http://webarchive.nationalarchives.gov.uk/20121007104210/http://www.fawc.org.uk/freedoms.htm>
- Lurié, A., & Kalinina, M. (2015). Protecting animals in international trade: A study of the recent successes at the WTO and in free trade agreements. *American University International Law Review*, 30(3), 431–487. <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1848&context=auilr>
- Order of the Minister of Agriculture of the Republic of Kazakhstan of January 30, 2015, № 7-1/68.
- Order of the Minister of Agriculture of the Republic of Kazakhstan of February 20, 2015, № 18-03/118.
- Order of the Minister of Agriculture of the Republic of Kazakhstan of February 25, 2015, № 18-03/125.
- Order of the Minister of Agriculture of the Republic of Kazakhstan of February 27, 2015, № 18-03/146.
- Order of the Minister of Agriculture of the Republic of Kazakhstan of February 27, 2015, № 18-03/157.

- Order of the Minister of Agriculture of the Republic of Kazakhstan of April 14, 2015, № 3-3/332.
- Order of the Minister of Agriculture of the Republic of Kazakhstan of April, 27, 2015, № 7-1/370.
- Order of the Minister of Investments and Development of the Republic of Kazakhstan of April 30, 2015, № 546.
- Order of the Minister of Investments and Development of the Republic of Kazakhstan of April 30, 2015, № 546.
- Order of the Acting Minister of Agriculture of the Republic of Kazakhstan of May, 29, 2015, № 7-1/498.
- Order of the Minister of Agriculture of the Republic of Kazakhstan of June 30, 2014, № 16-07/332.
- Order of the Minister of Agriculture of the Republic of Kazakhstan of December 19, 2014, № 16-04/679.
- Order of the Minister of Agriculture of the Republic of Kazakhstan of December 30, 2014, № 7-1/700.
- Order of the Acting Minister of Agriculture of the Republic of Kazakhstan of December 30, 2014, № 16-02/701.
- Popescu, N. (2014). *Eurasian Union: The real, the imaginary and the likely* (Chaillot Paper No. 132). European Union Institute for Security Studies. [https://www.iss.europa.eu/sites/default/files/EUISSFiles/CP\\_132.pdf](https://www.iss.europa.eu/sites/default/files/EUISSFiles/CP_132.pdf)
- Treaty on the Eurasian Economic Union (English version), May 29, 2014. [https://docs.eaeunion.org/docs/en-us/0017353/itia\\_05062014\\_doc.pdf](https://docs.eaeunion.org/docs/en-us/0017353/itia_05062014_doc.pdf)

Aisulu Sailaukhanova and Joseph Luke

LEGAL PERSONHOOD OF ANIMALS



### *Abstract*

Human-animal relations have a long history, and during different historical periods the place that animals occupied in people's lives and legal system has constantly changed. Lately, debates on whether animals should be granted certain legal rights and legal personhood are more relevant and acute than ever.

In this chapter, the author gives a brief historical outlook on an animal's status in the legislation of the past and analyzes current legislation. The author shows us how animals are actually unprotected in the legal system that is based on the assumption of human superiority where they are regarded as mere property. Also, the chapter considers the concept of legal personhood and proposes arguments for giving animals legal personality to ensure greater protection for nonhuman beings.

**Key words:** animal welfare, animal law, legal personhood, animal sentience.

### **Introduction**

The aim of this chapter is 1) to analyze and understand whether animals are protected enough or if they need some additional mechanism of protection beyond what is currently available, and 2) to provide arguments for giving animals legal personhood. The first section briefly describes the status of animals both historically and in the current legal setting. Then it lists areas where animals as 'things' suffer from inadequate



protection. We propose that a solution to this is to give animals legal personhood. The second section discusses various arguments against giving animals legal personhood to show that they are either insufficient or based on incorrect information and assumptions.

## I

The animal has a long history as a thing. The idea of animals as property began perhaps as early as agriculture itself.<sup>22</sup> However, the most famous articulation of this idea comes from Roman law. When considering the distinction between persons and things in Roman law we should refer to Roman scholar Gaius's classification. He divided everything in three categories: persons (*personae*), things (*res*) and actions (*actiones*). In general, under Roman law, animals always were recognized as mere objects before the law. For example, Justinian's *Institutiones* note that:

Wild animals, birds, and fish, that is to say all the creatures which the land, the sea, and the sky produce, as soon as they are

---

<sup>22</sup> Driessen, B. (2017). Fundamental animal rights in European law. *European Public Law*, 23(3), 547–585.

caught by any one become at once the property of their captor by the law of nations.<sup>23</sup>

Although the idea of animals as things has continued, there have been times where animals could be said to have been granted certain rights and, if a legal person is defined as a bearer of rights, then recognized as a type of legal person. Although viewed with some derision in the 21<sup>st</sup> century, for several hundred years beginning in medieval Europe, animals under the law of Deodand were brought to trial and given court-assigned representation, meaning, the animal had a right of representation and standing in court.<sup>24</sup> Great Britain only abolished this practice in 1846.<sup>25</sup>

---

<sup>23</sup> *The Institutes of Justinian* (J. B. Moyle, Trans.; 5th ed., Book 1). (1913). Clarendon Press.

<sup>24</sup> See Hockstad, T. A. (2016). Rats and trees need lawyers too: Community responsibility in Deodand practice and modern environmentalism. *Vermont Journal of Environmental Law*, 18(1), 105–133. <https://www.jstor.org/stable/24859520>.

See also Weiss, K. J., Fromm, L., & Glazer, J. (2018). Assignment of culpability to animals as a form of abuse: Historical and cultural perspectives. *Behavioral Sciences & the Law*, 36(6), 661–674: “review of medieval animal trials and their cultural context reveals attitudes and beliefs which in some ways presaged current trends toward recognition of animal ‘personhood’ in the law”. <https://doi.org/10.1002/bsl.2372>.

<sup>25</sup> Hockstad, T. A. (2016). Rats and trees need lawyers too: Community responsibility in Deodand practice and modern environmentalism. *Vermont Journal of Environmental Law*, 18(1), 114. <https://www.jstor.org/stable/24859520>.

But see Pietrzykowski, T. (2017). The idea of non-personal subjects of law. In V. A. J. Kurki & T. Pietrzykowski (Eds.), *Legal personhood: Animals, artificial*

As one approaches more modern times, however, animals clearly remain things. Descartes thought of animals as “no different than inanimate objects: that they could not think or feel pain”.<sup>26</sup> Yet with increased recognition of how incorrect this position was, scholars such as Bentham and Kant viewed animals as having sentience and consciousness, which obligated society to treat them humanely.<sup>27</sup>

In modern law, the view towards animals changed a little bit. Several current legislations distinguish animals from other types of property. In the case of *Hermann v Germany*, Judge Pinto de Albuquerque, in his partially concurring, partially dissenting opinion, lists several jurisdictions that have moved the animal into a category different than just a thing:

The formal legal distinction between animals and objects was introduced in Austria with the entry into force of Ar-

---

*intelligence and the unborn* (p. 54). Springer. <https://doi.org/10.1007/978-3-319-53462-6>.

<sup>26</sup> Ibrahim, D. M. (2007). A return to Descartes: Property, profit, and the corporate ownership of animals. *Law and Contemporary Problems* 70(1), 89–90. <https://scholarship.law.duke.edu/lcp/vol70/iss1/4>.

<sup>27</sup> Pietrzykowski, T. (2017). The idea of non-personal subjects of law. In V. A. J. Kurki & and T. Pietrzykowski (Eds.), *Legal personhood: Animals, artificial intelligence and the unborn* (pp. 52–53). Springer. <https://doi.org/10.1007/978-3-319-53462-6>.

ticle 285a of the Civil Code (*Bürgerliches Gesetzbuch*) in 1986, which was followed by the approval of Article 90a of the German *Bürgerliches Gesetzbuch* in 1990, Article 1 of the Polish Animal Protection Act in 1997, Article 528 of the French *Code Civil* in 1999, Article 641a of the Swiss Civil Code (*Zivilgesetzbuch*) in 2002 and Article 287 of the Moldovan Civil Code in 2002. According to these provisions, animals are not objects, although some features of the rules governing objects may apply to animals by analogy.<sup>28</sup>

As “things” or “analogous to things” animals remain imperfectly protected. Driessen notes that the EU treaties ultimately “permit” animal welfare but do not require it. Consequently over 11 million animals are the objects of tests for human cosmetics and medicines.<sup>29</sup> “The degree to which animals benefit from legislation for their protection depends on colliding political interests, not on the animals’ innate qualities”.<sup>30</sup> The welfare laws for livestock fall

---

<sup>28</sup> Herrmann v. Germany, App. no. 9300/07 (ECHR 2012). Retrieved May 12, 2012, from <http://hudoc.echr.coe.int/eng?i=001-11169>.

<sup>29</sup> Driessen, B. (2017). Fundamental animal rights in European law. *European Public Law*, 23(3), 551 ff.

<sup>30</sup> Driessen, B. (2017). Fundamental animal rights in European law. *European Public Law*, 23(3), 555.

short in protecting animals in agriculture from the gruesome factory farm practices of agribusiness in most jurisdictions.<sup>31</sup>

In *Akkum a o v Turkey*, the owner of a dog and a horse sued parties alleged to have killed his animals. The basis of the lawsuit was the property rights of the owner, not the death of the animals per se.<sup>32</sup> In addition to the rights being the human owner's and not the animals', it has been noted that the level of protection granted to animals depends on the "cuteness" factor, creating an unequal set of laws based on the human perception of cuteness.<sup>33</sup>

In the USA, an additional problem exists in the legal protection of animals, especially in environmental protection laws, because courts refuse to recognize standing for organizations trying to rep-

---

<sup>31</sup> Fiber-Ostrow, P., & Lovell, J. S. (2016) Behind a veil of secrecy: Animal abuse, factory farms, and ag-gag legislation. *Contemporary Justice Review*, (19)2, 230. <https://doi.org/10.1080/10282580.2016.1168257>; Sluzska, D. (2016) Animal farm: The EU's move towards progress and the US's slide towards dystopia in farm animal welfare. *Cardozo Journal of Intl & Comp Law*, (24), 423; See also Ibrahim, D. M. (n 26) and Driessen, B. (n 22).

<sup>32</sup> *Akkum a o v Turkey*, App. No. 20984/93 (ECtHR 2004), as cited in Driessen, B. (n 22), 569.

<sup>33</sup> Driessen, B. (2017). Fundamental animal rights in European law. *European Public Law*, 23(3), 554.

resent an animal.<sup>34</sup> Organizations that would represent the animal's welfare are required to show actual harm to its (human) members. This has been nearly always an insurmountable barrier. Ultimately, “even though nonhuman animals contribute significantly to human well-being . . . they are often prevented from enforcing their statutory rights due to contemporary standing doctrine”.<sup>35</sup>

Lastly, as an example of failing to protect animals under the existing law where animals are “things”, one may point to Kazakhstan's Criminal Code, art. 316.<sup>36</sup> The law against cruelty to animals requires a motive of hooliganism, the use of sadistic methods, or the circumstance that the acts of cruelty are perpetrated in the presence of a minor. Moreover, animal cruelty is listed among the criminal offenses against public health and morality. In short, the animal is in a real sense not the victim of the crime against it but rather society is (especially in those instances when a human child must be present where, it seems, it is the human and not the animal

---

<sup>34</sup> Hogan, M. (2007). Standing for nonhuman animals: Developing a guardianship model from the dissents in *Sierra Club v Morton*. *California Law Review*, 95(2), 513. <http://dx.doi.org/10.15779/Z38Q416>.

<sup>35</sup> Driessen, B. (2017). Fundamental animal rights in European law. *European Public Law*, 23(3), 519.

<sup>36</sup> Criminal Code of the Republic of Kazakhstan No. 226-V of 3 July 2014.

that is suffering).<sup>37</sup> But even if the article is problematic, Davar investigated the analogous article in the older 1997 version of Kazakhstan's Criminal Code and found that very few people, if any, were ever prosecuted under this article.<sup>38</sup>

The above is only a short litany of the failure of laws and regulations across jurisdictions to safeguard animals from use in experiments, from abuse, from harm caused by violations in environmental laws and from harsh farm practices. More examples can be brought in, but even this short list leads one inexorably to the conclusion that animals are insufficiently protected. In modern legal systems, as mentioned above, animals are not just property, however, they are not persons either. Legally, the attitude towards animals does not provide anything further than a possibility of animal welfare, meaning that it does not give animals rights, but it gives humans obligations. In other words, under animal welfare, animals might have some fundamental rights, but it is humans who

---

<sup>37</sup> Further on the topic of victimology of animals, see Flynn, M., & Hall, M. (2017). The case for a victimology of nonhuman animal harms. *Contemporary Justice Review*, 20(3), 299. <https://doi.org/10.1080/10282580.2017.1348898>.

<sup>38</sup> Davar, A. (2013). *Legislative regulation of cruel treatment of animals in Kazakhstan: Problems and solutions* [Unpublished master's thesis]. KIMEP University.

are able to enforce them. According to Driessen,<sup>39</sup> the problem for animals is that there is no legal standard against which one can measure whether animal welfare suffices. The possible way to tackle this problem might be the need to establish an absolute standard against which animal rights must be measured. A standard can be created by, and animals better protected through, granting them legal personhood. Then their rights would be on equal footing with other legal persons and benefits from suits in courts would accrue directly to them, not to others.

## II

The historical development of the idea of legal person can be linked to the Latin “*persona*”. The Romans used the word *persona* in two different senses: the word originally referred to the mask worn by actors in plays, which is why it could mean “status” or “attribute”, but it would later also start signifying “human individual”. And, as mentioned above, Gaius divided everything into persons (*personae*), things (*res*) and actions (*actiones*). But he did not specify the necessary attributes in order to be counted as a person or as a

---

<sup>39</sup> Driessen, B. (2017). Fundamental animal rights in European law. *European Public Law*, 23(3), 547–585.



thing. In addition, Kurki states that: “slaves were classified as persons – though unfree ones – but also as things and thus objects of ownership”.<sup>40</sup>

According to Kurki, the first person who developed a technical legal concept of personhood in early modern era was French Renaissance humanist and law professor Hugues Doneau in the 16<sup>th</sup> century. However, the distinction between human (*homo*) and person (*persona*) was provided not by Doneau, but by German jurist Hermann Vultejus. Vultejus stated that a person was a human who bears legal standing. About animals, Hegel explicitly stated that as people can acquire a property and “the thing becomes mine and acquires my will as its substantial end (since it has not such end within itself). And this includes animals as they are things and can be owned”.<sup>41</sup>

Although this attitude remained in modern times, already in the 18<sup>th</sup> century Jeremy Bentham reflected on animals as bearers of rights: “The day may come, when the rest of the animals ac-

---

<sup>40</sup> Kurki, V. A. J. (2019). *A theory of legal personhood* (p. 35). Oxford University Press. <https://doi.org/10.1111/1468-2230.12531>.

<sup>41</sup> Hegel, G. (1991). *Elements of the philosophy of right* (A. Wood, Ed.; H. Nisbet, Trans., Section 44 (addition)). Cambridge University Press, as cited in Kurki V. A. J. (2019). *A Theory of legal personhood* (p. 43). Oxford University Press.

quire those rights which never could have been withheld from them but by the hand of tyranny".<sup>42</sup> He went on to state two characteristics of animals that would be the basis for granting rights, namely the ability to be autonomous and the ability to feel pain (which he found more compelling).<sup>43</sup> Steven Wise<sup>44</sup> has developed the first position. He argues in favor of granting animals legal personhood based on animal autonomy – in other words, permitting nonhuman animals of certain autonomy to have equal status under the law as humans of full autonomy, humans of comparable autonomy, or (at least) humans of no autonomy. Cass Sunstein argues in favor of the other position, an animal's ability to feel pain, i.e., granting animals legal personhood to protect and foster the animals' capabilities—that is, negative rights to prevent suffering in animals capable of suffering and to ensure

---

<sup>42</sup> Bentham, J. (1988). *The principles of morals and legislation* (p. 301). Prometheus, as cited in Maddux, E. A. (2012). Time to stand: Exploring the past, present, and future of nonhuman animal standing. *Wake Forest Law Review*, 47, 1243, 1255.

<sup>43</sup> Maddux, E. A. (2012). Time to stand: Exploring the past, present, and future of nonhuman animal standing. *Wake Forest Law Review*, 47, 1255. <http://wake-forestlawreview.com/2013/04/time-to-stand-exploring-the-past-present-and-future-of-nonhuman-animal-standing>.

<sup>44</sup> See, for example, Wise, S. M. (1998). Hardly a revolution – the eligibility of nonhuman animals for dignity-rights in a liberal democracy. *Vermont Law Review*, 22, 793.

that the capabilities of nonhuman animals are included in the balance of the law.<sup>45</sup>

Before deeply concentrating and considering giving animal legal personality first and foremost we should understand what legal personhood actually is. According to Kurki, “‘Person’ or ‘legal person’—or, in civil-law countries, ‘legal subject’ – is usually taken to mean ‘someone or something that holds legal rights, even though there are ample slightly differing formulations’”.<sup>46</sup> Kurki describes the paradigmatic natural person in Western legal systems 1) humans, 2) who have been born, 3) who are currently alive and 4) sentient.<sup>47</sup> To this he additionally adds that they may be passive natural or active natural persons depending on their capacity to enter into civil relations with another legal person. Indeed, the Ka-

---

<sup>45</sup> Sunstein, C. R. (2003). The rights of animals. *University of Chicago Law Review*, 70(1), 387–401. <https://doi.org/10.2307/1600565>.

<sup>Maddux</sup> characterizes the different approaches as dignity rights (Wise) or scientific weighing of human versus nonhuman rights (Sunstein).

<sup>46</sup> Kurki, V. (2017). Animals, slaves, and corporations: Analyzing legal thinghood. *German Law Journal*, (18)5, 1069–1090. <https://doi.org/10.1017/S2071832200022252>.

<sup>47</sup> Kurki, V. (2019). *A theory of legal personhood* (pp. 8-10). Oxford University Press. <https://doi.org/10.1111/1468-2230.12531>.

<sup>While</sup> this chapter uses legal person as an overarching term for both natural and artificial persons (legal entities), the paradigmatic definition was of the natural person.

zakhstan's Civil Code defines natural persons as humans (either citizens of a country or stateless).<sup>48</sup> In the Civil Code of Kazakhstan natural persons are understood as citizens of the Republic of Kazakhstan, citizens of other states, as well as stateless persons.<sup>49</sup> In other words, in all jurisdictions in order to acquire legal personality one has to be born human. But this paradigmatic natural person does not describe the entire panoply of “legal persons” or “legal entities”, nor does it exactly capture the legal personhood of a natural person.

The natural legal person's beginning and ending raise problematic issues. This specific argument arises when discussing abortion: to what extent or when is a fetus a legal person? Stillborn children are usually excluded, whereas children born alive may occasionally benefit from the maxim *nasciturus pro iam nato habetur quamdiu agitur de eius commodo* – *nasciturus* for short – that is, “one who is about to be born is to be treated as if already born whenever that is to her or his advantage”. This rule presupposes, however, that the fetus

---

<sup>48</sup> Berg, J. (2007). Of elephants and embryos: A proposed framework for legal personhood. *Hastings Law Journal*, 59(2), 369, 373. [https://repository.uchastings.edu/hastings\\_law\\_journal/vol59/iss2/3](https://repository.uchastings.edu/hastings_law_journal/vol59/iss2/3).

<sup>49</sup> Civil Code of the Republic of Kazakhstan of 27 December 1994.

is later born alive.<sup>50</sup> It is obvious that only the quick have legal personhood. In some cases, certain rights and obligations may also be applied to a dead person in terms of the right not to be defiled. And, even if all the above-mentioned criteria are met, that does not necessarily mean that a person has legal personhood. For example, a new born child cannot acquire full legal personhood; even if he has rights, he himself cannot fulfill any obligations. In those jurisdictions that once (currently?) allow slavery, the slave is without rights, indeed, is treated as a thing. Women fought hard to acquire full legal personhood throughout the 20<sup>th</sup> century across the globe and continue to struggle in many jurisdictions. In common law through the 20<sup>th</sup> century, felons experienced “civil death,” making them dead to many operations of civil law (being declared civilly dead did allow, however, for the person thus punished to write a last will and testament within six months of the declaration).<sup>51</sup>

In addition, one may observe with various courts an understanding of legal personhood. For example, the famous Nonhu-

---

<sup>50</sup> Kurki V. (2019). *A Theory of legal personhood* (p. 9). Oxford University Press. <https://doi.org/10.1111/1468-2230.12531>.

<sup>51</sup> A historical description of this in the United States can be found in Dayan, C. (2011). *The law is a white dog: How legal rituals make and unmake persons* (pp. 57–63). Princeton University Press. <https://doi.org/10.2307/j.ctt7snkj>.

man Project case which sought habeas corpus for a chimpanzee, narrows the possibility of legal personhood in a way that echoes the requirement that a person should be able to reciprocate in fulfilling duties and rights. The court noted that:

the ascription of rights has historically been connected with the imposition of societal obligations and duties. Reciprocity between rights and responsibilities stems from principles of social contract, which inspired the ideals of freedom and democracy at the core of our system of government... Case law has always recognized the correlative rights and duties that attach to legal personhood.<sup>52</sup>

This orthodox view does not encompass all the existing instances of legal personhood, nor exclude certain instances of legal personhood that do not match the definition. But the idea of the human animal as “the legal entity par excellence is based merely on an emotional bias and therefore unjustified from the point of view of legal science”.<sup>53</sup>

---

<sup>52</sup> New York ex rel. Nonhuman Rights Project, Inc. on Behalf of Tommy v. Lavery et al, 2014 WL 6802767 (N.Y. App. Div. Dec. 4, 2014).

<sup>53</sup> Nékám, A. (1938). *The personality conception of the legal entity* (p. 44). Harvard University Press. <https://doi.org/10.1017/S0008197300127874>.

Historically, preceding the idea of the human as the bearer of rights, the original bearer of rights was the family.<sup>54</sup> Legislatures have created legal persons, defined in some cases as legal entities as municipalities, ships, corporations, trusts, or other business entities. Thus, if the legislature can create legal persons in the form of corporations, etc., creating legal persons in the form of nonhuman animals is well within their competency. The creation of a legal person requires only the object be given a capacity to hold some right. Stone suggests that a legal person, having been so designated by the appropriate authoritative body, also may sue to protect the right and that a judgment in its favor would have the benefits accrue to it.<sup>55</sup> These rights would protect the animal.

If Stone's proposal in 1972<sup>56</sup> seemed radical, today, in at least two cases, US courts have already granted legal personhood to animals, that is animals were given independent legal standing. In

---

<sup>54</sup> Driessen, B. (2017). Fundamental animal rights in European law. *European Public Law*, 23(3), 549. See also Stone, C. (2010). *Should trees have standing?* (p. 1). Oxford University Press.

<sup>55</sup> Stone, C. (2010). *Should trees have standing? Law, morality, and the environment* (pp. 4–5). Oxford University Press.

<sup>56</sup> Stone, C. (1972). Should trees have standing? – Toward legal rights for natural objects. *Southern California Law Review*, 45, 450. His book (n 55) includes an updated treatment of this article.

*Naruto v. Slater*, No. 16-15469 (9th Cir. 2018), the plaintiff, a macaque represented by People for the Ethical Treatment of Animals (PETA), was declared to have constitutional standing.<sup>57</sup> An earlier case, *Palila v. Hawaii Dept. of Land & Natural Resources*, 471 F. Supp. 985 (D. Haw. 1979) gave the palila, represented by non-profit organizations, standing to sue (successfully) in an environmental matter.

Nékám may have been the first to suggest that legal personhood is a concept that has gradations. Other authors have also offered the same idea that legal personhood may vary the type of rights provided depending on the type of law and the type of person.<sup>58</sup> In whatever shape the legal person of the nonhuman animal takes, the protection of it will be greater than the current system where the animal is a “thing”.<sup>59</sup>

---

<sup>57</sup> The case failed because the macaque did not have standing under the copyright statute; the dispute was over who held copyright of a selfie that the macaque had taken.

<sup>58</sup> Nékám, A. (1938). *The Personality Conception of the Legal Entity* (p. 45). Harvard University Press. See also Kurki, V. (n 40), which develops a theory of personhood as a bundle of rights, not all rights accruing to all persons. See also Naffine, N. (2009). *Meaning of life: Philosophy, religion, Darwin and the legal person*. Hart Publishing, maintaining that the definition of person depends and type and area of law.

<sup>59</sup> The exact configuration of the legal personhood of the nonhuman animal is beyond the scope of this chapter.



Driessen lists and disposes of typical arguments against giving nonhuman animals legal personhood:<sup>60</sup>

1) *Social compact argument*

The contention is that since only humans have the capacity to negotiate and join into the social compact which is the basis of law, nonhuman animals are excluded from being persons. As already noted above, not all humans (infants, fetuses, mentally ill or incapacitated) can fulfill obligations, yet remain legal persons, even if of a limited nature. Further to this, such foundational documents cited by Driessen (US Constitution and US Declaration of Independence) show only the relationship among humans and nothing as to animals vis-à-vis humans. Even later, as John Rawls once again states contractualist thinking, he confesses that his theory does not include how human and nonhuman animals should interact.<sup>61</sup>

Korsgaard introduces an argument based on Kant's philosophy that both counters the social compact argument and independently

---

<sup>60</sup> Driessen, B. (2017). Fundamental animal rights in European law. *European Public Law*, 23(3), 554 ff.

<sup>61</sup> Driessen discussing Rawls at Driessen, B. (2017). Fundamental animal rights in European law. *European Public Law*, 23(3), 559. Driessen also provides an argument called the Gray's standard, but its defects are similar to the social compact argument discussed above and so it is not included in this article.

supports the argument for personhood for animals. Universal human rights are those shared by humanity, which are a protection of a set of interests, “not merely of the interests protected under some actual social contract. So, it makes sense to raise the question whether the other [non-human] animals share the kinds of interests that our laws . . . are meant to protect”.<sup>62</sup> In Kant’s system of ethics, a human is an end in themselves, with its basis being rational choice, or “autonomy”. These rights accrue from the human’s autonomy. However, autonomy is important not in and of itself. We value autonomy because it protects, at least indirectly, our welfare, our interests and our rights. “Things that are good and bad for animals is distinct in that it is both non-derivative and capable of being experienced”.<sup>63</sup>

If animals do not have autonomy, there is no possibility for them to protect their interests legally. They become things. As animals do have independent interests, as shown above, and can enjoy “good” and suffer “bad”, they are autonomous. As they are beings with autonomy similar to humans, logically, they must be given personhood in order to protect their interests.

---

<sup>62</sup> Korsgaard, C. M. (2013). Personhood, animals and the law. *Think*, 12(34), 25, 28. <https://doi.org/10.1017/S1477175613000018>.

<sup>63</sup> Korsgaard, C. M. (2013). Personhood, Animals and the Law. *Think*, 12(34), 29. <https://doi.org/10.1017/S1477175613000018>.

## 2) *The moral agency argument*

Non-human animals cannot distinguish “good” from “bad” behavior and actions, but human animals can. Therefore, as between the species there is no moral obligations toward each other. Proponents of this argument are led to the unsatisfactory assertion that children have capacity to be moral in future, and therefore have legal personality. But one must conclude from such a weak argument that the reason those who have mental illness or are children (or comatose) are legal persons is only due to their humanity, not their capacity for moral agency.

Significantly, the idea that animals do not have some recognition of morality or behave morally ignores recent research that shows that animals actually do have this ability. In her recent article, Monsó lists several publications from current research showing that non-human animals exhibit moral behavior.<sup>64</sup> Giv-

---

<sup>64</sup> Monsó, S., Benz-Schwarzburg, J., & Bremhorst, A. (2018). Animal morality: What it means and why it matters. *The Journal of Ethics*, 22, 283–310. <https://doi.org/10.1007/s10892-018-9275-3>.

One should note that in that article, a distinction is made between moral agents and moral subjects, but this distinction is beyond the scope of this chapter. This article provides a basis for preferring animal rights over animal welfare, a distinction beyond the scope of this chapter. See also Driessen, B. (n 22) citing Flack, J., & Waal, F. (2000). Any animal whatever: Darwinian building blocks of morality in monkeys and apes. *Journal of Consciousness Studies*, 7(1-2), 1–29, for the

en the numerous data, one must acknowledge animals as moral subjects.

3) *Animals are not conscious*

Some maintain that human animals have cognitive powers that nonhuman animals do not. While Darwin would say that it is a continuum,<sup>65</sup> other scholars argue that the difference between cognitive abilities is sufficient to prevent animals from possessing legal personality.

There are constant debates over the question whether animals have conscious or not. And the reason for this is the fact that there is a lack of proper definition on consciousness. Yet over time those who study animals have become more convinced that whatever consciousness is, animals have it.

Driessen notes that the ability to understand that the “self” is different from the environment is one of the key elements of consciousness.<sup>66</sup> He provides as an example, the test that was done

---

proposition of a sense of morality among some vertebrates; and Bekoff, M., & Pierce, J. (2010, March 1). *The ethical dog*. Scientific American. Retrieved February 18, 2016, from [scientificamerican.com/article/the-ethical-dog](http://scientificamerican.com/article/the-ethical-dog) for evidence that dogs have a sense of “inequity aversion”.

<sup>65</sup> See Driessen, B. (2017). Fundamental animal rights in European law. *European Public Law*, 23(3), 565 citing Darwin.

<sup>66</sup> Driessen, B. (2017). Fundamental animal rights in European law. *European*

in the early 1970s. The test was devised to assess for different species whether the individuals were able to recognize themselves. An animal that is able to recognize that the image in the mirror is its own reflection has the ability to analyze its relationship with its environment and its social partners.<sup>67</sup>

As a result of the test at least Asian elephants,<sup>68</sup> bottlenose dolphins,<sup>69</sup> all species of great apes and magpies can pass the mirror test, implying at the very least that they have a mental model of what they look like from the outside and that they are conscious.

In 2012, a group of scientists proclaimed the Cambridge Proclamation on Consciousness, which states:

Convergent evidence indicates that non-human animals have the neuroanatomical, neurochemical, and neurophys-

---

*Public Law*, 23(3), 566.

<sup>67</sup> Hunter, P. (2010). The basis of morality. *EMBO Reports*, 11(3), 166–169. <https://doi.org/10.1038/embor.2010.19>.

<sup>68</sup> Plotnik, J., Waal, F., & Reiss, D. (2006). Self-recognition in an Asian elephant. *Proceedings of the National Academy of Sciences of the United States of America*, 103(45), 17053–17057. <https://doi.org/10.1073/pnas.0608062103>, as noted in Driessen, B. (n 22), 566.

<sup>69</sup> Reiss, D., & Marino, L. (2001). Mirror self-recognition in the bottlenose dolphin: A case of cognitive convergence. *Proceedings of the National Academy of Sciences of the United States of America*, 98(10), 5937–5942. <https://doi.org/10.1073/pnas.101086398>, as noted in Driessen, B. (n 22), 566.

iological substrates of conscious states along with the capacity to exhibit intentional behaviors. Consequently, the weight of evidence indicates that humans are not unique in possessing the neurological substrates that generate consciousness. Nonhuman animals, including all mammals and birds, and many other creatures, including octopuses, also possess these neurological substrates.<sup>70</sup>

While the arguments against giving nonhuman animals legal personality are weak or based on incorrect scientific understanding of animals, the argument that Bentham was among the first to articulate supports giving legal personhood to animals: animals are sentient.

Over time there has been a move in recognizing that creatures other than humans are able to experience diverse feelings. Animal sentience, while first recognized long time ago, has only in the last few decades been explored scientifically and included in animal-related policies. For example, INRA (French National Institute for

---

<sup>70</sup> The Cambridge Proclamation on Consciousness. Retrieved May 18, 2020, from <http://fcmconference.org/img/CambridgeDeclarationOnConsciousness.pdf>. The Proclamation was the culmination of The First Annual Francis Crick Memorial Conference, focusing on “Consciousness in Humans and Non-Human Animals” 12 July 2012 in Cambridge that was attended by several prominent neuroscientists.

Agricultural Research) performed a study that concludes that animals respond to pain as humans do (the study reviewed only farm animals).<sup>71</sup>

There are no valid arguments against giving animals legal personality to defend themselves and as Driessen puts it: “this, then, is the only relevant criterion: if a creature is sentient, it should be recognized by the law to enjoy certain rights”.<sup>72</sup>

## Conclusion

This chapter had several objectives. The first was to analyze and understand whether animals are protected enough or they need some additional mechanism of protection besides to what exists now. And the second objective was to provide arguments for giving animals legal standing. To do so, the chapter provided a brief historical outlook on animals in different historical periods, concentrating specifically on Roman law and the Early Modern Era.

---

<sup>71</sup> Le Neindre, P., Guatteo, R., Guémené, D., Guichet, J., Latouche, K., Leterrier, C., Levionnois, O., Mormède, P., Prunier, A., Serrie, A., Servière, J. (Eds). (2009). *Animal pain – identifying, understanding and minimising pain in farm animals* [Multi-disciplinary scientific assessment, Summary of the expert report], 13. INRA (France). <https://www6.paris.inrae.fr/depe/content/download/3387/33163/version/2/file/animal-pain-apr2013.pdf>.

<sup>72</sup> Driessen, B. (2017). Fundamental animal rights in European law. *European Public Law*, 23(3), 568.

After discussing these periods and the prevalent attitudes toward animals, the authors analyzed modern existing laws. For instance, many current European statutes distinguish animals from just things, nevertheless they do not grant animals any special status. Rather, they put forward a formulation that from a legal perspective, animals should be viewed as things. Such wording is worth noting since, while introducing this provision from a legal point of view, animals are not things, but for the sake of clarity, equated to them.

Then, the authors provided examples of areas where the current legal protection of animals does not work effectively, and looked for a possible mechanism for their better protection, which led to the idea of giving animals legal personhood.

After the results of such analysis, the authors tried to define some objective criteria for acquiring it and provided arguments that supported the idea of giving animals legal personhood. The arguments against legal personhood were shown to be ineffective. In addition, evidence was provided to show that animals are conscious and sentient, which supports granting them legal personhood.



## Bibliography

- Akkum a o v Turkey, App. No. 20984/93 (ECtHR 2004).
- Bekoff, M., & Pierce, J. (2010, March 1). *The ethical dog*. Scientific American. Retrieved February 18, 2016, from scientificamerican.com/article/the-ethical-dog
- Bentham, J. (1988). *The principles of morals and legislation*. Prometheus.
- Berg, J. (2007). Of elephants and embryos: A proposed framework for legal personhood. *Hastings Law Journal*, 59(2), 369–406. [https://repository.uchastings.edu/hastings\\_law\\_journal/vol59/iss2/3](https://repository.uchastings.edu/hastings_law_journal/vol59/iss2/3)
- Civil Code of the Republic of Kazakhstan of 27 December 1994.
- Criminal Code of the Republic of Kazakhstan No. 226-V of 3 July 2014.
- Davar, A. (2013). *Legislative regulation of cruel treatment of animals in Kazakhstan: Problems and solutions* [Unpublished master's thesis]. KIMEP University.
- Dayan, C. (2011). *The law is a white dog: How legal rituals make and unmake persons*. Princeton University Press. <https://doi.org/10.2307/j.ctt7snkj>
- Driessen, B. (2017). Fundamental animal rights in European law. *European Public Law*, 23(3), 547–585.
- Fiber-Ostrow, P., & Lovell, J. S. (2016) Behind a veil of secrecy: Animal abuse, factory farms, and ag-gag legislation. *Contemporary Justice Review*, (19)2, 230–249. <https://doi.org/10.1080/10282580.2016.1168257>
- Flynn, M., & Hall, M. (2017). The case for a victimology of nonhuman animal harms. *Contemporary Justice Review*, 20(3), 299–318. <https://doi.org/10.1080/10282580.2017.1348898>

- Herrmann v. Germany, App. no. 9300/07 (ECHR 2012). Retrieved May 12, 2012, from <http://hudoc.echr.coe.int/eng?i=001-11169>
- Hockstad, T. A. (2016). Rats and trees need lawyers too: Community responsibility in Deodand practice and modern environmentalism. *Vermont Journal of Environmental Law*, 18(1), 105–133. <https://www.jstor.org/stable/24859520>
- Hogan, M. (2007). Standing for nonhuman animals: Developing a guardianship model from the dissents in *Sierra Club v Morton*. *California Law Review*, 95(2), 513–534. <http://dx.doi.org/10.15779/Z38Q416>
- Hunter, P. (2010). The basis of morality. *EMBO Reports*, 11(3), 166–169. <https://doi.org/10.1038/embor.2010.19>
- Ibrahim, D. M. (2007). A return to Descartes: Property, profit, and the corporate ownership of animals. *Law and Contemporary Problems* 70(1), 89–116. <https://scholarship.law.duke.edu/lcp/vol70/iss1/4>
- Korsgaard, C. M. (2013). Personhood, animals and the law. *Think*, 12(34), 25–32. <https://doi.org/10.1017/S1477175613000018>
- Kurki V. (2019). *A theory of legal personhood*. Oxford University Press. <https://doi.org/10.1111/1468-2230.12531>
- Kurki, V. (2017). Animals, slaves, and corporations: Analyzing legal thinghood. *German Law Journal*, (18)5, 1069–1090. <https://doi.org/10.1017/S2071832200022252>
- Le Neindre, P., Guatteo, R., Guémené, D., Guichet, J., Latouche, K., Leterrier, C., Levionnois, O., Mormède, P., Prunier, A., Serrie, A., Servière, J. (Eds). (2009). *Animal pain – identifying, understanding and minimising pain in farm animals* [Multidisciplinary scientific assessment, Summary of the expert report], 13. INRA (France). <https://www6.paris.inrae.fr/depe/content/>

download/3387/33163/version/2/file/animal-pain-apr2013.pdf

- Maddux, E. A. (2012). Time to stand: Exploring the past, present, and future of nonhuman animal standing. *Wake Forest Law Review*, 47, 1243–1267. <http://wakeforestlawreview.com/2013/04/time-to-stand-exploring-the-past-present-and-future-of-nonhuman-animal-standing>
- Monsó, S., Benz-Schwarzburg, J., & Bremhorst, A. (2018). Animal morality: What it means and why it matters. *The Journal of Ethics*, 22, 283–310. <https://doi.org/10.1007/s10892-018-9275-3>
- Naffine, N. (2009). *Meaning of life: Philosophy, religion, Darwin and the legal person*. Hart Publishing.
- Nékám, A. (1938). *The personality conception of the legal entity*. Harvard University Press. <https://doi.org/10.1017/S0008197300127874>
- New York ex rel. Nonhuman Rights Project, Inc. on Behalf of Tommy v. Lavery et al, 2014 WL 6802767 (N.Y. App. Div. Dec. 4, 2014).
- Pietrzykowski, T. (2017). The idea of non-personal subjects of law. In V. A. J. Kurki & T. Pietrzykowski (Eds.), *Legal personhood: Animals, artificial intelligence and the unborn*. Springer. <https://doi.org/10.1007/978-3-319-53462-6>
- Sluzska, D. (2016) Animal farm: The EU’s move towards progress and the US’s slide towards dystopia in farm animal welfare. *Cardozo Journal of Intl & Comp Law*, (24), 423–455.
- Stone, C. (1972). Should trees have standing? – Toward legal rights for natural objects. *Southern California Law Review*, 45, 450–501.
- Stone, C. (2010). *Should trees have standing? Law, morality, and the environment*. Oxford University Press.

- Sunstein, C. R. (2003). The rights of animals. *University of Chicago Law Review*, 70(1), 387–401. <https://doi.org/10.2307/1600565>
- The Cambridge Proclamation on Consciousness 2012. <http://fcmconference.org/img/CambridgeDeclarationOnConsciousness.pdf>
- The Institutes of Justinian* (J. B. Moyle, Trans.; 5th ed., Book 1). (1913). Clarendon Press.
- Weiss, K. J., Fromm, L., & Glazer, J. (2018). Assignment of culpability to animals as a form of abuse: Historical and cultural perspectives. *Behavioral Sciences & the Law*, 36(6), 661–674. <https://doi.org/10.1002/bsl.2372>
- Wise, S. M. (1998). Hardly a revolution – the eligibility of nonhuman animals for dignity-rights in a liberal democracy. *Vermont Law Review*, 22, 793–915.

Alina Davar, Joseph Luke

CRUEL TREATMENT OF ANIMALS IN KAZAKHSTAN:  
THEORY AND PRACTICE



### *Abstract*

Recently, though not for the first time in our history, animal welfare became one of the most acute societal concern topics, and a popular area of research for specialists of various disciplines, including law. As a result, numerous regulations on the relationship between humans and animals and amendments to legal acts were enforced, in particular in Kazakhstani legislation. Yet a lot of those updates proved themselves not fully sufficient and exposed gaps in the practical enforcement of the legislation.

In this article, the author acquaints the reader with how animal anti-cruelty legislation in Kazakhstan changed over time and how these changes overall affected the situation with animal abuse in the country. The author investigates the reasons for the ineffectiveness of Kazakhstani animal anti-cruelty legislation, e.g. gives an analysis on how the narrowness of formulation of certain terms, such as “animal”, “cruel treatment” causes obstacles in implementing the law, and how differences in cultures also make defining these terms even more complex a task; shows how certain features of the process of the law implementation itself can affect its effectiveness.

The author provides a rationale for the underdevelopment of the current criminal and legal norms and drafts recommendations for improving the criminal legislation governing crimes against animals.

**Key words:** animal welfare, animal law, anti-cruelty legislation, animal protection.

## 1. Introduction

### 1.1. *Reasons for Undertaking Research*

In recent years, the debates over the revision of the treatment of animals has not only not subsided but in fact has increased to a new level. Having moved beyond the concerns solely of veterinarians and animal lovers, this problem turns out to be a multi-faceted source of investigation for specialists of various disciplines, among which are philosophy, ethics, psychology, and sociology. The legal specialists have not stood idly by; they have been busy drafting and passing into law numerous regulations of the relationship between humans and animals. Some of the developing legislation<sup>73</sup> of the emerging field of Animal Law<sup>74</sup> includes the protection of rare and endangered species of animals, the use and protection of wild animals kept in captivity, rules on the maintenance of animals in urban areas and regulations on animal testing.

---

<sup>73</sup> Animal Legal and Historical Center. (n.d.). *World law overview*. Retrieved July 25, 2020, from <http://animallaw.info/nonus/index.htm>.

<sup>74</sup> 1977 – The first course in animal law is taught at Seton Hall Law School in the United States; See Waldau, P. (2011). *Animal rights: What everyone needs to know* (p. 204). Oxford University Press.

Despite its novelty, this field, being a rapidly growing one, has already defined priority research areas and allotted the issue of animal abuse to a special category of study. However, the idea that animal cruelty prevention is a modern concept finds justifiable refutations. Thus, Paul Waldau in his book “Animal rights: What everyone needs to know”<sup>75</sup> starts with a chronology of dates significant to the development of the concept of animal protection from 35,000 – 15,000 years ago, when through depictions of animals people stressed some special bond between them and animals. Doris Lin in the very beginning of her article “Historical Timeline of the Animal Rights Movement” emphasized that “...concerns for animal suffering... can be read in the ancient Hindu and Buddhist scriptures”.<sup>76</sup> Many argue that a serious consideration of the animal abuse issue began from the “first pieces of animal rights legislations”<sup>77</sup> known as Massachusetts Bay Colony Law (“forbade

---

<sup>75</sup> Waldau, P. (2011). *Animal rights: What everyone needs to know* (p. 201). Oxford University Press.

<sup>76</sup> Lin, D. (2019, November 26). Historical timeline of the animal rights movement. *ThoughtCo*. Retrieved July 25, 2020, from <http://animalrights.about.com/od/animalrights101/a/TimelineModern.htm>.

<sup>77</sup> Waldau, P. (2011). *Animal rights: What everyone needs to know* (p. 203). Oxford University Press.



cruelty against ‘any brute creature kept by man’<sup>78</sup>, 1641) and Martin’s Act (“An Act to Prevent the Cruel and Improper Treatment of Cattle”, 1822).

The discussion over points of reference of animal protection history can be continued, but present-day realities prove the fact that the legislative consolidation of standards for the treatment of animals has become one of the primary weapons in the fight against animal cruelty.

Yet despite the enactment of legislation prohibiting cruel treatment of animals, citizens as well as law enforcers in some countries face two common challenges:

- 1) under-development of legislative regulation, and
- 2) gaps in the practical enforcement of the legislation.

Observation of the above-mentioned circumstances in the application of the animal anti-cruelty law of the Republic of Kazakhstan was the reason for this research. To be more precise, the extreme paucity of cases under the relevant laws of recent years on cruel treatment of animals (represented currently by the Arti-

---

<sup>78</sup> Vicente-Arche, A. R. (2001). The animal rights movement in the United States: some thoughts about a new ethics. <https://www.institutofranklin.net/sites/default/files/2021-03/CS%20Animal%20Rights.pdf>.

cle 316 of the Criminal Code of the Republic of Kazakhstan No. 226-V from 3 July 2014, enacted from 1 January 2015 (hereinafter – Article 316) served as the impetus for the study.

At this stage, let us turn to the more detailed explanation of the problem and the subject of investigation (Article 316).

### *1.2. Problem Statement and Objectives*

The introduction of Article 200-2 of the Criminal Code of the Kazakh SSR<sup>79</sup> in 1968 can be taken as the initial point of animal anti-cruelty legislation in Kazakhstan. It stated that: “cruel treatment of animals, which cause their death or injury, as well as animal torture committed by a person to whom during the year an administrative penalty for the same action was applied, – shall be punished with correctional works for a term of up to six months or a fine of one hundred rubles”.<sup>80</sup>

In January 1998 the new Criminal Code (hereinafter, Code of 1998)<sup>81</sup> of the independent Kazakhstan, which was based on the

---

<sup>79</sup> Adopted on the 22<sup>nd</sup> of July, 1959 (is given with the amendments from April, 19 and December, 29, 1982).

<sup>80</sup> Criminal Code of the Kazakh SSR, 1959, Art. 200-2. Retrieved 2020, July 20, from [http://adilet.zan.kz/rus/archive/docs/K590002000\\_/16.07.1997](http://adilet.zan.kz/rus/archive/docs/K590002000_/16.07.1997).

<sup>81</sup> Note that this research was originally held under Code of 1998, but continued

Constitution of the Republic of Kazakhstan and generally recognized principles and norms of international law, entered into force. Many legal norms of the previous code remained as the basis for the current one, but it was significantly amended and supplemented. Professor Borchashvili in the preface to his Commentary to the Code noticed that there were three main reasons for its acceptance: “1) the need for judicial reforms, improvement of the protection of the rights and freedoms of individuals, democratization of criminal legislation; 2) new social, economic and political realities; 3) the lack of new characteristics and trends of a crime in the previous criminal code”.<sup>82</sup>

Along with the enactment of another code, the article on the cruel treatment of animals was replaced by a new one with the following wording (Article 276):

1. “Cruel treatment of animals which entailed their death or injury, if this act is committed for motives of hooliganism, or with the use of sadistic methods, or in the presence of small children, – shall be punished with a fine in the amount from one hundred to two hundred under the current Code of 2015.

<sup>82</sup> Borchashvili, I. (2007). *Kommentarii k ugolovnomu kodeksu Respubliki Kazakhstan* [Commentary to the Criminal Code of the Republic of Kazakhstan]. Zheti Zhargy.

monthly calculation indices, or correctional works for a term of up to one year, or restriction of freedom for a term of up to one year.

2. The same act committed by a group of persons, or by a group of persons upon a preliminary collusion, or by an organized group, or committed repeatedly, - shall be punished with a fine in the amount from five hundred to eight hundred monthly calculation indices, or correctional works for a term of up to two years, or restriction of freedom for a term of up to two years”.<sup>83</sup>

Nonetheless, the mere availability of legislation containing the norm prohibiting cruelty towards animals was not enough for it to work. Since the introduction of the article an abnormally scant number of criminal cases had been heard by courts under Article 276, while, in spite of the obviousness of a crime committed, the number of cases refused in proceedings initiation on different grounds was measured in the hundreds.<sup>84</sup>

---

<sup>83</sup> Criminal Code of the Republic of Kazakhstan, 1997, Art. 276. Retrieved April 4, 2013, from [https://online.zakon.kz/document/?doc\\_id=1008032#pos=3617;-54&sdoc\\_params=text%3D276%26mode%3Dindoc%26topic\\_id%3D1008032%26spos%3D1%26tSynonym%3D1%26tShort%3D1%26tSuffix%3D1&sdoc\\_pos=0](https://online.zakon.kz/document/?doc_id=1008032#pos=3617;-54&sdoc_params=text%3D276%26mode%3Dindoc%26topic_id%3D1008032%26spos%3D1%26tSynonym%3D1%26tShort%3D1%26tSuffix%3D1&sdoc_pos=0), and July 20, 2020, from [https://online.zakon.kz/document/?doc\\_id=1008032](https://online.zakon.kz/document/?doc_id=1008032).

<sup>84</sup> Official responses of the Committee of Legal Statistics and Special Records of the General Procuratorate of the Republic of Kazakhstan №2-20034-13-03315 from May 6, 2013 and №2-20034-13-03065 from July 11, 2013.

The introduction of the new code, which came into force on January 1, 2015 (hereinafter, Code of 2015), did not change the wording of the article, although it was renumbered to 316. However, significant changes in the very concept of a crime were brought in with the allocation of a criminal offense, dividing into crimes and criminal misdemeanors, depending on the degree of public danger and punishment.<sup>85</sup> This led to the classification of this criminal offense as a criminal misdemeanor and affected the punishment in the direction of mitigation:

1. Cruel treatment of animals which entailed their death or injury, if this act is committed for motives of hooliganism, or with the use of sadistic methods, or in the presence of small children, – shall be punished with a fine in the amount of up to two hundred monthly calculation indices, or correctional works in the same amount, or engagement in public service for a term of up to one hundred and eighty hours, or arrest for a term of up to sixty days.

2. The same act committed by a group of persons, or by a group of persons upon a preliminary collusion, or by an organized group, or committed repeatedly, – shall be punished with a fine in

---

<sup>85</sup> Criminal Code of the Republic of Kazakhstan, 2014. Retrieved July 20, 2020, from [https://online.zakon.kz/document/?doc\\_id=31575252](https://online.zakon.kz/document/?doc_id=31575252).

the amount of up to five hundred monthly calculation indices, or correctional labor in the same amount, or engagement in community service for a term of up to three hundred hours, or arrest for a term of up to ninety days.<sup>86</sup>

Moreover, sanctions to parts 1 and 2 were amended in accordance with the Law of the Republic of Kazakhstan dated 12.07.18, No. 180-VI, even more mitigating punishment, where the most severe of the types and sizes is arrest up to 50 days.<sup>87</sup>

Originally, based on the analysis of Article 276, it was hypothesized that the narrowness of the formulation of the *corpus delicti*'s elements<sup>88</sup> in the law on the cruel treatment of animals<sup>89</sup> along with the Commentary interpretation to it was one of the main causes in refusing to initiate proceedings, which was eventually con-

---

<sup>86</sup> Criminal Code of the Republic of Kazakhstan, 2014. Retrieved July 20, 2020, from [https://online.zakon.kz/document/?doc\\_id=31575252](https://online.zakon.kz/document/?doc_id=31575252).

<sup>87</sup> Criminal Code of the Republic of Kazakhstan, 2014, Art. 316. Retrieved July 20, 2020, from [https://online.zakon.kz/document/?doc\\_id=31575252#pos=4521;-44&sdoc\\_params=text%3D316%26mode%3Dindoc%26topic\\_id%3D31575252%26spos%3D1%26tSynonym%3D1%26tShort%3D1%26tSuffix%3D1&sdoc\\_pos=1](https://online.zakon.kz/document/?doc_id=31575252#pos=4521;-44&sdoc_params=text%3D316%26mode%3Dindoc%26topic_id%3D31575252%26spos%3D1%26tSynonym%3D1%26tShort%3D1%26tSuffix%3D1&sdoc_pos=1).

<sup>88</sup> The *corpus delicti* is a combination of objective and subjective attributes (elements) comprised in a crime. Objective elements of a crime include the object and the objective side. The subject and the subjective side relate to subjective elements.

<sup>89</sup> Here it means Article 276 of the Code of 1998.

firmed by the authors. However, the continuation of the research of the current animal anti-cruelty law (Article 316) was driven by the need to understand whether the changes in legislation which re-categorized this criminal offense as a criminal misdemeanor<sup>90</sup> and mitigated sentencing led to an increase in cases bringing to court proceedings and whether this changed the practice of its interpretation.

This work's objective is to provide a rationale for the underdevelopment of the criminal and legal norms of Article 316 that defines the elements of cruelty to animals as the criminal misdemeanor and, on the basis of the research results, draft recommendations for improving the criminal legislation governing crimes against animals.

The normative basis of the work consists of the Constitution of the Republic of Kazakhstan and the Criminal and Criminal Procedure Codes of the Republic of Kazakhstan. Various corresponding international laws will be applied as comparative examples.

---

<sup>90</sup> Here it means the Article 316 of the Code of 2015.

## 2. Literature Review. Peculiarities of Animal Anti-Cruelty Legislation

Due to the novelty of the research's subject in Kazakhstan's law, the theoretical basis of research includes mainly works of foreign scholars dealing with a number of animal issues (See, for example, David Favre, Paul Waldau, Aysha Akhtar and others). However, a significant focus of the research topic on the criminal law of the Republic of Kazakhstan requires the use of works of the famous legal scholar and the author of the Commentary to the Criminal Code of the Republic of Kazakhstan of 1998 Professor Borchashvili<sup>91</sup> and the Commentaries to the Criminal Code of the Republic of Kazakhstan of 2015 written by Professor Rakhmetov to Article 316.<sup>92</sup>

### 2.1. *The Term "Animals" in Legal Discussions*

When considering legal aspects regarding animals, a number of controversies arise. These controversies are largely associated

---

<sup>91</sup> Borchashvili, I. (2007). *Kommentarii k ugolovnomu kodeksu Respubliki Kazakhstan* [Commentary to the Criminal Code of the Republic of Kazakhstan]. Zheti Zhargy. Retrieved July 20, 2020, from [https://zakon.uchet.kz/rus/docs/T9700167\\_1\\_](https://zakon.uchet.kz/rus/docs/T9700167_1_).

<sup>92</sup> Rakhmetov, S., & Rogov, I. (2016). *Kommentarii k ugolovnomu kodeksu Respubliki Kazakhstan* [Commentary to the Criminal Code of the Republic of Kazakhstan] (pp. 541–542). Norma-K.



with the limitation of categories of animals for ethical and legal discussions. In other words, lawyers, animal welfare activists, veterinarians and scientists of many fields are still struggling to find the correct definition of the term “animals” for its inclusion in legal acts. Nowadays these debates have become more intense and relevant in light of the fact that most legislations reconsidered the violation of animal anti-cruelty laws as a felony.<sup>93</sup>

As a starting point, the authors provide necessary clarifications on the differences of the term as perceived by animal welfare advocates and legal specialists.

Paul Waldau raises the question of duality of use of the word “animals” - scientific and nonscientific one. The scientific definition of “animals” encompasses all living beings including humans, while widespread nonscientific, or, as Waldau calls it, “anti-scientific”, use of the term is essentially different: “all living beings other than humans”.<sup>94</sup> He believes that modern society can be divided according to its commitment to the first or second perception of

---

<sup>93</sup> Turner, J. (2011). *That's progress!: New nationwide animal protection laws passed*. Global Animal. Retrieved July 12, 2020, from <http://www.globalanimal.org/2011/06/06/animal-rights-new-laws-passed-across-america/40880/>.

<sup>94</sup> Similar definition can be found in the Oxford English Dictionary (an electronic version). Retrieved July 29, 2020, from <http://oxforddictionaries.com/definition/english/animal>.

animals: to those, who “link humans to other living beings<sup>95</sup> ... and those, who separate humans from the earth’s other living beings”.<sup>96</sup>

Obviously animal welfare advocates belong to the first group, whereas legal specialists adhere to the second option of the term’s definition, at least for the reason from the standpoint that the law field identifies a human as a separate subject of law. However, in practice legal professionals cannot be limited to such a broad definition. That is when the question who (what) and why should be included in the term “animals” become significantly important.

According to the noted animal welfare activist and lawyer David Favre, in practice the determination of categories of animals appropriate for legal consideration is mostly kept to the drawing of parallels between some qualities of animals and humans.<sup>97</sup> “It might be argued that legal rights should be extended to those animals who are conscious, self-aware, have language, use tools,

---

<sup>95</sup> Another term, “non-human animals”, is also widely acknowledged.

<sup>96</sup> Waldau, P. (2011). *Animal rights: What everyone needs to know* (p.7). Oxford University Press.

<sup>97</sup> Favre, D. S. (2010). Living property: A new status for animals within the legal system. *Marquette Law Review*, 93(3), 1043. <https://scholarship.law.marquette.edu/mlr/vol93/iss3/3>.

or feel – wrote Dr. Favre in “Living Property”.<sup>98</sup> However, in the same work he leads the reader to the idea that, since the capacities of animals can vary from species to species, the key characteristic in the definition of animals would better be the word “living”. He further explains that by “living” he means those beings (excluding humans) whose life-functioning is determined by the presence of DNA molecules, the inalienable existence purpose of which is reproduction. In turn, the desire to reproduce determines a number of other life goals, for instance, the struggle for life.<sup>99</sup> Nevertheless, this definition also has practical limitations. Thus, Dr. Favre excludes from his definition of animals “the plants kingdom, insects, worms and other small animals”.<sup>100</sup> Moreover, continuing his reasoning, he emphasizes the necessity of additional limitations saying that “many states initially defined protected animals with the full sweep of the biological definition

---

<sup>98</sup> Favre, D. S. (2010). Living property: A new status for animals within the legal system. *Marquette Law Review*, 93(3), 1043. <https://scholarship.law.marquette.edu/mulr/vol93/iss3/3>.

<sup>99</sup> Favre, D. S. (2010). Living property: A new status for animals within the legal system. *Marquette Law Review*, 93(3), 1043, 1049. <https://scholarship.law.marquette.edu/mulr/vol93/iss3/3>.

<sup>100</sup> Favre, D. S. (2010). Living property: A new status for animals within the legal system. *Marquette Law Review*, 93(3), 1045. <https://scholarship.law.marquette.edu/mulr/vol93/iss3/3>.

of the word ‘animal’, but the application of the definition, as reflected in the cases filed at the time, was mostly limited to mammals. More recently, as violations of these laws have become felony violations, the legal definition of animal has been redrawn<sup>101</sup> at the line of vertebrate animals”.<sup>102 103</sup>

The redrawing of this definition is related not only to the changes in classification of crimes against animals, but also to

---

<sup>101</sup> The author of this work has selected on a random basis a number of legislations regarding cruel treatment of animals and found the following: among corresponding legislations of the U.S.A (52 separate states’ laws), UK, Switzerland, Germany and Zimbabwe only 18 states’ (Alabama, Connecticut, Florida, Illinois, Indiana, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nevada, New Jersey, New York, North Carolina, North Dakota, Rhode Island and Vermont) animal anti-cruelty laws determine “animals” by the broad definitions as “every living creature, except a human being” or “any animal”. Other aforementioned laws refer to the definition of “vertebrates”. Texts of legislations were retrieved June 10, 2020, from <http://www.animallaw.info/statutes/>.

<sup>102</sup> Vertebrate animals mean mammals, birds, reptiles, amphibians and fish. See Bousfield, B., & Brown, R. (2010). Animal welfare. *Veterinary Bulletin – Agriculture, Fisheries and Conservation Department Newsletter*, 1(4). [http://www.afcd.gov.hk/english/quarantine/qua\\_vb/files/AW8.pdf](http://www.afcd.gov.hk/english/quarantine/qua_vb/files/AW8.pdf).

<sup>103</sup> Favre, D. S. (2010). Living property: A new status for animals within the legal system. *Marquette Law Review*, 93(3), 1045. <https://scholarship.law.marquette.edu/mlr/vol93/iss3/3>.

the scientific evidence<sup>104</sup> proving that vertebrate<sup>105</sup> animals are sentient.<sup>106</sup> Eleanor Boyle in the article “Neuroscience and Animal Sentience” remarked that “roughly defined as the capacity for emotion, pleasure and pain, sentience is related to other brain

---

<sup>104</sup> “In 2012, an international group of eminent neuroscientists signed The Cambridge Declaration on Consciousness, which confirmed that many animals, including all mammals and birds, possess the ‘neurological substrates that generate consciousness?’” See Voiceless. *Animal Sentience*. (2018). Retrieved June 10, 2020, from <https://www.voiceless.org.au/the-issues/animal-sentience>.

“Research into animal sentience is emerging from neuroscience, evolutionary biology, zoology and philosophy, employing a variety of approaches and methods. Neuroscientists have conducted experimental brain lesioning and stimulation to map the neuroanatomy and neurochemistry of emotion. Researchers have done brain scanning on monkeys performing cognitive tasks, electrical recording on neural cells of shrews and post-mortem analyses of the brains of whales. Biologists have observed species’ behavioural and physiological responses to potentially emotional or painful situations and have employed experimental studies to assess animals’ preferences and choices. Evolutionary scientists, psychologists and philosophers have examined the adaptive value of emotion, of pleasure and of pain for motivation and for survival”. See Boyle, E. (2009). *Neuroscience and animal sentience*. CIWF. Retrieved May 27, 2013, from [http://www.ciwf.org.uk/includes/documents/cm\\_docs/2009/b/boyle\\_2009\\_neuroscience\\_and\\_animal\\_sentience.pdf](http://www.ciwf.org.uk/includes/documents/cm_docs/2009/b/boyle_2009_neuroscience_and_animal_sentience.pdf). See also Akhtar, A. (2012). *Animals and public health: Why treating animals better is critical to human welfare* (pp. 6–7). Palgrave Macmillan.

<sup>105</sup> A number of researches have proved that some invertebrates, such as cephalopods and crustaceans, can demonstrate the signs of sentience. See Bousfield, B., & Brown, R. (November 2010). Animal welfare. *Veterinary Bulletin – Agriculture, Fisheries and Conservation Department Newsletter*, 1(4), 3. [http://www.afcd.gov.hk/english/quarantine/qua\\_vb/files/AW8.pdf](http://www.afcd.gov.hk/english/quarantine/qua_vb/files/AW8.pdf).

<sup>106</sup> Boyle, E. (2009). *Neuroscience and animal sentience*. CIWF. Retrieved May 27, 2013, from [http://www.ciwf.org.uk/includes/documents/cm\\_docs/2009/b/boyle\\_2009\\_neuroscience\\_and\\_animal\\_sentience.pdf](http://www.ciwf.org.uk/includes/documents/cm_docs/2009/b/boyle_2009_neuroscience_and_animal_sentience.pdf).

capabilities of intelligence and consciousness”.<sup>107</sup> For instance, one of the recent studies in mice showed that during painful stimulation with the mouse, another observing mouse evinced particular concern. While only in a case when the mouse, subjected to painful procedures, was familiar to the observing one, that mouse demonstrated real compassion to the testee.<sup>108</sup>

Thus, animals, which mankind throughout the centuries has not considered as though a little emotionally connected society, have exhibited the absolutely opposite behavior. With the advancement of the study of animals, the number of similar examples confirming the sensitivity of particular living beings will, no doubt, also increase; new types of sentient animals will swell the ranks of the protected creatures and current legislative definition of animals will be sunk into oblivion.

The issue of the definition of animals is not the only controversy that occurs in regard to the animal anti-cruelty legislation.

---

<sup>107</sup> Boyle, E. (2009). *Neuroscience and animal sentience*. CIWF. Retrieved May 27, 2013, from [http://www.ciwf.org.uk/includes/documents/cm\\_docs/2009/b/boyle\\_2009\\_neuroscience\\_and\\_animal\\_sentience.pdf](http://www.ciwf.org.uk/includes/documents/cm_docs/2009/b/boyle_2009_neuroscience_and_animal_sentience.pdf).

<sup>108</sup> Akhtar, A. (2012). *Animals and public health: Why treating animals better is critical to human welfare* (p. 10). Palgrave Macmillan.

## 2.2. The Term “Cruelty” in Legal Discussions

An additional “sore spot” of the animal abuse issue is the definition of cruelty itself.<sup>109</sup>

Having searched for the definitions of cruelty in the laws of different countries, legal databases in a majority of cases will produce acts relating to child abuse and cruelty to animals. This observation is to some extent symbolic, but in this case also rather demonstrative: for the last 30 years a number of studies on the link between violence toward humans and animals have proved its expediency.<sup>110</sup> According to Aysha Akhtar, the connection between child and animal abuse is determined not only by their belonging to a vulnerable group, but also by the fact that for a violent offender there is no difference who is the subject of maltreatment: thus, “in a survey of 48 of the largest shelters in the USA for victims of domestic violence and child abuse, more than 85 percent said that women who came in reported incidents of animal abuse and 63 percent of the shelters said that children who came in reported the same”.<sup>111</sup>

---

<sup>109</sup> For the purposes of this work only the terms “cruelty”, “abuse”, “mistreatment” and “maltreatment” are used as interchangeable synonyms.

<sup>110</sup> Akhtar, A. (2012). *Animals and public health: Why treating animals better is critical to human welfare* (p. 30). Palgrave Macmillan.

<sup>111</sup> Akhtar, A. (2012). *Animals and public health: Why treating animals better is critical to human welfare* (p. 36). Palgrave Macmillan.

Despite the similar nature of these crimes, the principles and standards for its definition are certainly different.

When searching for common principles for defining cruel treatment towards animals, it is necessary to understand that such a broad concept can vary from country to country depending on cultural and ethical values. For instance, Corrida – a traditional Spanish spectacle involving bulls – is a part of Spanish cultural heritage for some people and public brutal killing of bulls for others. Differences in cultures complicate the definition of what is “cruelty to animals”.

However, after decades of investigations and without regard to any traditional component, in 1993 the United Kingdom Farm Animal Welfare Council (FAWC) modified the so-called “Five Freedoms”, the standards for animal welfare measurement,<sup>112</sup> which declare:<sup>113</sup>

---

<sup>112</sup> “They have been included or referred to in national legislation, for example in New Zealand’s Animal Welfare Act (1999) where they were used as part of the definition of animals’ “physical, health and behavioural needs” (sec. 4), and Costa Rica’s Animal Welfare Act (1994) where they are considered the “basic conditions” for animal welfare (art. 3). The Five Freedoms have also been adapted and incorporated into regional agreements such as the European Convention for the Protection of Animals Kept for Farming Purposes (1976)”. See Vapnek, J., & Chapman, M. (2010). *Legislative and regulatory options for animal welfare* [FAO Legislative Study] (pp. 6 – 7). FAO of the United Nations <http://www.fao.org/docrep/013/i1907e/i1907e00.htm>.

<sup>113</sup> Vapnek, J., & Chapman, M. (2010). *Legislative and regulatory options for animal welfare* [FAO Legislative Study] (p. 6). FAO of the United Nations. <http://www.fao.org/docrep/013/i1907e/i1907e00.htm>.



1. freedom from hunger and thirst – by ready access to fresh water and a diet designed to maintain full health and vigour.
2. freedom from discomfort – by the provision of an appropriate environment including shelter and a comfortable resting area;
3. freedom from pain, injury or disease – by prevention or through rapid diagnosis and treatment;
4. freedom to express normal behaviour – by the provision of sufficient space, proper facilities and company of the animal's own kind; and
5. freedom from fear and distress – by the assurance of conditions that avoid mental suffering.<sup>114</sup>

With the emergence of the modified “Five Freedoms” as fundamental principles to maintain animal welfare, the practice of reference to it in order to determine cruel treatment became widely accepted. However, nonobservance of these rules does not always mean violating them if it is done for the benefit of the animal. For example, if after a surgery an animal is prohibited from drinking, the fact that the animal was not allowed to drink for a short pe-

---

<sup>114</sup> Farm Animal Welfare Committee. (n.d.) *Five Freedoms* (An overview). Retrieved July 6, 2013, from <http://www.fawc.org.uk/freedoms.htm>.

riod of time cannot be considered as non-compliance with these standards.

### *2.3. Features of the Law Implementation*

Another feature of the primary legislation on animal welfare (laws on cruel treatment of animals are a part of it) is the delegation of implementation responsibility to a particular institution.<sup>115</sup>

This institutional framework creation depends on several factors such as legal and structural system of a state, absence or existence of previous experience in the discussed issue, necessity of involvement of additional specialists and many other varying nuances.

According to Jessica Vapnek and Megan Chapman, the responsibility to implement animal welfare legislation frequently falls on the shoulders of already existing governmental divisions as, for instance, corresponding ministries and agencies. These kinds of institutions are called “the competent authority”.<sup>116</sup>

---

<sup>115</sup> Vapnek, J., & Chapman, M. (2010). *Legislative and regulatory options for animal welfare* [FAO Legislative Study] (p. 37). FAO of the United Nations. Retrieved July 10, 2020, from <http://www.fao.org/docrep/013/i1907e/i1907e00.htm>.

<sup>116</sup> Vapnek, J., & Chapman, M. (2010). *Legislative and regulatory options for animal welfare* [FAO Legislative Study] (p. 37). FAO of the United Nations. Retrieved July 10, 2020, from <http://www.fao.org/docrep/013/i1907e/i1907e00.htm>.

However, it is obvious that depending on the above-mentioned factors the governmental divisions chosen as a competent authority might vary from country to country and even comprise several institutions or be an absolutely separate body.

The Ministry of Agriculture and Forestry of Korea can serve as an instance where certain authority was delegated to one governmental division, while in Peru the Law on the Protection of Domestic Animals and Wild Animals in Captivity (2000) assigns authority among the Ministries of Health, Agriculture and Education.<sup>117</sup> Other countries, as, for example, the Republic of Kazakhstan in its Law “On Veterinary”, grant special regulatory authority to local executive organs and the Ministry of Agriculture.<sup>118</sup>

As a rule, besides competent authority selection the primary legislation defines a number of other important provisions. Despite the variety of competent authority options, its functional obligations are almost the same and mainly include inspection, licensing, testing and regulatory duties.

---

<sup>117</sup> Vapnek, J., & Chapman, M. (2010). *Legislative and regulatory options for animal welfare* [FAO Legislative Study] (p. 39). FAO of the United Nations. Retrieved July 10, 2020, from <http://www.fao.org/docrep/013/i1907e/i1907e00.htm>.

<sup>118</sup> Law of the Republic of Kazakhstan “On veterinary”, 2002, № 339-II. Retrieved July 17, 2020, from <http://www.pavlodar.com/zakon/?-dok=02111&uro=08010>.

Apart from the competent authority, the practice of establishing special committees or boards is also fairly common. Usually, it consists of experts of scientific and veterinary organizations, lawyers and representatives of NGOs dealing with animal issues and many other interested parties. As Jessica Vapnek and Megan Chapman state in their work, “Legislative and Regulatory Options for Animal Welfare”, the composition depends on the role imposed on this committee or board, stating that “depending on the assigned functions of the board, it may not be appropriate to include private sector representatives, as there is a potential conflict of interest where the regulated are acting as the regulators. In Latvia, for example, the Animal Protection Act (2000) establishes an animal protection ethics council with a purely advisory role, and includes only members of public institutions, not the private sector. The role of the ethics council is to educate the general public and give recommendations to state institutions on animal protection”.<sup>119</sup>

One more “feature of animal welfare legislation is the attention given to civil society as both a *raison d’être* for such legislation and

---

<sup>119</sup> Vapnek, J., & Chapman, M. (2010). *Legislative and regulatory options for animal welfare* [FAO Legislative Study] (p.40). FAO of the United Nations. Retrieved July 10, 2020, from <http://www.fao.org/docrep/013/i1907e/i1907e00.htm>.

a key partner in its implementation”.<sup>120</sup> This practice is common to the Western countries and liberalism world, where the legal system and division of power are entirely different from the post-Soviet one. In other words, a state, driven by the impact of a powerful and developed civil society, through legislation in general and some additional tools as funding and social service privileges in particular might attract its population to participate. Moreover, usually legislation defines the state’s policy regarding animal welfare through claimed ethical and moral principles. For instance, “The Malaysian Animals Act (1953, last revised 2006) offers a reward to anyone who reports a violation (sec. 50(1))”,<sup>121</sup> or Costa Rican Animal Welfare Act (1994) says the following:

The family and educational institutions will encourage, in children and youth, the values that sustain this law. The following will be particularly emphasized:

a) The consciousness that cruel acts against and mistreatment of animals harms human dignity.

---

<sup>120</sup> Vapnek, J., & Chapman, M. (2010). *Legislative and regulatory options for animal welfare* [FAO Legislative Study] (p. 43). FAO of the United Nations. Retrieved July 10, 2020, from <http://www.fao.org/docrep/013/i1907e/i1907e00.htm>.

<sup>121</sup> Vapnek, J., & Chapman, M. (2010). *Legislative and regulatory options for animal welfare* [FAO Legislative Study] (p. 43). FAO of the United Nations. Retrieved July 10, 2020, from <http://www.fao.org/docrep/013/i1907e/i1907e00.htm>.

- b) The foundation of respect for all living beings.
- c) The consciousness that compassion for suffering animals dignifies human beings.
- d) The knowledge and practice of the norms that govern protection of animals.<sup>122</sup>

In this fashion, the civil society is engaged to help enforce the statute, at least in its educational and explanatory aspects. This approach is justified as it helps to bring understanding to the general population and thereby it stimulates interest and desire to participate with the result that implementation of the legislation is a more conscious consensus building effort.

### **3. Methodology**

The authors investigated a flaw in Kazakhstan's legal framework of animal protection. In order to understand why there were so few cases of proper enforcement of the animal protection regulations, the primary author of the present article requested from KARE-Zabota Public Foundation cases of observed animal cruel-

---

<sup>122</sup> Vapnek, J., & Chapman, M. (2010). *Legislative and regulatory options for animal welfare* [FAO Legislative Study] (p. 44). FAO of the United Nations. Retrieved July 10, 2020, from <http://www.fao.org/docrep/013/i1907e/i1907e00.htm>.

ty.<sup>123</sup> In addition to these cases, the authors analyzed data on the article from its inception; the data was received from the appropriate state agencies in the form of several statistics. The formation of the state legal statistics in order to ensure the integrity, objectivity and adequacy of statistical indicators as well as the conduct of special records in the Republic of Kazakhstan is under the authority of the Committee of Legal Statistics and Special Records of the General Procuratorate (hereinafter, the Committee) and its territorial directorates.

Thereby, in accordance with the provisions of the law “On the order of consideration of requests of physical and legal entities”<sup>124</sup>, several letters were submitted to the central division of the Committee to obtain the data about:

- the number of registered crimes under Article 276 and then Article 316;

- the number of initiated criminal cases that were directed to and considered by the courts;

---

<sup>123</sup> KARE-Zabota Foundation is one of Kazakhstan’s main animal protection organizations, see <http://www.kare.kz>.

<sup>124</sup> Law of the Republic of Kazakhstan “On the order of consideration of requests of physical and legal entities”, 2007, № 221-III. Retrieved July 17, 2020, from [https://online.zakon.kz/document/?doc\\_id=30086115](https://online.zakon.kz/document/?doc_id=30086115).

- the number of cases that were refused in proceedings initiation on the rehabilitating and non-rehabilitating grounds.<sup>125</sup>

Thus, for three originally submitted requests to the Committee three official responses were received, data from which is reflected and analyzed in the next chapter. However, to receive updated information for the last 7 years 2 requests were sent none of which followed by the response. Moreover, the analytical information provided on the website for the period from 2013 to 2020 does not contain the necessary data, therefore, conclusions for this period will be based on well-known cases of cruelty to animals in Kazakhstan available in various media.<sup>126</sup>

Important changes in the analyzed time period were made after receiving of the responses. Despite the fact that Article 276 was introduced in 1997, there was no separate allotment of this article in any statistical reports: all articles of the chapter “Crimes against morality and public health” were reflected in reports to

---

<sup>125</sup> See, for instance, Committee on Legal Statistics and Special Accounts of the General Prosecutor’s Office of the Republic of Kazakhstan. (n.d.). Reports. Retrieved July 17, 2020, from <http://pravstat.prokuror.gov.kz/rus/o-kpsisu/deyatelnost-komiteta/analiticheskaya-informaciya>.

<sup>126</sup> See, for instance, Olga. (2014, March 18). *Medvezhonka skormili yaguaram v Karagande na glazah u detey* [Bear cub fed to jaguars in Karaganda in front of children]. Diapazon. Retrieved July 15, 2020, from <https://diapazon.kz/news/40661-medvezhonka-skormili-yaguaram-v-karagande-na-glazah-u-detey>.



gether. However, with the introduction of a new statistical report of the №1-M form in 2004, which allocated Article 276 separately, accumulation of statistical data on the article under the study has begun. Thereby, the analyzed time period covers a span from 2005 to June 2013.

#### **4. Findings**

As stated above, the main objective of the research concludes by confirming the relationship between the variables of the hypothesis, assuming the main reason of the large number of refusals in proceedings initiation under Article 276 and with the adoption of the new Criminal Code, replaced by its Article 316 in the narrowness of formulation of *corpus delicti*'s elements and its interpretation in the Commentary to the Criminal Code of the Republic of Kazakhstan.

To satisfy this objective, it was necessary to map the available statistical data on Article 276.<sup>127</sup>

Obtained results have been reflected in the figure and table below.

---

<sup>127</sup> Note that the analyzed period of time covers years from 2005 to 6 months of 2013.

Figure 1. *The ratio of criminal cases that were initiated and directed to the courts under Article 276 and cases refused on rehabilitating and non-rehabilitating grounds (on the entire Kazakhstan)*

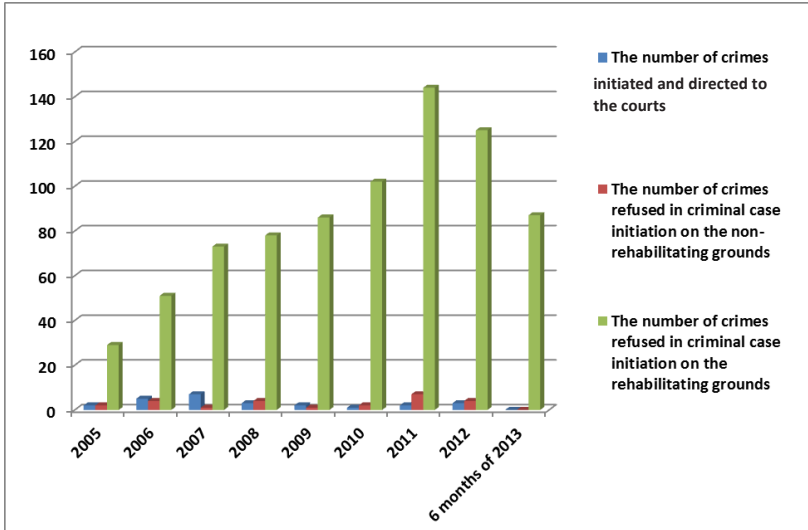


Table 1. *The number of cases under Article 276 that were terminated and on which a defendant was convicted (on the entire Kazakhstan)*

|  | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013* |
|--|------|------|------|------|------|------|------|------|-------|
| The number of cases that were terminated               | 0    | 3    | 0    | 1    | 0    | 0    | 2    | 1    | 0     |
| The number of cases on which a defendant was convicted | 0    | 1    | 2    | 0    | 0    | 0    | 0    | 1    | 0     |

\* for 6 months

Analyzing the data reflected in the figure and table, the following findings can be made:

1. As Figure 1 shows, for the period between 2005 and 2013 there has been a significant increase in the number of cases under Article 276 (Fig. 1).

2. Only over 1% of the total number of registered cases under Article 276 was considered in court (Fig. 1). Moreover, only half of this 1% resulted in conviction (Table 1).

3. Almost 99% of the cases under Article 276 were rejected /prior to initiating procedure/at the time the proceedings were initiated on the rehabilitating and non-rehabilitating grounds (Fig.2). At the same time, the predominant majority of the refusals (96%) constitute those which were made on rehabilitating grounds, mainly due to lack of *corpus delicti*.

4. According to the available copies of the rulings on refusing to initiate proceedings on corresponding cases, 96% cases were refused due to the lack of *corpus delicti*. That, in turn, suggests that the majority of refusals to go forward under Article 276 and current Article 316 indicated the absence of *corpus delicti* as the main reason for the impossibility of initiating criminal proceedings.

#### *4.1. Reasons of the Growth of the Crimes' Number*

The first observation from the results obtained earlier shows that there was an overall increase in the number of registered offenses under Article 276. The authors believe that this tendency has two reasons.

First there was a proven fact that the state economic growth increases the well-being of citizens. Such economic situation, as a rule, presumes appropriate political environment that in the aggregate allows population increase its social awareness. The evident growth of people's prosperity in Kazakhstan from the 1990s and the beginning of 2000s, should be noted. Thus, the first presumed reason of the increase in the number of registered offences is connected with the increased awareness of citizens' social responsibility; paying attention to the problem, people demonstrate their willingness to deal with it.

However, such tendency also reflects an increase in the number of such offenses registered. According to the Committee, the recent "...growth of crimes' number is the result of the work of law enforcement bodies on the maximization of crimes' registration and objectification of the indicators, which have been concealed

for many years”.<sup>128</sup> To take this forward, the following actions have been done:

- the entire system of recording and registration of crimes has been reformed;
- adequate information technologies have been throughout Kazakhstan;
- the penalty for deliberately concealing crimes by officials was increased.<sup>129</sup>

Taking into account the above changes, it can be concluded that measures undertaken by the Committee for the improvement of reflection of the legitimacy and legal order in the country might be considered as another reason leading to the increase in the number of offences under Article 276, however, it is not clear why such

---

<sup>128</sup> Kokanova, G., & Nurseitov N. (2013, January 9). *Analiz statisticheskikh dannykh o sostoyanii zakonnosti i pravoporyadka v strane za 2012 god* [Statistical data analysis on legality and legal order in the country for 2012] (Annual analytical paper prepared by and for the Committee of Legal Statistics and Special Records of the General Procuratorate 2012). Retrieved 2013, June 29, from <http://pravstat.prokuror.kz/rus/o-kpsisu/deyatelnost-komiteta/analiticheskaya-informaciya>.

<sup>129</sup> Kokanova, G., & Nurseitov N. (2013, January 9). *Analiz statisticheskikh dannykh o sostoyanii zakonnosti i pravoporyadka v strane za 2012 god* [Statistical data analysis on legality and legal order in the country for 2012] (Annual analytical paper prepared by and for the Committee of Legal Statistics and Special Records of the General Procuratorate 2012). Retrieved 2013, June 29, from <http://pravstat.prokuror.kz/rus/o-kpsisu/deyatelnost-komiteta/analiticheskaya-informaciya>. This source is the official site of the General Procuratorate of the Republic of Kazakhstan.

information is not freely available online. Presumably, the situation associated with the pandemic affected the work of the postal services and made it problematic to send replies on requests of the number of crimes under Article 316 for the period from 2013 to 2020.

#### *4.2. The Problem's Pattern*

In general, the remaining findings can be combined and summarized in the following statement:

For the period of time analyzed, only over 1% of the total number of registered crimes under Article 276 was examined in the courts, the remaining 99%<sup>130</sup> constitute refusals to initiate proceedings on different grounds, the dominant majority of which has been the absence of *corpus delicti*, while the cases covered by the Mass Media over the past 5–7 years confirm the continuing trend of non-initiation of criminal cases on the same basis.<sup>131</sup>

---

<sup>130</sup> Note that 100% is equal to 811 registered crimes under Article 276. This number of crimes has been recorded for the period from 2005 to 6<sup>th</sup> months of 2013. 99% means 800 registered crimes under Article 276 that were refused in proceedings initiation on different grounds. 96% means 775 registered crimes under Article 276, proceedings initiation on which were refused on rehabilitating grounds.

<sup>131</sup> See, for instance, Inform Buro. (2017, November 20). *Otstrel brodyachikib zhi-votnykh vozle shkoly shokiroval ust-kamenogortsev* [Shooting of stray animals near

In other words, the results obtained demonstrate that the main ground for refusing to initiate proceedings consists of the absence of *corpus delicti*, which partially proves the authors' hypothesis: the narrowness of the formulation of *corpus delicti*'s elements in the current law on cruel treatment of animals, along with the Commentary interpretation to it, is one of the main obstacles in initiating proceedings. In order to show the interrelation of the hypothesis's variables, one must provide reasoned arguments that detection of the *corpus delicti* is not possible because of the narrowness of its elements.

Prior to a discussion of the *corpus delicti*'s elements of Article 276 and current Article 316, the authors provide a general background of the relevant part of Kazakhstan's Criminal Code.

Article 1 of the Criminal Code states that:

1. The criminal legislation of the Republic of Kazakhstan shall consist exclusively of the present Code of the Republic of Kazakhstan. Other laws which stipulate criminal liability shall only be subject to application after their inclusion into the present Code.

---

the school shocked Ust-Kamenogorsk people]. Retrieved 2020, July 15, from <https://informburo.kz/novosti/otstrel-brodyachih-zhivotnyh-vozle-shkoly-shokiroval-ust-kamenogorcev.html>.

2. The present Code is based on the Constitution of the Republic of Kazakhstan and generally accepted principles and norms of international law.<sup>132</sup>

Thereby, the direct source of the criminal law in Kazakhstan is the Criminal Code.<sup>133</sup>

Article 4 of the Criminal Code specifies that:

The only basis for criminal liability shall be the commission of a criminal offence, that is, an act which has all of the attributes of a legally defined crime (*corpus delicti*)<sup>134</sup> stipulated by the present Code. No one can be subject to repeated criminal liability for one and the same crime.<sup>135</sup>

Being enshrined in law<sup>136</sup>, the general elements of *corpus delicti* can be presented in the following way:

---

<sup>132</sup> Criminal Code of the Republic of Kazakhstan, 2015, Art. 1. Retrieved 2020, July 12, from [https://online.zakon.kz/document/?doc\\_id=31575252#-pos=523;-54](https://online.zakon.kz/document/?doc_id=31575252#-pos=523;-54).

<sup>133</sup> Note: particular Resolutions of the Supreme Court of the Republic of Kazakhstan can also be used.

<sup>134</sup> I.e., the elements of *corpus delicti*.

<sup>135</sup> Criminal Code of the Republic of Kazakhstan, 2015, Art. 4. Retrieved July 12, 2020, from [https://online.zakon.kz/document/?doc\\_id=31575252#-pos=523;-54](https://online.zakon.kz/document/?doc_id=31575252#-pos=523;-54).

<sup>136</sup> The elements of *corpus delicti* have a doctrinal nature rather than legislative. See also Trainin, A. (1957). *Obscheye ucheniye o sostave prestupleniya* [The general doctrine of the elements of the corpus delicti]. Gosyurizdat.



1) *The object of a criminal offence* implies social relations, interests and benefits protected by the criminal law.

2) *The objective side of a criminal offence* is an external form of the crime exercise that includes features related to the criminal act itself. To be more precise, these features include characteristic of the action and inaction and its external attributes (place, method, time, used instruments and means, etc.), and also characteristic of harmful consequences caused by the *criminal offence*.

3) *The subject* characterizes the essential properties specific to a person who committed a crime: age, mental health, official position, etc.

4) *The subjective side* includes the features that characterize internal mental attitude of an offender to a socially dangerous act and its consequences, motives, goals, which he or she would like to achieve in the result of the violation of criminal law.

In discussing the elements of the *corpus delicti*, it is important to note that the Kazakhstani Criminal Code is divided into two parts: General and Special. Thus, the General Part contains mainly general regulatory provisions including the subject and

subjective side of the crime, indicating, for instance, in Article 15 who is a subject to criminal liability:

1. Only a sane person who reached the age established by the present Code shall be subject to criminal liability.

2. Persons who commit crimes shall be equal before law, regardless of their origin, social, official, and property status, gender, race, nationality, language, religious attitude, persuasions, membership in public organizations, place of residence, or any other circumstances.<sup>137</sup>

Whereas, the Special Part provides the description of the criminal act itself defining all the elements in detail.

To understand the underdevelopment of *corpus delicti*'s elements of Article 316, let us sort out the article into the relevant elements.

According to the article, the object of the criminal offence is “public morality”. While, obviously, the object against which the cruel actions are directed is an animal and the animal’s health. Moreover, the article itself does not provide a specific

---

<sup>137</sup> Criminal Code of the Republic of Kazakhstan, 2015, Art. 15. Retrieved July 12, 2020, from [https://online.zakon.kz/document/?doc\\_id=31575252#-pos=523;-54](https://online.zakon.kz/document/?doc_id=31575252#-pos=523;-54).

definition of animals, nor does any reference to a law that defines them. This, at least in theory, allows considering insects within the category of animals and, in practice, creates ambiguity regarding the very fact of who should be included in this definition.

The objective side of the criminal offence is characterized in Article 316 by the cruel treatment which entailed death or injury of an animal(s), committed for motives of hooliganism, or with the use of sadistic methods, or in the presence of small children. The Legislator again left the act of cruel treatment without definition, allowing law enforcers to understand this term differently, implying action and inaction with the final outcome of animal's death or injury. Furthermore, the condition of presence of small children seems not well-thought-out enough, as, for example, for many adults the observation of cruelty to animals can cause, at least, psychological problems.

The subject of the criminal offence in Article 316 is regulated by Articles 15 of the Criminal Code, meaning by it a sane individual who has reached the age of 16. That also, as one of the latest cruel cases of puppies being burned alive, shows, requires a revi-

sion, since one of the 15-year-olds “arsonist” was released from criminal liability due to not reaching the specified age.<sup>138</sup>

The subjective side of the criminal offence in Article 316 is characterized by the deliberate form of guilt in the form of direct or indirect intent.

Here the widespread in the usage of the investigating authorities the Commentary to the Criminal Code of the Republic of Kazakhstan should be referred to. The Commentary, written by the Doctor of Jurisprudence, Professor Borchashvili, represents particular interpretations of the norms of the Criminal Code. Designed for the convenience of investigators, the Commentary has no legal force and may be used only for clarifications, which, in turn, bear advisory rather than mandatory character.<sup>139</sup> However, as practice shows, investigators often neglect description of the crime in Article 316 (previously, Article 276) in favor of the interpretation, provided by the Commentary, making not only wrong, but unlawful regulations.

---

<sup>138</sup> See, for instance Nurzhanov, S. (2020, July 1). *Sozgli shbenka: K otvetstvennosti mogut privlecb' roditelej zhivoderov v Almatinskoj oblasti* [Burned puppy: Parents of flayers in Almaty region may be prosecuted]. In Almaty. Retrieved July 12, 2020, from <https://www.inalmaty.kz/news/2806643/sozgli-senka-k-otvetstvennosti-mogut-privlec-roditelej-zivoderov-v-almatinskoj-oblasti>.

<sup>139</sup> Official response of the Supreme Court of the Republic of Kazakhstan №20-66/2013 from August 7, 2013.

For instance, the Commentary to the Code of 1998 defines animals as wild and domestic one and animals in captivity (circus, zoo).<sup>140</sup> In spite the fact, the Commentary, at least, clarifies which category is meant under this term, it excludes, for instance, birds and farm animals, which, as the observation of corresponding international laws show, are under the definition of those animals who should be protected from cruel treatment.

But of the most importance is the interpretation of the objective side of the *corpus delicti* of Article 276 in the Commentary. Under the cruel treatment it implies only actions such as, for example, beating, torturous methods of killing and others.<sup>141</sup> However, in the criminal law the crime means both action and inaction. Obviously, leaving an animal in the house for indefinite period of time without appropriate amount of food and water can also be seen as cruel treatment.

---

<sup>140</sup> Borchashvili, I. (2007). *Kommentarii k Ugolovnomu kodeksu Respubliki Kazakhstan* [Commentary to the Criminal Code of the Republic of Kazakhstan]. Zheti Zhargy.

<sup>141</sup> Borchashvili, I. (2007). *Kommentarii k Ugolovnomu kodeksu Respubliki Kazakhstan* [Commentary to the Criminal Code of the Republic of Kazakhstan]. Zheti Zhargy.

Interpretation of sadistic methods is even more extreme: skinning, burning alive and etc.<sup>142</sup> Anyone who has ever watched the trapping of animals in Kazakhstan would have no doubt about its sadistic character despite the absence of skinning: to catch an animal “specially trained people” use improvised metallic noose with thorns sticking into the animal’s neck and suffocating him.

Further, the conditions that the crime shall be committed for motives of hooliganism, or with the use of sadistic methods, or in the presence of small children are considered in the aggregate, not separately.<sup>143</sup> As a result of such an interpretation, a number of actions do not meet the elements of the crime and, as a consequence, are not considered at all.

The Commentary by Dr. Rakhmetov is already more detailed.<sup>144</sup> So, for example, it is taken into account that the subject of a criminal offense is mammals and birds, as well as reptiles, amphibians

---

<sup>142</sup> Borchashvili, I. (2007). *Kommentarii k Ugolovnomu kodeksu Respubliki Kazakhstan* [Commentary to the Criminal Code of the Republic of Kazakhstan]. Zheti Zhargy.

<sup>143</sup> Borchashvili, I. (2007). *Kommentarii k Ugolovnomu kodeksu Respubliki Kazakhstan* [Commentary to the Criminal Code of the Republic of Kazakhstan]. Zheti Zhargy.

<sup>144</sup> Rakhmetov, S., & Rogov, I. (2016). *Kommentarii k Ugolovnomu kodeksu Respubliki Kazakhstan* [Commentary to the Criminal Code of the Republic of Kazakhstan] (pp. 541–542). Norma-K.

and fish, both domestic and wild. Although it is still difficult to say how effective this disclosure is. For the first time, it is indicated that the objective side can be expressed in inaction (this was also indicated by the authors in the original work of 2013). Signs of hooliganism, the use of sadistic methods and the presence of minors are indicated as independent. Then, as some of the decisions of the investigators on the refusal to initiate criminal proceedings referring to the Commentary to the Code of 1998 did not perceive them as separate, but as mandatory in the aggregate. However, the use of a separating particle “or” would eliminate doubts about such a perception. Another clarification was the possibility of defining the subjective side in the form of indirect intent.

## **5. Conclusion**

Without any doubts, the field of animal welfare legislation in general and animal anti-cruelty law in particular is a new one and has just started to be developed in Kazakhstan. Because of this a number of discrepancies can be found in Kazakhstan’s law against cruelty to animals. The conducted research proves that the narrowness of formulation of the elements of the *corpus delicti*’s in the previous Article 276 and current Article 316 caused the addressing

of investigators to the Commentaries that, in turn, lead to further refusals in proceedings initiation due to the incompleteness of both and the need for a fundamental and detailed law.

### **Bibliography**

- Akhtar, A. (2012). *Animals and public health: Why treating animals better is critical to human welfare*. Palgrave Macmillan.
- Animal Legal and Historical Center. (n.d.). *World law overview*. Retrieved July 25, 2020, from <http://animallaw.info/nonus/index.htm>
- Borchashvili, I. (2007). *Kommentarii k ugolovnomu kodeksu Respubliki Kazakhstan* [Commentary to the Criminal Code of the Republic of Kazakhstan]. Zhetai Zhargy.
- Bousfield, B., & Brown, R. (2010). Animal Welfare. *Veterinary Bulletin – Agriculture, Fisheries and Conservation Department Newsletter*, 1(4). [http://www.afcd.gov.hk/english/quarantine/qua\\_vb/files/AW8.pdf](http://www.afcd.gov.hk/english/quarantine/qua_vb/files/AW8.pdf)
- Boyle, E. (2009). *Neuroscience and animal sentience*. CIWF. Retrieved May 27, 2013, from [http://www.ciwf.org.uk/includes/documents/cm\\_docs/2009/b/boyle\\_2009\\_neuroscience\\_and\\_animal\\_sentience.pdf](http://www.ciwf.org.uk/includes/documents/cm_docs/2009/b/boyle_2009_neuroscience_and_animal_sentience.pdf)
- Committee on Legal Statistics and Special Accounts of the General Prosecutor's Office of the Republic of Kazakhstan. (n.d.). Reports. Retrieved July 17, 2020, from <http://pravstat.prokuror.gov.kz/rus/o-kpsisu/deyatelnost-komiteta/analiticheskaya-informaciya>
- Criminal Code of the Kazakh SSR 1959. Retrieved from [http://adilet.zan.kz/rus/archive/docs/K590002000\\_/16.07.1997](http://adilet.zan.kz/rus/archive/docs/K590002000_/16.07.1997)



- Criminal Code of the Republic of Kazakhstan, 1997. Retrieved April 4, 2013, from [https://online.zakon.kz/document/?doc\\_id=1008032#pos=3617;-54&sdoc\\_params=text%3D276%26mode%3Dindoc%26topic\\_id%3D1008032%26spos%3D1%26tSynonym%3D1%26tShort%3D1%26tSuffix%3D1&doc\\_pos=0](https://online.zakon.kz/document/?doc_id=1008032#pos=3617;-54&sdoc_params=text%3D276%26mode%3Dindoc%26topic_id%3D1008032%26spos%3D1%26tSynonym%3D1%26tShort%3D1%26tSuffix%3D1&doc_pos=0), and July 20, 2020, from [https://online.zakon.kz/document/?doc\\_id=1008032](https://online.zakon.kz/document/?doc_id=1008032)
- Criminal Code of the Republic of Kazakhstan, 2014, №226-V. Retrieved July 20, 2020, from [https://online.zakon.kz/document/?doc\\_id=31575252#pos=4521;-44&sdoc\\_params=text%3D316%26mode%3Dindoc%26topic\\_id%3D31575252%26spos%3D1%26tSynonym%3D1%26tShort%3D1%26tSuffix%3D1&sdoc\\_pos=1](https://online.zakon.kz/document/?doc_id=31575252#pos=4521;-44&sdoc_params=text%3D316%26mode%3Dindoc%26topic_id%3D31575252%26spos%3D1%26tSynonym%3D1%26tShort%3D1%26tSuffix%3D1&sdoc_pos=1)
- Criminal Code of the Republic of Kazakhstan, 2014. Retrieved July 20, 2020, from [https://online.zakon.kz/document/?doc\\_id=31575252](https://online.zakon.kz/document/?doc_id=31575252)
- Criminal Code of the Republic of Kazakhstan, 2015. Retrieved 2020, July 12, from [https://online.zakon.kz/document/?doc\\_id=31575252#pos=523;-54](https://online.zakon.kz/document/?doc_id=31575252#pos=523;-54)
- Farm Animal Welfare Committee. (n.d.) *Five Freedoms* (An overview). Retrieved July 6, 2013, from <http://www.fawc.org.uk/freedoms.htm>
- Favre, D. S. (2010). Living property: A new status for animals within the legal system. *Marquette Law Review*, 93(3), 1021–1070. <https://scholarship.law.marquette.edu/mulr/vol93/iss3/3>
- Inform Buro. (2017, November 20). *Otstrel brodyachikh zhivotnykh vozle shkoly shokiroval ust-kamenogortsev* [Shooting of stray animals near the school shocked Ust-Kamenogorsk people]. Retrieved 2020, July 15, from <https://informburo.kz/novosti/otstrel-brodyachih-zhivotnyh-vozle-shkoly-shokiroval-ust-kamenogortsev.html>.

- Kokanova, G., & Nurseitov N. (2013, January 9). *Analiz statisticheskikh dannykh o sostoyanii zakonnosti i pravoporyadka v strane za 2012 god* [Statistical data analysis on legality and legal order in the country for 2012] (Annual analytical paper prepared by and for the Committee of Legal Statistics and Special Records of the General Procuratorate 2012). Retrieved 2013, June 29, from <http://pravstat.prokuror.kz/rus/o-kpsisu/deyatelnost-komite-ta/analiticheskaya-informaciya>
- Law of the Republic of Kazakhstan “On the order of consideration of requests of physical and legal entities” from 12.01.2007 № 221-III. Retrieved July 17, 2020, from [https://online.zakon.kz/document/?doc\\_id=30086115](https://online.zakon.kz/document/?doc_id=30086115)
- Law of the Republic of Kazakhstan “On veterinary” from 10.07.2002 № 339-II. Retrieved July 17, 2020, from <http://www.pavlodar.com/zakon/?dok=02111&uro=08010>
- Lin, D. (2019, November 26). Historical timeline of the animal rights movement. *ThoughtCo*. Retrieved July 25, 2020, from <http://animalrights.about.com/od/animalrights101/a/TimelineModern.htm>
- Nurzhanov, S. (2020, July 1). *Sozgli sbhenka: K otvetstvennosti mogut privilech' roditelej zhivoderov v Almatinskoj oblasti* [Burned puppy: Parents of flayers in Almaty region may be prosecuted]. Inalmaty. Retrieved July 12, 2020, from <https://www.inalmaty.kz/news/2806643/sozgli-senka-k-otvetstvennosti-mogut-privlec-roditelej-zivoderov-v-almatinskoj-oblasti>
- Official responses of the Committee of Legal Statistics and Special Records of the General Procuratorate of the Republic of Kazakhstan №2-20034-13-03315 from May 6, 2013 and №2-20034-13-03065 from July 11, 2013.
- Olga. (2014, March 18). *Medvezhonka skormili yaguaram v Karagande na glazakh u detey* [Bear cub fed to jaguars in Karaganda in front

of children]. Diapazon. Retrieved July 15, 2020, from <https://diapazon.kz/news/40661-medvezhonka-skormili-yaguaram-v-karagande-na-glazah-u-detey>

Rakhmetov, S., & Rogov, I. (2016). *Kommentarii k Ugolovnomu kodeksu Respubliki Kazakhstan* [Commentary to the Criminal Code of the Republic of Kazakhstan]. Norma-K.

Turner, J. (2011). That's progress!: New nationwide animal protection laws passed. *Global Animal*. Retrieved July 12, 2020, from <http://www.globalanimal.org/2011/06/06/animal-rights-new-laws-passed-across-amierca/40880/>

Vapnek, J., & Chapman, M. (2010). *Legislative and regulatory options for animal welfare* (FAO Legislative Study). FAO of the United Nations. <http://www.fao.org/docrep/013/i1907e/i1907e00.htm>

Vicente-Arche, A. R. (2001). The animal rights movement in the United States. Some thoughts about a new ethics. [http://www.institutofranklin.net/sites/default/files/fckeditor/CS%20Animal%20Rights\(1\).pdf](http://www.institutofranklin.net/sites/default/files/fckeditor/CS%20Animal%20Rights(1).pdf)

Voiceless. *Animal Sentience*. (2018). Retrieved June 10, 2020, from <https://www.voiceless.org.au/the-issues/animal-sentience>

Waldau, P. (2011). *Animal rights: What everyone needs to know*. Oxford University Press.

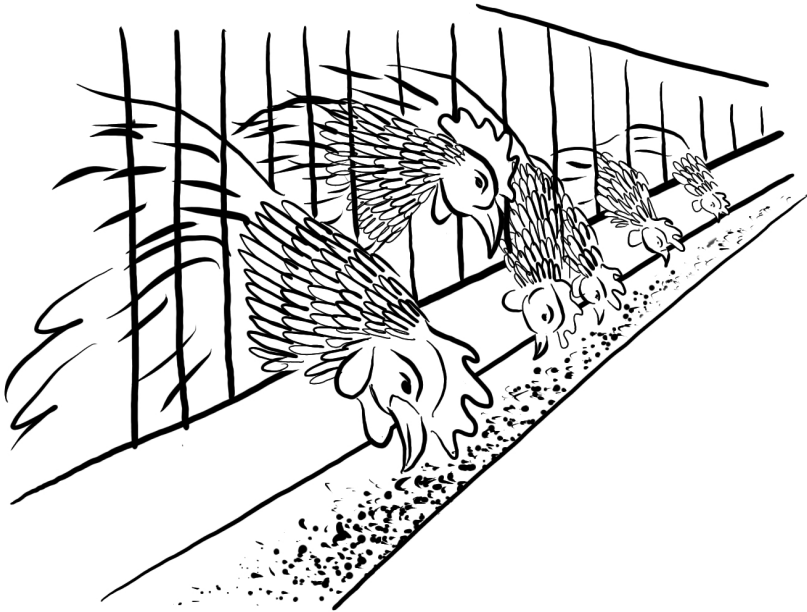


## II. ANIMALS IN AGRICULTURE



Lyudmila Shegay

THE UNKNOWN: HOW ARE FARMED ANIMALS  
SUFFERING IN FACTORY FARMS?



### *Abstract*

We are used to see animals everywhere, whether as companion animals, animals used for entertainment in circuses and zoos, wild animals, or animals in agriculture raised for commercial purposes. Farmed animals are one of the categories of animals receiving most abuse and threats from humans. There are approximately 7.7 billion people on Earth, and the majority of them consume meat on a daily basis. In some countries, meat is an integral part of culture and in some countries, it is considered something sacred. However, many people are not aware of where this meat and animal-derived products are coming from, yet many people believe that the consumption of meat is more nutritious than vegan or vegetarian diets. Of course, it is indisputable that meat is coming from animals, but what methods are used and what practices are done on animals still remain partially unknown. This chapter will touch upon the background information on the demand of meat all over the world, discuss the usual practices of factory farms towards animals, the law that is related to the treatment of farmed animals, as well as the impact and consequences of factory farms on animals, the environment, and public health and safety.

**Key words:** animal welfare, animal husbandry, CAFO, factory farms.

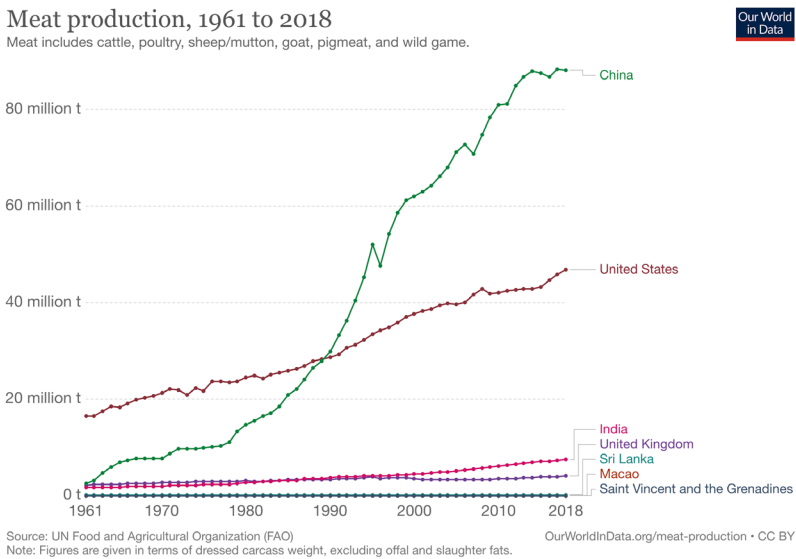
### **Introduction**

Meat production in itself is considered one of the most widespread businesses around the world, and this kind of business



usually has a big impact on any country's economy.<sup>145</sup> For the past 50 years, Asia has been the largest meat producer in the world. In the 1960s, however, Europe (42%) and North America (25%) were the leading meat producers, while Asia produced just 12% (see Fig. 2).

Figure 2. *Meat Production, 1961 to 2018*



Globally, the most-produced types of meat include poultry, cattle such as beef and buffalo meat, pig, and in some cases sheep and

<sup>145</sup> Ritchie, H., & Roser, M. (2017, August 25). *Meat and dairy production*. Our World in Data. Retrieved July 01, 2020, from <https://ourworldindata.org/meat-production>.

goat.<sup>146</sup> But depending on the particular country and its culture, other animals can be used for meat production, e.g., horse. A good example of horse meat consumption would be Kazakhstan where horses are slaughtered for food because of the ethno-cultural and a historical preconditions. Beef and poultry, however, still lead meat production all over the world. Over the past 50 years, cattle meat production increased from 28 million tons to 68 million tons per year.<sup>147</sup> The United States is currently the world's largest beef and buffalo meat producer, followed by Brazil, China, Argentina, Australia, and India. Likewise, globally poultry production is led by the United States, China, and Brazil.<sup>148</sup> As for pork, China is the dominant producer of pig meat, and its production of 1.5 million tons in the 1960s increased to 54 million tons in 2014. The United States, Germany, Spain, and Brazil follow the main pork producer

---

<sup>146</sup> Ritchie, H., & Roser, M. (2017, August 25). *Meat and dairy production*. Our World in Data. Retrieved July 01, 2020, from <https://ourworldindata.org/meat-production>.

<sup>147</sup> Ritchie, H., & Roser, M. (2017, August 25). *Meat and dairy production*. Our World in Data. Retrieved July 01, 2020, from <https://ourworldindata.org/meat-production>.

<sup>148</sup> Ritchie, H., & Roser, M. (2017, August 25). *Meat and dairy production*. Our World in Data. Retrieved July 01, 2020, from <https://ourworldindata.org/meat-production>.

on the list.<sup>149</sup> In 2018, approximately 69 billion chickens, 1.5 billion pigs, 656 million turkeys, 574 million sheep, 479 million goats, and 302 million cattle animals were killed for meat production. It is certainly an issue for animal rights lawyers and animal rights activists, who keep raising public awareness of the real treatment of animals inside the factory farms, and challenging the laws that contradict other regulations, but why is it still a non-issue for many communities? I would not say that meat production will be eliminated completely, but the future is here, especially with the current production of plant-based food. The question for many people is almost the same - why is agribusiness detrimental for animals, the environment, and public health?

### **1. CAFOs as Nazi Concentration Camps**

First of all, it is necessary to address the concept and system of the concentrated animal feeding operations (CAFO), as defined by the United States Department of Agriculture (USDA); similar establishments exist in most countries under different names. A CAFO is an intensive animal feeding operation, where over a

---

<sup>149</sup> Ritchie, H., & Roser, M. (2017, August 25). *Meat and dairy production*. Our World in Data. Retrieved July 01, 2020, from <https://ourworldindata.org/meat-production>.

thousand animal units are confined for commercial purposes, and they usually consist of approximately 1000 cows, 700 cows used for dairy purposes, 2500 pigs, 125 000 chickens, 82 000 of which are egg-laying hens.<sup>150</sup> CAFOs are usually compared to the Nazi concentration camps because of the huge number of animals kept together where they are not able to perform their natural behavior. The main difference between CAFOs and other methods of raising livestock is the high-density confinement of livestock in CAFOs, and the grain-based diet, which deprives animals of seeking their food by themselves naturally.<sup>151</sup> CAFOs are not open to the public and one can only guess what's happening inside those large factory farms. Fortunately, some animal law organizations had an opportunity to get into a farm with the purpose of exposing the truth to the public, and this will be discussed below in this chapter.

But the operation of CAFOs certainly creates a huge impact on the environment, public health and safety, and animals themselves, and here is why.

---

<sup>150</sup> United States Department of Agriculture, Natural Resources Conservation Service. (n.d.). *Animal Feeding Operations*. <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/plantsanimals/livestock/afo/>.

<sup>151</sup> Gurian-Sherman, D. (2008). *CAFOs uncovered. The untold costs of confined animal feeding operations* (p. 13). Union of Concerned Scientists. <https://www.ucsusa.org/sites/default/files/2019-10/cafos-uncovered-executive-summary.pdf>.

## 2. Environmental Impact

Because a high number of animals are confined in a small place, CAFOs produce a lot of waste, such as manure, feces, urine, etc. This poses a threat both to the environment and to public health and safety, especially to the neighborhood. Waste from agricultural facilities has always presented a risk to water quality. The United States Environmental Protection Agency established that states with high concentrations of CAFOs face on average 20 to 30 problems with water quality every year due to waste management.<sup>152</sup> Waste from the CAFOs include numerous harmful pollutants, such as nitrogen and phosphorus; organic matter; solids; pathogens; salts; arsenic; carbon dioxide, methane, hydrogen sulfide, and ammonia; antibiotics; and pesticides and hormones.<sup>153</sup> But the main issue with CAFOs' impact on public health is the manure production, because manure contains various contaminants, such as plant nutrients, chemicals used as additives to the manure,

---

<sup>152</sup> Hribar, C. (2010). *Understanding concentrated animal feeding operations and their impact on communities* (p. 4). National Association of Local Boards of Health. [https://www.cdc.gov/nceh/ehs/Docs/Understanding\\_CAFOs\\_NALBOH.pdf](https://www.cdc.gov/nceh/ehs/Docs/Understanding_CAFOs_NALBOH.pdf).

<sup>153</sup> Environmental Protection Agency (EPA). (2000). *National pollutant discharge elimination system permit regulation and effluent limitations guidelines and standards for CAFOs* (pp. 41–79). <https://nepis.epa.gov/Exe/ZyPDF.cgi/901H0H00.PDF?Dockey=901H0H00.PDF>.

animal blood, silage leachate from corn feed, copper sulfate, etc.<sup>154</sup> Although the use of manure is a common practice in the farming industry, the sheer amount that is produced from CAFOs might become problematic. It is estimated that approximately 1.201.37 billion tons of waste is derived from livestock animals used in agriculture.<sup>155</sup>

CAFOs have a great impact on air quality because they produce different types of air emissions, gaseous and particulate substances among them. Gaseous substances are usually caused by the decomposition of animal manure, while particulate substances are derived from the movement of animals.<sup>156</sup> The most common air pollutants surrounding CAFOs include ammonia, hydrogen sulfide, methane, and particulate matter.<sup>157</sup> Most of the manure that

---

<sup>154</sup> Hribar, C. (2010). *Understanding concentrated animal feeding operations and their impact on communities* (p. 2). National Association of Local Boards of Health. [https://www.cdc.gov/nceh/ehs/Docs/Understanding\\_CAFOS\\_NALBOH.pdf](https://www.cdc.gov/nceh/ehs/Docs/Understanding_CAFOS_NALBOH.pdf).

<sup>155</sup> Hribar, C. (2010). *Understanding concentrated animal feeding operations and their impact on communities* (p. 5). National Association of Local Boards of Health. [https://www.cdc.gov/nceh/ehs/Docs/Understanding\\_CAFOS\\_NALBOH.pdf](https://www.cdc.gov/nceh/ehs/Docs/Understanding_CAFOS_NALBOH.pdf).

<sup>156</sup> Hribar, C. (2010). *Understanding concentrated animal feeding operations and their impact on communities* (p. 5). National Association of Local Boards of Health. [https://www.cdc.gov/nceh/ehs/Docs/Understanding\\_CAFOS\\_NALBOH.pdf](https://www.cdc.gov/nceh/ehs/Docs/Understanding_CAFOS_NALBOH.pdf).

<sup>157</sup> Hribar, C. (2010). *Understanding concentrated animal feeding operations and their impact on communities* (p. 5). National Association of Local Boards of Health. [https://www.cdc.gov/nceh/ehs/Docs/Understanding\\_CAFOS\\_NALBOH.pdf](https://www.cdc.gov/nceh/ehs/Docs/Understanding_CAFOS_NALBOH.pdf).

CAFOs produce is applied to land and this results in air emissions, which usually occurs in two phases, whereas one follows land application and the other occurs later and for a longer period of time as substances in the soil break down.<sup>158</sup> Apart from the land application as a vehicle of air emissions, CAFO buildings release many dangerous contaminants through their ventilation systems. All those factors together cause health effects on factory farm workers, but also on schools nearby and children studying there who are at risk of developing lung diseases.<sup>159</sup> The operation of factory farms also increases asthma due to the emission of particulate matter and suspended dust.<sup>160</sup> Chronic bronchitis, chronic obstructive airway diseases, and interstitial lung disease are also in the list of diseases that factory farm workers are likely to develop.

Water quality is another problem associated with the operation of CAFOs. CAFOs affect and pollute groundwater through leaks

---

<sup>158</sup> Hribar, C. (2010). *Understanding concentrated animal feeding operations and their impact on communities* (p. 5). National Association of Local Boards of Health. [https://www.cdc.gov/nceh/ehs/Docs/Understanding\\_CAFOS\\_NALBOH.pdf](https://www.cdc.gov/nceh/ehs/Docs/Understanding_CAFOS_NALBOH.pdf).

<sup>159</sup> Hribar, C. (2010). *Understanding concentrated animal feeding operations and their impact on communities* (p. 5). National Association of Local Boards of Health. [https://www.cdc.gov/nceh/ehs/Docs/Understanding\\_CAFOS\\_NALBOH.pdf](https://www.cdc.gov/nceh/ehs/Docs/Understanding_CAFOS_NALBOH.pdf).

<sup>160</sup> Hribar, C. (2010). *Understanding concentrated animal feeding operations and their impact on communities* (p. 6). National Association of Local Boards of Health. [https://www.cdc.gov/nceh/ehs/Docs/Understanding\\_CAFOS\\_NALBOH.pdf](https://www.cdc.gov/nceh/ehs/Docs/Understanding_CAFOS_NALBOH.pdf).

in storage or containment units, runoff from land application of manure, etc.<sup>161</sup> Groundwater is usually polluted by pathogenic organisms, which leads to a serious threat to drinking water, and approximately 53% of the population of the United States relies on groundwater as a source of drinking water, especially in rural areas.<sup>162</sup> Moreover, CAFOs's pollution of lakes, rivers, and reservoirs affects water quality due to manure management problems caused by surface discharges. These result from storms or floods that make storage lagoons overfilled.<sup>163</sup> Pollution in surface water generally can cause nitrates and nutrients, e.g., ammonia is the common emission found in the water surrounding CAFOs.<sup>164</sup> Ammonia is not only detrimental to the environment and to public health and safety, but also kills aquatic life because it causes oxygen

---

<sup>161</sup> Hribar, C. (2010). *Understanding concentrated animal feeding operations and their impact on communities* (p. 3). National Association of Local Boards of Health. [https://www.cdc.gov/nceh/ehs/Docs/Understanding\\_CAFOs\\_NALBOH.pdf](https://www.cdc.gov/nceh/ehs/Docs/Understanding_CAFOs_NALBOH.pdf).

<sup>162</sup> Hribar, C. (2010). *Understanding concentrated animal feeding operations and their impact on communities* (p. 3). National Association of Local Boards of Health. [https://www.cdc.gov/nceh/ehs/Docs/Understanding\\_CAFOs\\_NALBOH.pdf](https://www.cdc.gov/nceh/ehs/Docs/Understanding_CAFOs_NALBOH.pdf).

<sup>163</sup> Hribar, C. (2010). *Understanding concentrated animal feeding operations and their impact on communities* (p. 4). National Association of Local Boards of Health. [https://www.cdc.gov/nceh/ehs/Docs/Understanding\\_CAFOs\\_NALBOH.pdf](https://www.cdc.gov/nceh/ehs/Docs/Understanding_CAFOs_NALBOH.pdf).

<sup>164</sup> Hribar, C. (2010). *Understanding concentrated animal feeding operations and their impact on communities* (p. 4). National Association of Local Boards of Health. [https://www.cdc.gov/nceh/ehs/Docs/Understanding\\_CAFOs\\_NALBOH.pdf](https://www.cdc.gov/nceh/ehs/Docs/Understanding_CAFOs_NALBOH.pdf).



depletion from water. Nitrogen and phosphorus make the water environment impossible for fish to inhabit or lead to eutrophication, which may destroy the ecological balance and create serious problems in surface waters.<sup>165</sup>

Another of the biggest problems of CAFOs from an environmental and public health and safety point of view is waste management. Because the waste management of CAFOs is basically not regulated, in many jurisdictions it leaves a huge impact on the environment and the neighborhood. This problem can be resolved by adopting the regulation on minimum standards of waste from factory farms. This can oblige factory farms to treat manure before it is applied; dispose the waste from animals in accordance with the requirements provided by the applicable law, such as Clean Air Act<sup>166</sup> and Clean Water Act<sup>167</sup> in the United States, or the Environmental Code of the Republic of Kazakhstan<sup>168</sup> in Kazakhstan; not

---

<sup>165</sup> Hribar, C. (2010). *Understanding concentrated animal feeding operations and their impact on communities* (p. 4). National Association of Local Boards of Health. [https://www.cdc.gov/nceh/ehs/Docs/Understanding\\_CAFOS\\_NALBOH.pdf](https://www.cdc.gov/nceh/ehs/Docs/Understanding_CAFOS_NALBOH.pdf).

<sup>166</sup> Clean Air Act, 42 U.S.C. §§7401-7671q.

<sup>167</sup> Clean Water Act, 33 U.S.C §§ 1251 et seq.

<sup>168</sup> Environmental Code of the Republic of Kazakhstan of January 9, 2007, № 212-III (as amended of 2020).

allow storing liquefied manure outdoor, which can pose the additional risk of spillage or leakage; maintain waste storage and land application in a way that it does not affect neighborhood; install the improved drainage and sewers near the factory farm; prevent the possible impact of their activities on public health; etc. Additionally, due to the possible existence of hazardous waste from the CAFO, facilities should have a leak detection system installed, as well as a construction quality assurance program; run on, runoff, and wind dispersal controls; double lines; and double leachate collection and removal systems.

All of the above-discussed factors together create a detrimental effect on the environment, public health and safety. Apart from natural factors that can affect the environment, industrial facilities worsen the situation and lead to the destruction of the ecosystem, but also have an impact on humans. The way animals are kept and treated inside factory farms remains one of the biggest problems in the animal welfare field. While many people are concerned about CAFOs as a place where animals are abused and neglected, others are concerned for consumer safety. Animal rights activists argue over whether factory farm practices can be considered hu-

mane, and work on exposing the truth of factory farming to show the public the reality of animals' lives in agriculture.

### **3. Impact on Animals**

Animals nowadays face threats mostly from anthropogenic activities, but most of the actions or omissions are committed by means of cruel treatment. Companion animals are being neglected and abused by their owners or even by strangers; animals in laboratories are being mistreated and are suffering from unnecessary pain; farmed animals are kept in tiny enclosures with insufficient space, air, light, and generally in conditions, which are unacceptable and detrimental for animals; wild animals around the world are facing issues with poaching, or are kept in captivity and used in entertainment; lots of species of aquatic animals are being abused through some practices, such as bycatch, recreational fishing, overfishing, shark finning, marine mammals in entertainment, overcrowded tanks, etc. However, anti-cruelty statutes usually apply only to companion animals, and many of the animal welfare acts do not cover farmed animals, birds, and/or aquatic animals. For instance, the Animal Welfare Act (AWA) of the United States provides the definition of the animal saying that it excludes “birds, rats of the genus *Rattus*, and mice of the genus

Mus, bred for use in research”, “horses not used for research purposes”, and “other farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber.”<sup>169</sup> Basically, the AWA of the United States does not cover many categories or subcategories of animals. Nowadays, all states have anti-cruelty legislation, but it does not apply to all categories of animals. Despite cruelty to animals being a widespread practice all over the world, it is generally associated with domestic animals, while in reality, cruel treatment of animals occurs in many other places and towards many other categories of animals; since this chapter is focused on animals raised for commercial purposes, it will touch upon farmed animals. Many statutes on the state level in the United States cover some farmed animals, such as fowl, but there are always exceptions that emphasize that a certain statute does not apply to customary or so-called “normal” husbandry practices. This includes debeaking, tail docking, forced molting, castration, gestation crates, etc.

---

<sup>169</sup> The Animal Welfare Act (1966), 7 U.S.C. § 2131 et seq.

Debeaking is the process of beak removal of poultry, mostly of egg-laying hens and turkeys. This practice is done to prevent damage during mating and to other animals in the confinement.<sup>170</sup> A lot of different methods are used to conduct debeaking, but the most spread is a hot blade, cold blade (using scissors or secateurs), electrical, and infrared.<sup>171</sup> There are other uncommon methods, such as freeze-drying, chemical retardation, and the use of lasers.<sup>172</sup>

Forced molting is the practice used on poultry where birds are withdrawn from food for 7-14 days and sometimes from water to improve hens' egg-laying process. During the forced molting, birds stop producing eggs for a certain period of time, and this allows the egg production rate to increase in the future and the quality of eggs becomes higher. Apart from the food and water withdrawal, sometimes hens are also deprived of light except daylight to stimulate egg production. Other methods include a

---

<sup>170</sup> Gentle, M. J., & McKeegan, D. E. (2007). Evaluation of the effects of infrared beak trimming in broiler breeder chicks. *The Veterinary Record*, 160(5), 145–148. <https://doi.org/10.1136/vr.160.5.145>.

<sup>171</sup> Gentle, M. J., & McKeegan, D. E. (2007). Evaluation of the effects of infrared beak trimming in broiler breeder chicks. *The Veterinary Record*, 160(5), 145–148. <https://doi.org/10.1136/vr.160.5.145>.

<sup>172</sup> Gentle, M. J., & McKeegan, D. E. (2007). Evaluation of the effects of infrared beak trimming in broiler breeder chicks. *The Veterinary Record*, 160(5), 145–148. <https://doi.org/10.1136/vr.160.5.145>.

low-density diet, such as feeding hens with grape pomace, cottonseed meal, etc.<sup>173</sup>

Gestation crates are known for keeping pigs for breeding in a metal enclosure during pregnancy.<sup>174</sup> Stalls, where pigs are laying, are usually floored with plastic or metal surface, and it allows waste to be thrown into open-air.<sup>175</sup> In the United States, the majority of sows are kept in gestation crates during the pregnancy.<sup>176</sup> After the pig gives birth, they are moved to farrowing crates, which are considered a little wider. Animal rights activists argue that gestation crates are one of the most inhumane treatments of animals in agribusiness. However, the opposing side, such as pork producers, states that keeping pigs in a small enclosure will prevent them from fighting and injuring each other due to overcrowding.<sup>177</sup>

---

<sup>173</sup> Patwardhan, D., & King, A. (2011). Review: Feed withdrawal and non feed withdrawal moult. *World's Poultry Science Journal*, 67(2), 253–268. <https://doi.org/10.1017/S0043933911000286>.

<sup>174</sup> Pond, W., Bazer, F., & Rollin, B. (Eds.). (2011). *Animal welfare in animal agriculture* (p. 151). CRC Press. <https://doi.org/10.1201/b11679>.

<sup>175</sup> Kaufmann, M. (2001, June 18). *In pig farming, growing concern, raising sows in crates is questioned*. The Washington Post. [https://web.archive.org/web/20110724013229/http://www.pmac.net/AM/pigs\\_in\\_crates.html](https://web.archive.org/web/20110724013229/http://www.pmac.net/AM/pigs_in_crates.html).

<sup>176</sup> Webster, J. (1994). *Animal welfare: A cool eye towards Eden*. Blackwell Science.

<sup>177</sup> Weaver, S., & Morris, M. (2004). Science, pigs and politics: A New Zealand perspective on the phase-out of sow stalls. *Journal of Agricultural*

Other customary husbandry practices are used nowadays, such as castration and tail docking. Apart from a widespread practice of docking a dog's tail, pigs' tails are also removed without anesthesia. Unfortunately, all those practices are recognized as "normal" and are not regulated by any law. Despite those practices causing unnecessary pain and suffering to animals, there is no federal law in the United States that would cover farmed animals. Moreover, state anti-cruelty laws, as was pointed out above, exempt such practices.

#### **4. Ag-Gag Laws**

One may have observed that domestic violence is tightly connected with animal neglect, but not only pets or companion animals are facing challenges and abuse from their owners, so are farmed animals, too, and they are one of the categories of animals that are mostly abused by being kept in factory farms for commercial purposes and in slaughterhouses. Unfortunately, factory farms are not open to the public, and one can only guess what is actually happening inside and in what conditions and how animals are treated. Among the le-

---

*tural and Environmental Ethics*, 17, 51–66. <https://doi.org/10.1023/B:JAGE.0000010844.52041.32>.

gal instruments that protect the owners of factory farms are the ag-gag laws, otherwise called anti-whistleblower laws, which prohibit filming and photographing the activities inside factory farms. There is much criticism and speculations that ag-gag laws violate the First Amendment to the Constitution of the United States and hide animal abuse from the public. However, there are still ag-gag laws in different jurisdictions that receive both support and opposition from the public and the government. For instance, in Canada, Alberta, the Trespass Statutes Amendment Act<sup>178</sup> protects property owners from trespassing and imposes high fines on those who trespass the property.<sup>179</sup> A specific reference is made to the area of producing crops, raising and maintaining animals, and keeping the bees.<sup>180</sup> In Ontario, Bill 156 proposed fines up to \$25,000 for trespassing

---

<sup>178</sup> Trespass Statutes (Protecting Law-Abiding Property Owners) Amendment Act, 2019 (Can.).

<sup>179</sup> Heidenreich, P. (2019, November 19). UCP bill to protect Alberta property owners from liability for injured trespassers receives 1st reading. *Global News*. <https://globalnews.ca/news/6191237/alberta-property-owners-trespass-ucp-bill-27/>.

<sup>180</sup> Johnson, L. (2019, November 20). UCP proposes more protections for rural property owners. *Edmonton Journal*. <https://edmontonjournal.com/news/politics/ucp-proposes-more-protections-for-rural-property-owners/>.



the property used for animal husbandry.<sup>181</sup> As for the United States, animal protection organizations are striving to challenge ag-gag laws on the state level in different jurisdictions. For instance, ag-gag laws in Idaho,<sup>182</sup> Iowa,<sup>183</sup> and Utah<sup>184</sup> were ruled unconstitutional, while those laws in Arkansas,<sup>185</sup> Kansas,<sup>186</sup> and

---

<sup>181</sup> Walkom, T. (2019, December 5). New bill aims to hide animal abuse on farms. *The Star*. <https://www.thestar.com/opinion/star-columnists/2019/12/05/new-bill-aims-to-hide-animal-abuse-on-farms.html>.

<sup>Pfeffer</sup>, A. (2020, January 25). Animal rights activists decry Ontario bill that would limit farm protests. *CBC News*. <https://www.cbc.ca/news/canada/ottawa/animal-activists-bill-156-ontario-1.5440790>.

<sup>182</sup> Runyon, L. (2015, August 4). Judge strikes down Idaho ‘ag-gag’ law, raising questions for other states. *NPR*. <https://www.npr.org/sections/the-salt/2015/08/04/429345939/idaho-strikes-down-ag-gag-law-raising-questions-for-other-states>.

<sup>183</sup> Laird, R. (2019, January 9). Federal judge strikes down Iowa ‘ag-gag’ law. *Courthouse News Service*. <https://www.courthousenews.com/federal-judge-strikes-down-iowa-ag-gag-law/>.

Bhandari, E. (2019, January 22). Court rules ‘ag-gag’ law criminalizing undercover reporting violates the first amendment. *ACLU*. <https://www.aclu.org/blog/free-speech/freedom-press/court-rules-ag-gag-law-criminalizing-undercover-reporting-violates>.

<sup>184</sup> Chappell, B. (2017, July 8). Judge overturns Utah’s ‘ag-gag’ ban on undercover filming at farms. *NPR*. <https://www.npr.org/sections/theway/2017/07/08/536186914/judge-overturns-utahs-ag-gag-ban-on-undercover-filming-at-farms>.

<sup>185</sup> Grabenstein, H. (2019, June 27). Lawsuit calls Arkansas “ag-gag” law unconstitutional. *AP News*. <https://apnews.com/2d2924a97c49480fb14dae73c70255d>.

<sup>186</sup> Hegeman, R. (2018, December 5). Lawsuit: Kansas “ag-gag” law violates free speech rights. *AP News*. <https://apnews.com/d1ac7862c31c4fd98e2456d3430c73f5>.

North Carolina<sup>187</sup> are currently being challenged. In a few cases in the United States, lying and misrepresentation to obtain records of the facility were challenged,<sup>188</sup> where it was decided that the provisions on misrepresentation of the Idaho statute violated the First Amendment and were overly broad explaining that the imposed restriction on speech must be necessary where the compelling government interest is present, and there should be a “direct causal link between the restriction imposed and the injury to be prevented.”<sup>189</sup> And even if there is a compelling interest, the prohibition to access the property by misrepresentation is not necessary to protect property rights.<sup>190</sup> Also, it was held that the provisions from the statute, namely recording au-

---

<sup>187</sup> Challenging North Carolina’s ag-gag law. (2020, June 12). *ALDF*. <https://aldf.org/case/challenging-north-carolinas-ag-gag-law/>.

<sup>188</sup> See *ALDF v. Herbert*, 263 F. Supp. 3d 1193 (D. Utah 2017). <https://casetext.com/case/animal-legal-defense-fund-v-herbert>. *ALDF v. Wasden*, 878 F.3d 1184 (9th Cir. 2018). <https://casetext.com/case/animal-legal-defense-fund-v-wasden>.

<sup>189</sup> See *ALDF v. Herbert*, 263 F. Supp. 3d 1193 (D. Utah 2017). <https://casetext.com/case/animal-legal-defense-fund-v-herbert>; *ALDF v. Wasden*, 878 F.3d 1184 (9th Cir. 2018). <https://casetext.com/case/animal-legal-defense-fund-v-wasden>.

<sup>190</sup> See *ALDF v. Herbert*, 263 F. Supp. 3d 1193 (D. Utah 2017). <https://casetext.com/case/animal-legal-defense-fund-v-herbert>. *ALDF v. Wasden*, 878 F.3d 1184 (9th Cir. 2018). <https://casetext.com/case/animal-legal-defense-fund-v-wasden>.

dio and video through entering an agricultural production facility that is not open to the public violated the First Amendment because this particular part of the statute is content-based and explicitly prohibited the recording of agricultural operations and nothing else, therefore it is unconstitutional.<sup>191</sup>

Another demonstrative case involving the challenge of gag laws concerns lies as speech and recording provisions. In *ALDF v. Herbert*, the court discussing the constitutionality of the Utah Code followed the reasoning of *United States v. Alvarez*, which concluded that lies do not completely fall outside of the First Amendment, but those lies, which cause legally cognizable harm, are outside of First Amendment protection.<sup>192</sup> The court in *ALDF v. Herbert* held that the lie usually depends on the type of harm the person wants to make, namely if the harm is linked to the intervention, the person is both a liar and a trespasser, but if the harm does not relate to the interference with ownership or possession, this action

---

<sup>191</sup> See *ALDF v. Herbert*, 263 F. Supp. 3d 1193 (D. Utah 2017). <https://casetext.com/case/animal-legal-defense-fund-v-herbert>. *ALDF v. Wasden*, 878 F.3d 1184 (9th Cir. 2018). <https://casetext.com/case/animal-legal-defense-fund-v-wasden>.

<sup>192</sup> See *ALDF v. Herbert*, 263 F. Supp. 3d 1193 (D. Utah 2017). <https://casetext.com/case/animal-legal-defense-fund-v-herbert>.

would not cause a legally cognizable trespass harm.<sup>193</sup> Moreover, because the plain language of the Act criminalizes harmless misrepresentations and a host of trivial incidents, the Act is subject to First Amendment scrutiny.<sup>194</sup> As for provisions about recording, the court agreed with several other district courts that making a recording falls within the First Amendment protection. The Seventh Circuit, for instance, held that “the act of making an audio or audiovisual recording is necessarily included within the First Amendment’s guarantee of speech and press rights as a corollary of the right to disseminate the resulting recording”,<sup>195</sup> while the Eleventh Circuit decided that there is “a First Amendment right, subject to a reasonable time, manner, and place restrictions, to photograph or videotape police conduct”.<sup>196</sup> Eventually, the court ruled section 76-6-112 of Utah Code unconstitutional.

---

<sup>193</sup> See *ALDF v. Herbert*, 263 F. Supp. 3d 1193 (D. Utah 2017). <https://casetext.com/case/animal-legal-defense-fund-v-herbert>.

<sup>194</sup> See *ALDF v. Herbert*, 263 F. Supp. 3d 1193 (D. Utah 2017). <https://casetext.com/case/animal-legal-defense-fund-v-herbert>.

<sup>195</sup> *Am. Civil Liberties Union of Ill. v. Alvarez*, 679 F.3d 583 (7th Cir. 2012). <https://casetext.com/case/am-civil-liberties-union-of-ill-v-alvarez>.

<sup>196</sup> *Smith v. City of Cumming*, 212 F.3d 1332 (11th Cir. 2000). <https://casetext.com/case/smith-v-city-of-cumming?>

The analysis above regarding farmed animals kept for commercial purposes demonstrates that people kill animals for food, clothes, torment them in laboratories, and etc. But going back to farmed animals, the problem is not that farmed animals are killed for certain purposes, rather how they are treated before being killed. There is apparently a reason why agricultural facilities are not open to the public and their owners are always trying to protect their property from recordings. The conduct inside the agricultural facilities can certainly be defined as cruelty to animals taking into account that many animals, especially those who are kept in tiny, crowded places like in the CAFOs, are subject to practices that are performed without any anesthesia or painkillers, which undoubtedly cause pain and suffering to animals. Mostly, anti-cruelty statutes do not cover poultry and usually exempt such practices.<sup>197</sup> It is crucial to pay attention to the treatment of farmed animals because they cannot express their natural behavior and are abused during the practices that are performed on them.

---

<sup>197</sup> See Arkansas Code Annotated §§ 5-62-102; 5-62-105; South Carolina Code Annotated § 16-27-60; Oregon Revised Statutes §§ 167.315(2), 167.320(2), § 167.332(3).

## 5. The Future

Agribusiness using animals in confinement hugely affects the environment and public health. At the present time, many non-meat products have been invented and are being sold by many famous businesses, which allows even vegetarians and vegans to enjoy common food such as hamburgers, sausages, sandwiches, etc.<sup>198</sup> Other foods containing proteins have existed for a long period of time, such as tempeh, tofu, seitan that are commonly used in Asian cuisines. Plant-based meat is made out of plants - usually, it's soy protein, chickpea, mushrooms - and plant-based food production does not require keeping animals in slaughterhouses or raising them for commercial purposes along with the cruelty that

---

<sup>198</sup> Lucas, A. (2019, August 1). *Burger King's plant-based Impossible Whopper is launching nationwide this month*. CNBC. <https://www.cnn.com/2019/07/31/burger-kings-plant-based-impossible-whopper-is-launching-nationwide-this-month.html#:~:text=Burger%20King%20is%20launching%20the,available%20for%20a%20limited%20time;>

Gross, O. (2019, April 17). *Subway has just launched a new vegan patty sandwich and permanently veganised its garlic mayo*. Totally Vegan Buzz. <https://www.totallyveganbuzz.com/news/subway-has-just-launched-a-new-vegan-patty-sandwich-and-permanently-veganised-its-garlic-mayo/#:~:text=The%20new%20sauce%20has%20been,for%20a%20six%20Dinch%20sub;>

Franklin, T. (2019, October 8). *Carl's Jr. innovates on best-selling Beyond Burger™ with the launch of the new Beyond BBQ Cheeseburger*. BusinessWire. <https://www.businesswire.com/news/home/20191008005267/en/Carl%E2%80%99s-Jr.-Innovates-Best-selling-Burger%E2%84%A2-Launch-New#:~:text=The%20new%20Beyond%20BBQ%20Cheeseburger%20will%20be%20available%20at%20Carl's,About%20CKE%20Restaurants%20Holdings%2C%20Inc.>

is done to them and the pollution of the environment. Plant-based products - not only meat, but also milk and eggs - are available in grocery stores or online stores. Soy meat is not commonly used in Kazakhstan, but it exists, as well as coconut or soy milk.

Every day, every hour animals in agriculture are killed for food consumption all over the world. Unfortunately, they are not treated humanely and suffer unnecessarily before they are slaughtered. In the United States, there is no federal law protecting farm animals, yet most of the states exempt “normal” husbandry practices. Animals kept in confinement and raised for commercial purposes can barely move, birds are not able to extend their wings, and none of the animals are able to turn around, lie down, and express their natural behavior. Moreover, the commonly accepted husbandry practices that are described above are performed without anesthesia, and animals are suffering unnecessary pain. Discussing legal personhood for animals is generally misunderstood by many people who think that animal rights activists want to grant the same rights to animals as humans possess. But if some argue over legal personhood, could the right to life be the first and main right that can be granted to animals, who are also living beings? The future

is close, and living in such a developed world with so many innovations gives humans an opportunity to change not only their own lives but also the lives of others.

### **Bibliography**

ALDF v. Herbert, 263 F. Supp. 3d 1193 (D. Utah 2017). <https://casetext.com/case/animal-legal-defense-fund-v-herbert>

ALDF v. Wasden, 878 F.3d 1184 (9th Cir. 2018). <https://casetext.com/case/animal-legal-defense-fund-v-wasden>

Am. Civil Liberties Union of Ill. v. Alvarez, 679 F.3d 583 (7th Cir. 2012). <https://casetext.com/case/am-civil-liberties-union-of-ill-v-alvarez>

Arkansas Code Annotated §§ 5-62-102; 5-62-105.

Bhandari, E. (2019, January 22). Court rules “ag-gag” law criminalizing undercover reporting violates the first amendment. *ACLU*. <https://www.aclu.org/blog/free-speech/freedom-press/court-rules-ag-gag-law-criminalizing-undercover-reporting-violates>

Challenging North Carolina’s ag-gag law. (2020, June 12). *ALDF*. <https://aldf.org/case/challenging-north-carolinas-ag-gag-law/>

Chappell, B. (2017, July 8). Judge overturns Utah’s ‘ag-gag’ ban on undercover filming at farms. *NPR*. <https://www.npr.org/sections/thetwo-way/2017/07/08/536186914/judge-overturns-utahs-ag-gag-ban-on-undercover-filming-at-farms>

Clean Air Act, 42 U.S.C. §§7401-7671q.

Clean Water Act, 33 U.S.C §§ 1251 et seq.



Environmental Code of the Republic of Kazakhstan of January 9, 2017, № 212-III (as amended of 2020).

Environmental Protection Agency (EPA). (2000). *National pollutant discharge elimination system permit regulation and effluent limitations guidelines and standards for CAFOs* (pp. 41–79). <https://nepis.epa.gov/Exe/ZyPDF.cgi/901H0H00.PDF?Dockey=901H0H00.PDF>

Franklin, T. (2019, October 8). *Carl's Jr. innovates on best-selling Beyond Burger™ with the launch of the new Beyond BBQ Cheeseburger*. BusinessWire. <https://www.businesswire.com/news/home/20191008005267/en/Carl%E2%80%99s-Jr.-Innovates-Best-selling-Burger%E2%84%A2-Launch-New#:~:text=The%20new%20Beyond%20BBQ%20Cheeseburger%20will%20be%20available%20at%20Carl's,About%20CKE%20Restaurants%20Holdings%2C%20Inc.>

Gentle, M. J., & McKeegan, D. E. (2007). Evaluation of the effects of infrared beak trimming in broiler breeder chicks. *The Veterinary Record*, 160(5), 145–148. <https://doi.org/10.1136/vr.160.5.145>

Grabenstein, H. (2019, June 27). Lawsuit calls Arkansas “agg-gag” law unconstitutional. *AP News*. <https://apnews.com/2d2924a97c49480fb14dae73cc70255d>

Gross, O. (2019, April 17). *Subway has just launched a new vegan patty sandwich and permanently veganised its garlic mayo*. Totally Vegan Buzz. <https://www.totallyveganbuzz.com/news/subway-has-just-launched-a-new-vegan-patty-sandwich-and-permanently-veganised-its-garlic-mayo/#:~:text=The%20new%20sauce%20has%20been,for%20a%20six-%2Dinch%20sub.>

Gurian-Sherman, D. (2008). *CAFOs uncovered. The untold costs of confined animal feeding operations* (p. 13). Union of Concerned Sci-

- entists. <https://www.ucsusa.org/sites/default/files/2019-10/cafos-uncovered-executive-summary.pdf>
- Hegeman, R. (2018, December 5). Lawsuit: Kansas “ag-gag” law violates free speech rights. *AP News*. <https://apnews.com/d1ac7862c31c4fd98e2456d3430c73f5>
- Heidenreich, P. (2019, November 19). UCP bill to protect Alberta property owners from liability for injured trespassers receives 1st reading. *Global News*. <https://globalnews.ca/news/6191237/alberta-property-owners-trespass-ucp-bill-27/>
- Hribar, C. (2010). *Understanding concentrated animal feeding operations and their impact on communities*. National Association of Local Boards of Health. [https://www.cdc.gov/nceh/ehs/Docs/Understanding\\_CAFOs\\_NALBOH.pdf](https://www.cdc.gov/nceh/ehs/Docs/Understanding_CAFOs_NALBOH.pdf)
- Hribar, C. (2010). *Understanding concentrated animal feeding operations and their impact on communities*. National Association of Local Boards of Health. [https://www.cdc.gov/nceh/ehs/Docs/Understanding\\_CAFOs\\_NALBOH.pdf](https://www.cdc.gov/nceh/ehs/Docs/Understanding_CAFOs_NALBOH.pdf)
- Johnson, L. (2019, November 20). UCP proposes more protections for rural property owners. *Edmonton Journal*. <https://edmontonjournal.com/news/politics/ucp-proposes-more-protections-for-rural-property-owners/>
- Kaufmann, M. (2001, June 18). *In pig farming, growing concern, raising sons in crates is questioned*. The Washington Post. [https://web.archive.org/web/20110724013229/http://www.pmac.net/AM/pigs\\_in\\_crates.html](https://web.archive.org/web/20110724013229/http://www.pmac.net/AM/pigs_in_crates.html)
- Laird, R. (2019, January 9). Federal judge strikes down Iowa “ag-gag” law. *Courthouse News Service*. <https://www.courthousenews.com/federal-judge-strikes-down-iowa-ag-gag-law/>
- Lucas, A. (2019, August 1). *Burger King’s plant-based Impossible Whopper is launching nationwide this month*. CNBC. <https://www>

cnbc.com/2019/07/31/burger-kings-plant-based-impossible-whopper-is-launching-nationwide-this-month.html#:~:text=Burger%20King%20is%20launching%20the,available%20for%20a%20limited%20time.

Oregon Revised Statutes §§ 167.315(2), 167.320(2), § 167.332(3).

Patwardhan, D., & King, A. (2011). Review: Feed withdrawal and non feed withdrawal moult. *World's Poultry Science Journal*, 67(2), 253–268. <https://doi.org/10.1017/S0043933911000286>

Pfeffer, A. (2020, January 25). Animal rights activists decry Ontario bill that would limit farm protests. *CBC News*. <https://www.cbc.ca/news/canada/ottawa/animal-activists-bill-156-ontario-1.5440790>

Pond, W., Bazer, F., & Rollin, B. (Eds.). (2011). *Animal welfare in animal agriculture*. CRC Press. <https://doi.org/10.1201/b11679>

Ritchie, H., & Roser, M. (2017, August 25). *Meat and dairy production*. Our World in Data. Retrieved July 01, 2020, from <https://ourworldindata.org/meat-production>

Runyon, L. (2015, August 4). Judge strikes down Idaho “ag-gag” law, raising questions for other states. *NPR*. <https://www.npr.org/sections/thesalt/2015/08/04/429345939/idaho-strikes-down-ag-gag-law-raising-questions-for-other-states>

Smith v. City of Cumming, 212 F.3d 1332 (11th Cir. 2000). <https://casetext.com/case/smith-v-city-of-cumming?>

South Carolina Code Annotated § 16-27-60.

The Animal Welfare Act (1966), 7 U.S.C. § 2131 et seq.

Trespass Statutes (Protecting Law-Abiding Property Owners) Amendment Act, 2019 (Can.).

United States Department of Agriculture, Natural Resources Conservation Service. (n.d.). *Animal Feeding Operations*. <https://>

www.nrcs.usda.gov/wps/portal/nrcs/main/national/plants-animals/livestock/afo/

Walkom, T. (2019, December 5). New bill aims to hide animal abuse on farms. *The Star*. <https://www.thestar.com/opinion/star-columnists/2019/12/05/new-bill-aims-to-hide-animal-abuse-on-farms.html>

Weaver, S., & Morris, M. (2004). Science, pigs and politics: A New Zealand perspective on the phase-out of sow stalls. *Journal of Agricultural and Environmental Ethics*, 17, 51–66. <https://doi.org/10.1023/B:JAGE.0000010844.52041.32>

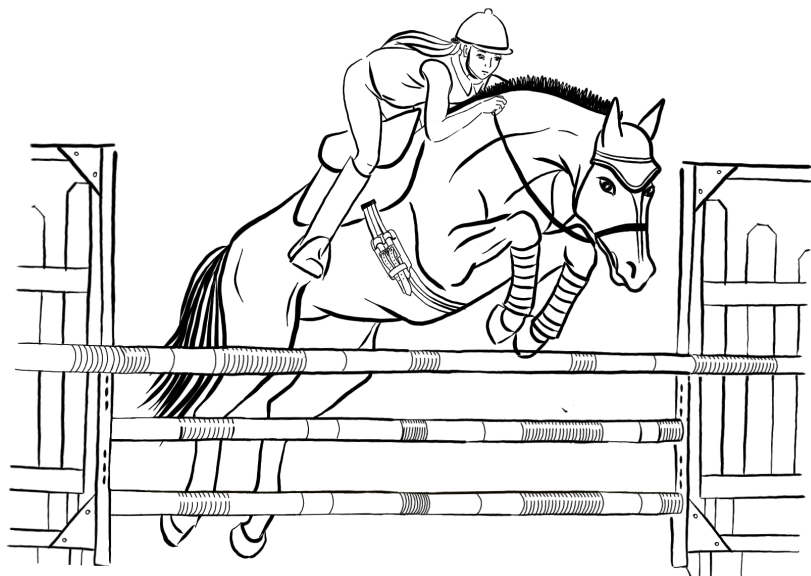
Webster, J. (1994). *Animal welfare: A cool eye towards Eden*. Blackwell Science.

**III. WILDLIFE,  
HUNTING AND SPORTS**



Denis Alexeyevich Erygin

LEGAL REGULATION OF THE USE OF ANIMALS  
IN SPORTS COMPETITIONS IN RUSSIA AND FOREIGN  
COUNTRIES: MAIN TRENDS AND PROBLEMS



### *Abstract*

The chapter is devoted to the study of legal acts of Russia and foreign countries regulating the participation of animals in sports competitions. It analyzes issues such as: the categories of animals, the use of which for sports purposes is unacceptable; the list of requirements for the maintenance and treatment of animals participating in sports competitions; the liability measures for the mistreatment of sports animals; the anti-doping regulation of sports involving animals; the features of maintenance of animals no longer able to participate in sports competitions. The author substantiates the need for a different definition of the concepts “animals participating in sports competitions” and “trainer”, as well as for other amendments to the Russian legislation. The author concludes that it is necessary to establish administrative responsibility in Russia for non-compliance with the requirements for keeping and using sports animals, as well as for the use of doping against animals.

**Key words:** animal law, animal welfare, animal cruelty, professional sports, equestrian sports, sports law, comparative law.

The ethics of using animals for entertainment purposes, especially in various sports shows and competitions, is a highly controversial issue of modern philosophy. There is an opinion that sports involving animals lack one of the main principles of sports – voluntary participation in competitions.<sup>199</sup> Others be-

---

<sup>199</sup> Forry, J. (2016). Why some animal sports are not sports. In Sh. E. Klein (Ed.), *Defining sport: Conceptions and borderlines* (p. 176). Lexington Books.



lieve that sports competitions reveal the natural abilities of animals and do not significantly harm their health. However, in practice, sports animals and athletes face similar problems, for example, overtraining and lack of sufficient rest from physical activity. Regardless of the attitude to the ethics of animal sports, it is worth recognizing that such use of animals requires special legal regulation.

It is not possible to form an accurate list of sports in which animals take part. In some countries, the concept of animal sports includes bullfights, dogfights, cockfights, and other competitions that are strictly prohibited in other countries. At the same time, it is obvious that horseracing is the most popular animal sport in many countries. Another widespread animal sport is dog racing, which is, however, prohibited in Croatia<sup>200</sup> and 41 states of the USA<sup>201</sup>. Elephant polo has gained significant popularity in Southeast Asia. In Russia, sports such as equestrianism, canine sports, utility dog trial and dog sled racing are

---

<sup>200</sup> Law on the Protection of Animals 2017 (Republic of Croatia). [https://narodne-novine.nn.hr/clanci/sluzbeni/2017\\_10\\_102\\_2342.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2017_10_102_2342.html).

<sup>201</sup> Dorchak, C. (2015). The history of greyhound racing in the United States. *Britannica*. <https://www.britannica.com/explore/savingearth/the-history-of-greyhound-racing-in-the-united-states>.

officially recognized by the Ministry of Sports of the Russian Federation.<sup>202</sup>

There are no international standards for the protection of sports animals. At the same time, some states have developed quite progressive sets of norms governing the use of animals in sports. In particular, special legal protection of sports animals is provided by the legislation of some countries of the Balkan region (Serbia, Croatia, Montenegro) and the post-Soviet area (Latvia, Estonia, Ukraine).

Despite the fact that animal shows are quite popular in Russia, the legal regulation of the use of animals for such purpose has started to form not long past. The Federal law on responsible treatment of animals and on amendments to certain legislative acts of the Russian Federation<sup>203</sup> (hereinafter – the RF Federal law on responsible treatment of animals) was published on December 27, 2018. Certain provisions of this act, including the article 15, which is key

---

<sup>202</sup> See Vserossiiskij reestr vidov sporta [All-Russian register of sports]. <https://www.minsport.gov.ru/sport/high-sport/priznanie-vidov-spor>.

<sup>203</sup> Federalnii zakon ot 27 dekabrya 2018 g. N 498-FZ “Ob otvetstvennom obrashhenii s zhivotnymi i o vnesenii izmenenij v otdel’nye zakonodatel’nye akty Rossijskoj Federacii” (poslednjaja redakcija) [Federal Law “On the responsible treatment of animals and on the introduction of changes to certain legal acts of Russian Federation” of 2018, December 27, № 498-FZ (last edition)]. [https://www.consultant.ru/document/cons\\_doc\\_LAW\\_314646](https://www.consultant.ru/document/cons_doc_LAW_314646).

for the topic of this study, entered into force only on January 1, 2020. This federal law forms the foundation of the legal regulation of the treatment of animals in Russia. Another important act in the mentioned field is the Federal law on physical education and sports in the Russian Federation<sup>204</sup> (hereinafter – the RF Federal law on sports). It provides a definition of animals participating in sports competitions and some measures to prevent the use of doping against animals. Some aspects of sports-related use of animals are established by legal acts of Russian executive bodies of state power. It is worth noting the Decree of the Government of the Russian Federation of December 30, 2019 № 1937 on approval of requirements for the use of animals for cultural and entertainment purposes and their maintenance<sup>205</sup> (hereinafter – the RF Government Decree № 1937). At the level of Russian regions, the exploitation of animals in sports is practically not regulated.

---

<sup>204</sup> Federal'nyj zakon "O fizicheskoj kul'ture i sporte v Rossijskoj Federacii" ot 4 dekabrya 2007 g. N 329-FZ (poslednjaja redakcija) [Federal Law "On physical culture and sports in the Russian Federation" of 2007, December 4, N 329-FZ (last edition)]. [https://www.consultant.ru/document/cons\\_doc\\_LAW\\_73038](https://www.consultant.ru/document/cons_doc_LAW_73038).

<sup>205</sup> Postanovlenie pravitel'stva RF ot 30 dekabrya 2019 N 1937 "Ob utverzhenii trebovanij k ispol'zovaniju zhivotnyh v kul'turno-zrelishhnyh celjah i ih sodержaniju" [Resolution of the government of the Russian Federation "On approval of requirements for the use of animals for cultural and entertainment purposes and their maintenance" of December 30, 2019, N 1937]. [https://www.consultant.ru/document/cons\\_doc\\_LAW\\_342400](https://www.consultant.ru/document/cons_doc_LAW_342400).

According to the RF Federal law on sports, animals participating in sports competitions are animals that participate in sports competitions in accordance with the rules of a certain sport. Such definition seems tautological. Moreover, it does not clarify whether this law applies to animals in the non-competitive period. Although it is obvious that the anti-doping rules should apply to animals even when they do not participate in competitions. So, the definition of animals participating in sports competitions needs to be further developed.

The legislation of other states rarely defines sports animals. For example, according to the Law on protection and welfare of animals of Guatemala, animals for sport are animals that are used in sports or competitive activities and develop in harmony with the instructor, owner or athlete (especially horses and dogs).<sup>206</sup> The Law on animal protection of Latvia specifies that a sport and working animal is an animal that has acquired specific skills and performs actions defined by a person.<sup>207</sup> The legislators of many

---

<sup>206</sup> Decreto número 5-2017: Ley de protección y bienestar animal [Decree Number 5-2017: Law on animal protection and welfare] 2017 (Guatemala). <http://www.fao.org/faolex/results/details/en/c/LEX-FAOC166167>.

<sup>207</sup> Dzīvnieku aizsardzības likums [Animal protection law] 1999 (Latvia). <http://www.fao.org/faolex/results/details/en/c/LEX-FAOC037839>.

other countries simply include sports animals in the group of animals used in entertainment, in particular in exhibitions, cinema and circuses.

Almost every state seeks to protect certain categories of animals from being used in sports competitions. In Russia, it is not allowed to use in sports such animals that have not reached the age of 3 months by the date of the event, sick, pregnant animals, animals during lactation (p. 240 of the RF Government Decree № 1937). In Ukraine, a similar ban applies to animals that have difficulty enduring bondage, enclosed space and training.<sup>208</sup> The legislation of Poland<sup>209</sup> and Estonia<sup>210</sup> allows the use in entertainment activities only of those animals that were born and raised in captivity. In addition, the Animal Protection Act of Poland prohibits the use of too old or young animals for sports purposes. In Malta, animals whose body parts have been removed or damaged due to surgical

---

<sup>208</sup> Закон Украйны “Pro zaxy`st tvary`n vid zhorstokogo povodzhennya” N 3447-IV [Law of Ukraine “On protection of animals from cruel treatment”] 2006. <http://extwprlegs1.fao.org/docs/pdf/ukr176335.pdf>.

<sup>209</sup> Polish Animal Protection Act 1997 (Poland). <https://www.animallaw.info/statute/poland-cruelty-polish-animal-protection-act>.

<sup>210</sup> Animal Protection Act 2013 (Republic of Estonia). <https://www.riigiteataja.ee/en/eli/530102013045/consolide>.

operations are not allowed to participate in sports competitions.<sup>211</sup> The Swiss Animal Welfare Ordinance prohibits the sports-related use of horses with trimmed or desensitized nerves of limbs, hypersensitive skin of limbs or painkillers applied to limbs.<sup>212</sup> In our view, the Russian legislation should be supplemented by additional categories of animals, the use of which for sports is unacceptable. In this case, the above-mentioned experience of foreign countries should be taken into account.

In equestrian sport, there are known cases of substitution of horses, as well as substitution of samples taken from horses in order to conduct doping control. To prevent such actions, certain states establish various measures for the identification and registration of sports animals. Mandatory issuance of special passports for sports horses is provided in Northern Ireland<sup>213</sup>, Croatia<sup>214</sup>,

---

<sup>211</sup> Animal Welfare Act XXV 2001 (Malta). <http://extwprlegs1.fao.org/docs/pdf/mlt29325.pdf>.

<sup>212</sup> Ordonnance sur la protection des animaux [Ordinance on the protection of animals] 2008. <https://www.admin.ch/opc/fr/classified-compilation/20080796/index.html>.

<sup>213</sup> Horse Passports Regulations 1999 (Northern Ireland). <http://extwprlegs1.fao.org/docs/html/uk20719.htm>.

<sup>214</sup> Pravilnik o identifikaciji i registraciji kopitara [Regulation on the identification and registration of equidae] 2007 (Croatia). <http://www.fao.org/faolex/results/details/en/c/LEX-FAOC130328>.

Turkmenistan<sup>215</sup> and Ukraine. In Uzbekistan, this procedure is carried out at the request of the horse owner.<sup>216</sup> In Russia, a horse can participate in national competitions of any level only if it has a sports horse passport issued or recognized by the Russian Equestrian Federation.<sup>217</sup> In addition, in Russia, Turkey<sup>218</sup> and Latvia, the admission of a sports animal to competitions is not possible without a veterinary certificate. It is also noteworthy that in Latvia sports animals must be marked with a special microchip, which must contain a unique identification number of the animal that does not change throughout its life, and also must not affect the welfare of the animal and cause any harm to it.

---

<sup>215</sup> Zakon Turkmenistana “O konevodstve i konnom sporte” № 308-V [Law of Turkmenistan “On Horse Breeding and Equestrian Sports” № 308-V] 2015. <http://extwprlegs1.fao.org/docs/pdf/tuk158528.pdf>.

<sup>216</sup> Uzbekiston Respublikasi vazirlar mahkamasining kharori naslli va sport otlariga “Ot pasporti” ni berish tartibi tugrisida nizomni Tasdikhlash Khakhida [Resolution of the Cabinet of Ministers of the Republic of Uzbekistan “On the approval of the procedure for issuing of the ‘horse passport’ to breeding and sports horses”] №214 of 2019, March 12. <http://extwprlegs1.fao.org/docs/pdf/uzb188490.pdf>.

<sup>217</sup> Reglament FKSR [REF Regulations] №01-01/17 of 2017, February 7, with changes as of 2019, January 1. <http://fksr.ru/index.php?page=3833904>.

<sup>218</sup> Law on veterinary services, plant health, food and feed No 5996 2010 (Turkey). <http://extwprlegs1.fao.org/docs/pdf/tur106155E.pdf>.

It is interesting to analyze some legal requirements for the organization of sports competitions with animals. Requirements for the use of animals in sports competitions and some other entertainment purposes are contained in Section VII of the RF Government Decree № 1937. According to paragraph 250 of this act, such rules apply to relations on the use of animals in sports competitions in the part that does not contradict the relevant rules of sports approved in accordance with the established procedure.

Thus, an event with the participation of an animal should last no more than 4 calendar days, and the maximum time spent by animals in the event venue should not exceed 12 hours per day. The continuous active work of the animal should not exceed 3 consecutive hours per day. During the event, physical impact on the animal that is harmful to its health is not allowed. In addition, the RF Government Decree № 1937 contains a number of requirements for the acceptable noise level and ambient temperature during the competition, as well as for the size and equipment of the competition venue. So, the organizer of the competition is obliged to provide areas for feeding, walking, resting animals, etc.



It seems obvious that in order to protect the life and health of sports animals, a competent veterinarian must be present at every sports event with their participation. In Finland, the organizer of sports competition must ensure that the veterinarian provides his or her services if the animal may be subjected to pain, suffering or excessive stress while participating in such event. A veterinarian must prohibit an animal from participating in a competition if there are reasonable grounds to suspect that the animal is being used in a way that violates the Finnish rules for the use of sports animals.<sup>219</sup> In Estonia, regardless of any circumstances, a veterinarian with a professional license must be present at the competition venue. In addition to checking the health status of a sports animal, he or she may decide to euthanize the animal if necessary, and recommend to an organizer to cancel the competition due to adverse weather conditions. In Russia, the obligation of the organizer of sports competitions to ensure the presence of a veterinarian is not explicitly provided for in any of the legal acts, which seems to be a serious omission of the legislator.

---

<sup>219</sup> Animal Welfare Act 247/1996 (Finland). <http://extwprlegs1.fao.org/docs/pdf/fin11662.pdf>.

The exploitation of animals for sports purposes is dangerous for their health and requires their owners, trainers and athletes to have special skills. According to the RF Federal law on sports, a trainer is an individual who has an appropriate secondary professional education or higher education and conducts trainings with athletes, as well as managing their competitive activities in order to achieve sports results. It follows from this definition that to guide the training and sports activities of a sports animal, a trainer does not need to have a special education. It seems obvious that this could negatively affect animal welfare. For example, in Spain, to exercise the profession of trainer of sports animals, a person must have a bachelor's degree or a specialist degree in the sphere of sports science, as well as the necessary practical experience in this field. In our opinion, the RF Federal law on sports should be supplemented with a norm according to which only persons with appropriate secondary professional or higher education may manage the training and sports activities of animals.

In most countries, including Russia, regulation of the use of animals for sports purposes is limited only to the abstract prohibition

of causing pain and suffering to animals during their training or participation in sports competitions, as well as to the prohibition of the use of doping against animals. In addition, it is not allowed in Russia to kill sports animals and force unhealthy animals to participate in training and sports events. At the same time, the laws of individual states establish rather original duties of athletes, trainers, owners of sports animals and organizers of sports competitions with their participation. In particular, the following actions are prohibited:

1) Forcing animals to perform actions that exceed their natural capabilities (Belgium (Wallonia)<sup>220</sup>, Costa Rica<sup>221</sup>, Latvia, UAE<sup>222</sup>, Serbia<sup>223</sup>).

---

<sup>220</sup> Décret relatif au Code wallon du Bien-être des animaux [Decree relating to the Walloon Code for animal welfare] 2018 (Belgium). <http://bienetreanimal.wallonie.be/home/legislation/legislationlist/liste-de-legislations-bea/bienetre067-W.html>.

<sup>221</sup> Ley sobre el bienestar de los animales No 7451 [Law on the Welfare of Animals] 1994 (Costa Rica). <http://extwprlegs1.fao.org/docs/pdf/cos9580.pdf>.

<sup>222</sup> Federal Law No. 16 of 2007 on Animal Welfare (United Arab Emirates). <http://yawdubai.com/wp-content/uploads/2017/07/Federal-Law-No.-16-of-2007-Eng.pdf>.

<sup>223</sup> Zakon o Dobrobyty Životinja [Animal Welfare Act] 2019 (Serbia). <http://extwprlegs1.fao.org/docs/pdf/srb104589.pdf>.

2) Organization of sports events, such as horse racing and dog racing, on hard (Belgium (Wallonia), Montenegro<sup>224</sup>) or other surfaces that cause damage to the limbs of animals (Bulgaria<sup>225</sup>).

3) Forcing animals to participate in sports competitions if it causes them fear or stress (Norway<sup>226</sup>, Serbia).

4) Sports-related use of animals that are not physically prepared for this (Iceland<sup>227</sup>).

5) Failure to provide sports animals with sufficient food and water (UAE).

6) Use of drugs that are not doping, but can change the behavior or the physical and mental abilities of animals (Serbia).

7) Use of a muzzle, collar, bridle or other accessory on an animal during its participation in sports events (Latvia).

The Russian legislation does not provide for special criminal or administrative liability for the improper treatment of animals

---

<sup>224</sup> Zakon o zaštiti i dobrobiti životinja [Animal Welfare Protection Act] 2019 (Montenegro). <http://extwprlegs1.fao.org/docs/pdf/mne168268.pdf>.

<sup>225</sup> Zakon za zashtita na zhivotnite [Animal Protection Act] 2008 (Bulgaria). <https://www.globalanimallaw.org/database/national/bulgaria>.

<sup>226</sup> Animal Welfare Act 2009 (Norway). <https://www.regjeringen.no/en/dokumenter/animal-welfare-act/id571188>.

<sup>227</sup> Act on Animal Welfare no. 55/2013 (Iceland). <https://www.globalanimallaw.org/database/national/iceland>.

participating in sports competitions. However, for such actions or inaction, athletes, owners of sports animals and other persons can be brought to sports sanctions in accordance with the regulations of all-Russian sports federations. For example, in January 2020, the rider who was competing in equestrian sports repeatedly whipped a horse because it refused to overcome an obstacle. The athlete was disqualified from participating in the competitions for one year by decision of the Russian Equestrian Federation, and her results in this competition were canceled.<sup>228</sup>

A number of foreign countries provide for legal liability for committing various illegal actions against sports animals. In Iceland, a fine or imprisonment may be imposed on a person who:

- 1) uses a physically incapable or insufficiently trained animal for competition or other entertainment purposes;
- 2) uses drugs that suppress medical symptoms or increase the performance of a sports animal to a degree that is contrary to its welfare;

---

<sup>228</sup> Russian Equestrian Federation. (2020, February 6). *Sportsmenka Kseniya Kuznetsova diskvalifitsirovana za zhestokoye obrashcheniye s loshad'yu* [Athlete Ksenia Kuznetsova disqualified for cruelty to a horse]. <http://www.fksr.org/index.php?page=38339625>.

3) subjects a sports animal to treatment that causes harm or fear.

In Malaysia, similar penalties can be applied to a person who organizes, participates in, advertises or is otherwise associated with training or sports events in which animals are subjected to abuse.<sup>229</sup> According to the Law on animal welfare of Serbia, a legal entity may be fined if it: 1) has allowed an animal to participate in a competition in violation of veterinary rules, the rules of relevant national and international sports associations; 2) organizes races involving animals in such a way that they cause them injury, pain, suffering, fear and stress, or force them to go beyond the physical capabilities of animals. In our opinion, the listed offenses must be taken into account when developing a new edition of the Administrative Code of the Russian Federation or the Criminal Code of the Russian Federation.

The qualitative development of animal sports is impossible without an effective anti-doping system. It is worth noting that the term doping was first used in relation with equestrian sports.<sup>230</sup>

---

<sup>229</sup> Animal Welfare Act 772/2015 (Malaysia). <http://extwprlegs1.fao.org/docs/pdf/mal176896.pdf>.

<sup>230</sup> Lopatenok, S. 2017, October 16. *Loshadinaya dozga. Doping dayut ne tol'ko lyudyam, no i loshadyam* [Horse dose. Doping is given not only to people, but also

The legal foundation of the international anti-doping system is the World Anti-Doping Code (WADA Code).<sup>231</sup> According to article 16 of this act, almost all the authority to establish and apply anti-doping rules in respect of sports animals is delegated to the relevant international sports federations. The anti-doping rules of such federations should include lists of prohibited substances, applicable testing procedures, and a list of laboratories accredited to conduct sample analysis.

The anti-doping legislation in various states is quite uniform, since its norms are based on the provisions of the WADA Code and other acts of World Anti-Doping Agency (WADA). Thus, in accordance with the RF Law on sports, a violation of anti-doping rules is the presence of prohibited substances or their metabolites or markers in a sample taken during the competitive period or in the non-competitive period from the body of an animal participating in sports competitions. It is noteworthy that the fact of using a prohibited substance against a sports animal can be confirmed

---

to horses]. Gorod 812. <http://gorod-812.ru/zachem-loshadyam-dayut-doping-kak-s-etim-boryutsya>.

<sup>231</sup> World Anti-Doping Code 2015 (with 2019 amendments). World Anti-Doping Agency. <https://www.wada-ama.org/en/resources/the-code/world-anti-doping-code>.

only by the results of research conducted in laboratories accredited by WADA.

The Russian legislation does not contain any other rules concerning anti-doping control of sports animals, which is not a disadvantage in itself, since the relevant relations are regulated by international sports federations. However, for a number of reasons, the Russian anti-doping system, including its branch aimed at combating the use of doping against sports animals, is ineffective. Firstly, in Russia there are no anti-doping laboratories accredited by WADA that analyze samples taken from animals. Secondly, there is a lack of doping officers, who are entitled to conduct doping tests on animals. For example, in equestrian sports, there is only one testing veterinarian accredited by the International Federation for Equestrian Sports (FEI).<sup>232</sup> Thirdly, sports animals are rarely sampled for doping control. According to representatives of equestrian sports interviewed by the author of this work, doping control of sports horses is carried out by FEI doping officers no more than a few times a year and only at all-Russian equestrian competitions.

---

<sup>232</sup> FKSR Awards 2019. (2019). Olga Zibreva. <https://www.fksrwards.com/development1>.



Nevertheless, it cannot be denied that the presence of doping in samples of sports animals is possible. Responsibility for the use of doping against an animal is established in many countries including Serbia, Mexico<sup>233</sup>, Croatia, Montenegro and even Mali<sup>234</sup>. In our opinion, in Russia, administrative responsibility should be imposed for the deliberate use or attempt to use doping against a sports animal. The subjects of such responsibility should be athletes, trainers, sports medicine specialists or other specialists in the field of physical education and sports.

Animals that successfully participate in sports competitions fully satisfy the personal ambitions of their owners, but after an incurable injury or general exhaustion of the body they can no longer be used for sports purposes. After this, there is a risk that an animal may be abandoned by its owner. Russia is one of the few countries that provides legal protection to former sports animals. According to article 15 of the RF Federal law on responsible treatment of animals, the owner of an animal, whose further use

---

<sup>233</sup> Ley general de cultura física y deporte [General law of physical culture and sport] 2019 (United Mexican States). [http://www.diputados.gob.mx/LeyesBiblio/pdf/LGCFD\\_111219.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LGCFD_111219.pdf).

<sup>234</sup> Loi № 2012-014/ du 24 fevrier 2012 relative au bien-etre animal [Law № 2012-014 / of February 24, 2012 relating to animal welfare] (Republic of Mali). <http://extwprlegs1.fao.org/docs/pdf/mli152384.pdf>.

for cultural and entertainment purposes is impossible, must ensure its maintenance until the natural death of such animal or transfer it to other person or legal entity or to an animal shelter. However, it is important to note that there are no criminal or administrative penalties for non-compliance with this requirement. Thus, providing a decent “pension” for sports animals remains one of the main gaps in the legal regulation of animal protection around the world.

The presented analysis has shown that a small number of states have developed a detailed legal regulation of the use of animals in sports competitions. In Russia, the system of legal protection of animals used for cultural and entertainment purposes has just begun to take shape, but its future effectiveness is causing some doubts right now. In particular, this conclusion is connected with the absence of a mechanism for enforcing compliance with the relevant requirements. One of the potential solutions to this problem may be the introduction of administrative liability for violation of obligations for the proper exploitation of animals for cultural and entertainment purposes, as well as for the use of doping against sports animals. In addition, it seems necessary to fix in the RF Law on sports a different definition of “trainer”, which would imply

that to guide the training and sports activities of an animal, a person must have an appropriate secondary professional or higher education.

### **Bibliography**

Act on Animal Welfare no. 55/2013 (Iceland). <https://www.globalanimallaw.org/database/national/iceland>

Animal Protection Act 2013 (Republic of Estonia). <https://www.riigiteataja.ee/en/eli/530102013045/consolide>

Animal Welfare Act 2009 (Norway). <https://www.regjeringen.no/en/dokumenter/animal-welfare-act/id571188>

Animal Welfare Act 247/1996 (Finland). <http://extwprlegs1.fao.org/docs/pdf/fin11662.pdf>

Animal Welfare Act 772/2015 (Malaysia). <http://extwprlegs1.fao.org/docs/pdf/mal176896.pdf>

Animal Welfare Act XXV 2001 (Malta). <http://extwprlegs1.fao.org/docs/pdf/mlt29325.pdf>

Décret relatif au Code wallon du Bien-être des animaux [Decree relating to the Walloon Code for animal welfare] 2018 (Belgium). <http://bienetreanimal.wallonie.be/home/legislation/legislationlist/liste-de-legislations-bea/bienetre067-W.html>

Decreto número 5-2017: Ley de protección y bienestar animal [Decree Number 5-2017: Law on animal protection and welfare] 2017 (Guatemala). <http://www.fao.org/faolex/results/details/en/c/LEX-FAOC166167>

Dorchak, C. (2015). The history of greyhound racing in the United States. *Britannica*. <https://www.britannica.com/explore/savingearth/the-history-of-greyhound-racing-in-the-united-states>

- Dzīvnieku aizsardzības likums [Animal protection law] 1999 (Latvia). <http://www.fao.org/faolex/results/details/en/c/LEX-FAOC037839>
- Federal Law No. 16 of 2007 on Animal Welfare (United Arab Emirates). <http://yawdubai.com/wp-content/uploads/2017/07/Federal-Law-No.-16-of-2007-Eng.pdf>
- Federalnii zakon ot 27 dekabrya 2018 g. N 498-FZ “Ob otvetstvennom obrashhenii s zhivotnymi i o vnesenii izmenenij v otdel’nye zakonodatel’nye akty Rossijskoj Federacii” (poslednjaja redakcija) [Federal Law “On the responsible treatment of animals and on the introduction of changes to certain legal acts of Russian Federation” of 2018, December 27, № 498-FZ (last edition)]. [https://www.consultant.ru/document/cons\\_doc\\_LAW\\_314646](https://www.consultant.ru/document/cons_doc_LAW_314646)
- Federal’nyj zakon “O fizicheskoj kul’ture i sporte v Rossijskoj Federacii” ot 4 dekabrya 2007 g. N 329-FZ (poslednjaja redakcija) [Federal Law “On physical culture and sports in the Russian Federation” of 2007, December 4, N 329-FZ (last edition)]. [https://www.consultant.ru/document/cons\\_doc\\_LAW\\_73038](https://www.consultant.ru/document/cons_doc_LAW_73038)
- FKSR Awards 2019. (2019). Olga Zibreva. <https://www.fks-rawards.com/development1>
- Forry, J. (2016). Why some animal sports are not sports. In Sh. E. Klein (Ed.), *Defining sport: Conceptions and borderlines* (p. 176). Lexington Books.
- Horse Passports Regulations 1999 (Northern Ireland). <http://extwprlegs1.fao.org/docs/html/uk20719.htm>
- Law on the Protection of Animals 2017 (Republic of Croatia). [https://narodne-novine.nn.hr/clanci/sluzbeni/2017\\_10\\_102\\_2342.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2017_10_102_2342.html)

- Law on veterinary services, plant health, food and feed No 5996 2010 (Turkey). <http://extwprlegs1.fao.org/docs/pdf/tur106155E.pdf>
- Lercier, M. (2019). Welfare protection of the animal-athlete in the sports company in light of the evolution of the legal regime for animals. *Derecho Animal. Forum of Animal Law Studies*, 10(1), 59. <https://doi.org/10.5565/rev/da.404>
- Ley general de cultura física y deporte [General law of physical culture and sport] 2019 (United Mexican States). [http://www.diputados.gob.mx/LeyesBiblio/pdf/LGCFD\\_111219.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LGCFD_111219.pdf)
- Ley sobre el bienestar de los animales No 7451 [Law on the Welfare of Animals] 1994 (Costa Rica). <http://extwprlegs1.fao.org/docs/pdf/cos9580.pdf>
- Loi № 2012-014/ du 24 fevrier 2012 relative au bien-etre animal [Law № 2012-014 / of February 24, 2012 relating to animal welfare] (Republic of Mali). <http://extwprlegs1.fao.org/docs/pdf/mli152384.pdf>
- Lopatenok, S. 2017, October 16. *Loshadinaya doza. Doping dayut ne tol'ko lyudyam, no i loshadyam* [Horse dose. Doping is given not only to people, but also to horses]. Gorod 812. <http://gorod-812.ru/zachem-loshadyam-dayut-doping-kak-s-etim-boryutsya>
- Ordonnance sur la protection des animaux [Ordinance on the protection of animals] 2008. <https://www.admin.ch/opc/fr/classified-compilation/20080796/index.html>
- Polish Animal Protection Act 1997 (Poland). <https://www.animal-law.info/statute/poland-cruelty-polish-animal-protection-act>
- Postanovlenie pravitel'stva RF ot 30 dekabrya 2019 N 1937 "Ob utverzhdenii trebovanij k ispol'zovaniju zhivotnyh v kul'turno-zrelisshnyh celjah i ih sodержaniju" [Resolution of the government of the Russian Federation "On approval of re-

quirements for the use of animals for cultural and entertainment purposes and their maintenance” of December 30, 2019, N 1937]. [https://www.consultant.ru/document/cons\\_doc\\_LAW\\_34240](https://www.consultant.ru/document/cons_doc_LAW_34240)

Pravilnik o identifikaciji i registraciji kopitara [Regulation on the identification and registration of equidae] 2007 (Croatia). <http://www.fao.org/faolex/results/details/en/c/LEX-FA-OC130328>

Reglament FKSR [REF Regulations] №01-01/17 of 2017, February 7, with changes as of 2019, January 1. <http://fksr.ru/index.php?page=3833904>

Russian Equestrian Federation. (2020, February 6). *Sportsmenka Kseniya Kuznetsova diskvalifitsirovana za zhestokoye obrashcheniye s lo-shad'yu* [Athlete Ksenia Kuznetsova disqualified for cruelty to a horse]. <http://www.fksr.org/index.php?page=38339625>

Uzbekiston Respublikasi vazirlar mahkhamasining kharori naslli va sport otlariga “Ot pasporti” ni berish tartibi tugrisida nizomni Tasdiklash Khakhida [Resolution of the Cabinet of Ministers of the Republic of Uzbekistan “On the approval of the procedure for issuing of the ‘horse passport’ to breeding and sports horses”] №214 of 2019, March 12. <http://extwprlegs1.fao.org/docs/pdf/uzb188490.pdf>

Vserossiiskij reestr vidov sporta [All-Russian register of sports]. <https://www.minsport.gov.ru/sport/high-sport/priznanie-vidov-spor>

World Anti-Doping Code 2015 (with 2019 amendments). World Anti-Doping Agency. <https://www.wada-ama.org/en/resources/the-code/world-anti-doping-code>

Zakon o Dobrobyty Životinja [Animal Welfare Act] 2019 (Serbia). <http://extwprlegs1.fao.org/docs/pdf/srb104589.pdf>

Zakon o zaštiti i dobrobiti životinja [Animal Welfare Protection Act] 2019 (Montenegro). <http://extwprlegs1.fao.org/docs/pdf/mne168268.pdf>

Zakon Turkmenistana “O konevodstve i konnom sporte” № 308-V [Law of Turkmenistan “On Horse Breeding and Equestrian Sports” № 308-V] 2015. <http://extwprlegs1.fao.org/docs/pdf/tuk158528.pdf>

Zakon Ukrajiny “Pro zaxy`st tvary`n vid zhorstokogo povodzhen-nya” N 3447-IV [Law of Ukraine “On protection of animals from cruel treatment”] 2006. <http://extwprlegs1.fao.org/docs/pdf/ukr176335.pdf>

Zakon za zashtita na zhivotnite [Animal Protection Act] 2008 (Bulgaria). <https://www.globalanimallaw.org/database/national/bulgaria>



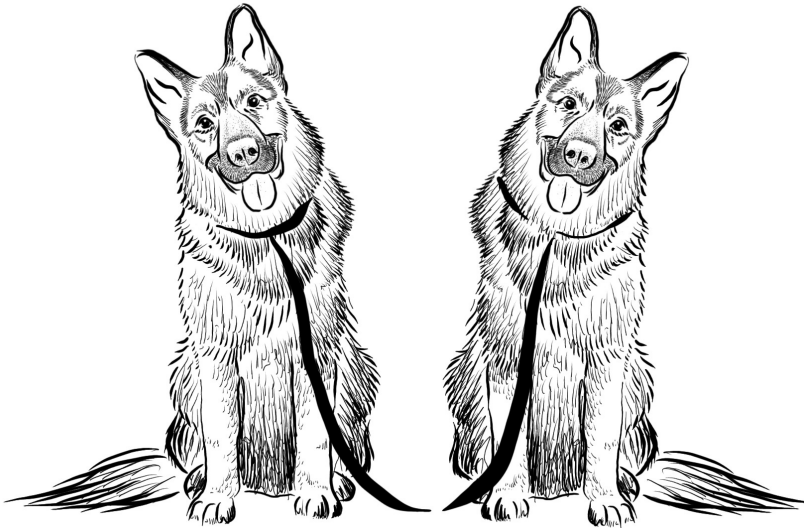


**IV. ANIMALS,  
MEDICINE AND SCIENCE**



Maria Slobodianiuk

THE SCIENTIFIC AND ETHICAL  
ASPECTS OF ANIMAL CLONING



### *Abstract*

Developments in biotechnology have raised new concerns, as cloning may cause certain problems for animal welfare and human well-being. Animal cloning is important in medicine, science and in the development of livestock production. However, cloning issues are very controversial and have both supporters and opponents. This chapter discusses the ethical, social, and scientific aspects of cloning farm animals, pets, endangered and extinct species. The chapter raises the important question of whether people have the right to interfere in the natural cycles and clone animals for their personal purposes or even for socially useful purposes. This is an ethical and philosophical problem that researchers have been trying to solve for several decades. Intervention in the processes of nature can affect not only individual animals and people, but also the entire ecosystem, therefore, animal cloning should be carried out only in extreme cases. The chapter also suggests a way to regulate animal cloning at the legislative level.

**Key words:** animal cloning, pet cloning, livestock cloning, ethical issues, biotechnology.

Animal cloning is a process that reproduces an entire organism from a single cell taken from a parent organism in a genetically identical way. A cloned animal is a nearly exact copy of its parent, it has the same DNA. Cloning in nature occurs quite often. Asexual reproduction in some organisms and the development

of twins from a single fertilized egg are both examples of cloning.<sup>235</sup> Artificial animal cloning appeared with the development of biological technology. “Cloning is the most recent evolution of selective assisted breeding in animal husbandry and it is a reliable way of reproducing superior livestock genetics and ensuring herds are maintained at the highest quality possible”.<sup>236</sup> Cloning does not affect the animal’s genetic makeup and its DNA. This is just another form of assisted reproduction that allows breeders to create a genetic copy of an animal that is identical to twin. Clones are excellent breeding animals used to produce more healthy offspring.<sup>237</sup> But not all scientists agree with the benefits of cloning, some are strongly opposed to cloning due to the fact that there are many ethical and social problems in this issue. Animal cloning may cause suffering to the donor animal and the clone, it has many unexplored consequences, and it may even harm the ecosystem. So, is it worth the risk for new scientific developments and for cloning for

---

<sup>235</sup> Buzzle. (n.d.). *Animal Cloning*. <https://www.buzzle.com/articles/animal-cloning/>.

<sup>236</sup> Bio. (2016, March 10). *Animal biotechnology: All about animal cloning*. <https://www.bio.org/advocacy/letters/animal-biotechnology-all-about-animal-cloning>.

<sup>237</sup> Bio. (2016, March 10). *Animal biotechnology: All about animal cloning*. <https://www.bio.org/advocacy/letters/animal-biotechnology-all-about-animal-cloning>.

non-scientific purposes, such as cloning pets? This question has been a concern of scientists and animal welfare activists for several decades and now causes a lot of controversy in the scientific and legal communities.

Scientists have long been trying to clone animals. The possibility of animal cloning was proved by J. Gurdon, an English biologist who was the first to get cloned frog embryos. He burned out the nuclei of eggs with ultraviolet light and then planted in them the nuclei isolated from the epithelium cells of tadpoles of this species. Most of the eggs obtained in this way died, and only 2,5% of them developed into tadpoles. Adult frogs could not be obtained in this way. Nevertheless, it was a success, and the results of Gurdon's experiments were included in many textbooks and manuals on biology. In 1976, J. Gurdon and R. Laskey began to cultivate in vitro (outside the body in a nutrient medium) kidney, skin and lung cells of adult frogs and use these cells as nuclear donors. Scientists isolated the nuclei of embryos and planted them in eggs devoid of their own nuclei. As a result of a series of similar transplants, several tadpoles were finally born, but the cloned animals did not live very long.

The first successful example of animal cloning was Dolly the sheep, which was cloned by I. Wilmut and his colleagues in 1996. The sheep clone survived and continued to breed naturally. Unlike previous cases, it was created not from a developing embryonic cell, but from a developed mammary cell taken from a full-grown sheep.<sup>238</sup>

Scientists have identified three main cloning methods. Gene cloning is carried out by replicating an identical DNA segment in several copies and is used by scientists to study specific genes. The second method is used to help treat medical diseases through the stem cell replication process. This is therapeutic cloning, but it has caused controversy as these cells come from embryos. The third method is reproductive cloning which was used for Dolly the sheep cloning.

Somatic-cell nuclear transfer, or SCNT, is often used for cloning farm animals because somatic cells can be easily cultured in labs. SCNT is considered a good method for producing farm animals for food consumption. “Reproductive cloning is accomplished by implanting an SCNT-derived blastocyst into the uterus of a sur-

---

<sup>238</sup> Buzzle. (n.d.). *Animal Cloning*. <https://www.buzzle.com/articles/animal-cloning/>.

rogate mother, in which the embryo develops into a fetus carried to term”.<sup>239</sup>

Successful experiments were carried out cloning various mammals using nuclei taken from somatic animal cells (mouse, goat, pig, cow), as well as taken from dead animals frozen for several years, but many cloned organisms had various pathologies that led to intrauterine death or death immediately after birth. In 1999, US researchers cloned a goat, which was a great achievement and an important step forward in the use of farm animals to produce drugs.<sup>240</sup> In China, for example, a company called BGI has already commercially produced animal cloning for medical research in the world’s largest center for the cloning of pigs.<sup>241</sup> Other US scientists cloned a cow for producing products for pharmaceutical purposes. Cloning can help facilitate the production of farm animals that are genetically suitable for medical purposes, such as xenograft organ procedures. Moreover, farm animals, such as goats, cows and

---

<sup>239</sup> Stocum, D. (2020, March 4). *Somatic cell nuclear transfer*. Encyclopedia Britannica. <https://www.britannica.com/science/somatic-cell-nuclear-transfer>.

<sup>240</sup> BBC News. (1999, April 27). *Scientists clone a goat*. <http://news.bbc.co.uk/2/hi/science/nature/329107.stm>.

<sup>241</sup> Shukman, D. (2014, January 14). *China cloning on an ‘industrial scale’*. BBC News. <https://www.bbc.com/news/science-environment-25576718>.



sheep, are sources of protein needed in medical science. Using the science of animal cloning, the problem of the lack of protein sources and vaccines obtained from animals can be solved. In combination with transgenesis, animal cloning opens up additional possibilities for the production of valuable biologically active proteins for the treatment of various diseases of animals and humans.

Cloning animals can also be useful for producing animal products. Farmers can now get livestock full of milk and meat of a productive breed with excellent quality thanks to cloning an animal with good genes. In 2007, some dairy and meat producers proposed a tracking system for all cloned animals as they move through the food chain to commercialize cloned livestock on a mass scale.<sup>242</sup> In 2018, the U.S. Food and Drug Administration (further – «FDA») approved the sale of meat and milk from cloned animals. Such products were considered indistinguishable from non-cloned animals.

Critics have objected to the FDA's approval of cloned-animal products for human consumption, arguing that the FDA's study

---

<sup>242</sup> Petland, W., & Gumpert, D. (2007, December 14). *USDA bets the farm on Animal ID program*. The Nation. <https://www.thenation.com/article/archive/usda-bets-farm-animal-id-program/>.

was inadequately limited and of dubious scientific validity.<sup>243</sup> Several consumer advocacy groups are working to promote a tracking program that will allow consumers to better learn about cloned-animal products in their food. The 2013 review noted that there was widespread misunderstanding regarding cloned cattle, and it was found that cloned cattle that reached adulthood and entered the food supply were largely equivalent to ordinary cattle with respect to the meat and milk quality and with respect to their reproductive capabilities.<sup>244</sup> On the one hand, the consumption of cloned animals will help to reduce the killing of real animals, which many animal protection activists and vegetarians are seeking. But on the other hand, the influence of meat, milk, eggs of cloned animals on people has not been fully studied by scientists, which can lead to negative consequences in relation to human health and life.

Therefore, the cloning of farm animals has an impact on the development of medicine and science, which will help to find ways

---

<sup>243</sup> The Human Society of the United States. (n.d.). *Welfare issues with genetic engineering and cloning of farm animals* [Report]. <https://www.humanesociety.org/sites/default/files/docs/hsus-report-issues-genetic-engineering-cloning-farm-animals.pdf>.

<sup>244</sup> Watanabe, S. (2013). Effect of calf death loss on cloned cattle herd derived from somatic cell nuclear transfer: Clones with congenital defects would be removed by the death loss. *Animal Science Journal*, 84(9), 631–638. <https://doi.org/10.1111/asj.12087>.

to solve even human health problems. The cloning of farm animals impacts on the development of the production of animal products as well. But the fact that animals are also cloned for domestic purposes is most criticized. Now there is a large industry of cloning pets for commercial purposes.

The first pet cloning occurred in 2002 when scientists in Texas cloned a domestic cat and produced a two-month-old kitten called CopyCat.<sup>245</sup> It was the only surviving kitten of 87 embryos created by cloning. This experiment triggered the controversial industry with owners willing to spend thousands of dollars to bring their dead pets back to life. Critics of pet cloning usually raise three objections to their cloning:

1. Widespread cloning of domestic animals can have bad consequences for unwanted companion animals. There are millions of unwanted pets around the world. How can we justify cloning companion animals when so many animals languish in shelters? Humane society opposes pet cloning because it is dangerous for the animals involved in it, it does not serve a convincing social purpose and threatens to aggravate the problem of overpopulation of

---

<sup>245</sup> BBC News. (2002, February 15). *First pet clone is a cat*. <http://news.bbc.co.uk/2/hi/science/nature/1820749.stm>.

domestic animals.<sup>246</sup> But pet owners grieving for a lost animal consider it unique and indispensable, so they cannot just go to a shelter and get any animal as a replacement pet. But on the other hand, this clone is not really an original pet, but only a solace for owners of a deceased pet. This implies the second argument against pet cloning.

2. Cloning companies can cheat and exploit grieving pet owners insisting that they offer a valuable service, citing unofficial evidence of behavioral similarities between the original pet and the clone. They argue that cloning pets implies genetic determinism – that only genes determine all behavioral and physical characteristics, but this is false. Criticizing the practice of cloning of animal companions, bioethicist D. Magnus argued: “The people who want this are spending huge sums of money to get their pet immortalised or to guarantee they’re getting a pet exactly like the one they had before - and it’s simply not possible”.<sup>247</sup> But the character and behavior of an animal are the result of a complex interaction of various factors, for example, the environment, nutrition and

---

<sup>246</sup> Humane Society of the United States. (2002, February 14). *Cat cloning is wrong-headed*. <http://hdl.handle.net/10822/520423>.

<sup>247</sup> Shiels, M. (2004, April 27). *Carbon kitty's \$50,000 price tag*. BBC News. <http://news.bbc.co.uk/2/hi/science/nature/3663277.stm>.

its raising, and may differ from their deceased pet. “If pet cloning firms are contributing to this false belief, then they are engaging in a type of fraud and are certainly exploiting the grief of the devoted pet owner”.<sup>248</sup> But some animal owners understand that a clone is not an exact copy of their pet, and still agree to clone in order to keep the memory of it as long as possible and see a similar creature next to them. This seems strange and it is better to always remember your pet and not pretend that the clone is the same real pet.

3. The next objection is that the process of cloning causes suffering to animals with extremely high failure and mortality rates – researchers note “high rates of miscarriage, stillbirth, early death, genetic abnormalities and chronic diseases among the first cloned animals”.<sup>249</sup> There is plenty of evidence that cloned animals often suffer from physical ailments such as pneumonia, tumors and abnormal growth patterns. Moreover, donor animals may also be affected by cloning. Outcome of cloning is not always certain “due to high pregnancy losses, as well as high morbidity and mortali-

---

<sup>248</sup> Fiester, A. (2005). Creating Fido’s twin: Can pet cloning be ethically justified. *Hastings Center Report*, 35(4), 34–39. [http://repository.upenn.edu/bioethics\\_papers/30](http://repository.upenn.edu/bioethics_papers/30).

<sup>249</sup> Fiester, A. (2005). Creating Fido’s twin: Can pet cloning be ethically justified. *Hastings Center Report*, 35(4), 34–39. [http://repository.upenn.edu/bioethics\\_papers/30](http://repository.upenn.edu/bioethics_papers/30).

ty during the neonatal period”.<sup>250</sup> Researchers play an important role in improving the effectiveness of cloning by finding treatment methods that ensure a normal animal pregnancy period, as well as developing preventive care for cloned newborns.

Thus, many animals can suffer for the whim of one owner, so the question of the appropriateness of pet cloning remains open. It is important to convey to people the idea that an exact copy of their deceased animal is definitely not to be returned and that it may be better to reconcile with the loss of a pet and help other animals find a family.

Fiester, a researcher from the University of Pennsylvania, emphasized some advantages of pet cloning. He wrote that “the practice of pet cloning – like advanced veterinary care such as transplants, neurosurgery, orthopedics, and psychopharmaceuticals – might improve the public’s perception of the moral status of companion animals because it puts animals in the category of being worthy of a very high level of expense and concern”.<sup>251</sup>

---

<sup>250</sup> Smith, L., Bordignon, V., Babkine, M., Fecteau, G., & Keefer, C. (2000). Benefits and problems with cloning animals. *The Canadian Veterinary Journal*, 41(12), 919–924. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1476349/>.

<sup>251</sup> Fiester, A. (2005). Creating Fido’s twin: Can pet cloning be ethically justified. *Hastings Center Report*, 35(4), 34–39. [http://repository.upenn.edu/bioethics\\_papers/30](http://repository.upenn.edu/bioethics_papers/30).

A member of cloning laboratory, Dr. Westhusin, said there were more important reasons for cats cloning – they have a feline AIDS that can be a model for studying human AIDS. But some groups of animal welfare have spoken about the ethical side of cloning cats and that it interferes with nature. In 2004, Americans began commercial cloning of cats. Therefore, cloning pets may also have its own value for science and medicine, as well as for the public perception of pets. But if pets are cloned only in the interests of grieving owners, then in the future it may cause serious disputes among animal welfare activists and scientists.

There are many examples of pet cloning. In April 2008, South Korean customs officers began training seven puppies cloned from somatic cells of the best Korean sniffer dog, a Canadian Labrador retriever.<sup>252</sup> In 2015, about 100 thousand dollars was used for cloning dogs in South Korea. The Sooam Biotech Research Foundation has cloned about 700 dogs by 2015 and produced 500 cloned embryos of various breeds per day in 2016.<sup>253</sup> In China, cloning a

---

<sup>252</sup> BBC News. (2008, April 21). *S Korea trains sniffer-dog clones*. <http://news.bbc.co.uk/2/hi/asia-pacific/7359242.stm>.

<sup>253</sup> Radford, T. (2015, December 23). *UK couple have dead dog cloned in South Korea*. The Guardian. <https://www.theguardian.com/science/2015/dec/23/uk-couple-await-birth-of-two-clones-of-dead-dog>.

dog in 2020 costs 54 thousand dollars. Chinese authorities cloned police dog Kunsun (he served in Puer and distinguished himself in capturing criminals), who began to be trained in 2019. In Texas, one company created 25 clones of the horse Aiken Kura, who won many races; one of the clones sold for 800 thousand dollars.

There are several other positive aspects of animal cloning. Nowadays, animal cloning can be carried out both for reproductive and non-reproductive or therapeutic purposes. In the second case, cloning is performed to obtain stem cells or other such cells that can be used for therapeutic purposes, such as reconstructing or healing damaged organs, but not duplicating the whole organism. Stem cells are used to treat many diseases and repair and build body tissues. Animal cloning can be used to aid in this process. If this is done successfully on animals, scientists and humanity can look to a future where human stem cells can be cloned to produce identical stem cells for specific people for future use.

Animal cloning is becoming a useful method for producing transgenic farm animals, clones of valuable adults and for preserving endangered breeds and species.<sup>254</sup> Cloning can be used to recre-

---

<sup>254</sup> Smith, L., Bordignon, V., Babkine, M., Fecteau, G., & Keefer, C. (2000). Benefits and problems with cloning animals. *The Canadian Veteri-*



ate even populations of extinct animals. In 2003, in Spain, a cloned cub of an extinct subspecies of the Pyrenean mountain goat Bucardo was born. This subspecies of goats completely disappeared in 2000. Using frozen skin samples taken from the last representative of this subspecies in 1999, Jose Folch from the Center for Agro-Nutrition Research and Technology in Aragon and his colleagues made clone embryos by inserting the bucardo's DNA into domestic goat eggs emptied of their original genetic material.<sup>255</sup> Researchers implanted 208 embryos, but only seven goats became pregnant, and only one Bucardo made it to term, but died seven minutes after birth due to problems with the respiratory system.

Despite the death of a cloned goat, many scientists believe that this may be the only way to save endangered animals. Reproductive biologist Bill Holt, who did not participate in this cloning, said that cloning just one or a few animals will not necessarily produce a viable population that would survive in the future. They will be very susceptible to climate change and disease and may not be able to

---

*nary Journal*, 41(12), 919–924. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1476349/>.

<sup>255</sup> Choi, C. (2009, February 11). *First extinct-animal clone created*. National Geographic. <https://www.nationalgeographic.com/science/2009/02/news-bucardo-pyrenean-ibex-deextinction-cloning/>.

survive for a very long time.<sup>256</sup> But there is a more complex issue of preserving endangered species through cloning. When scientists try to save endangered animals by cloning, they essentially interfere with the normal natural cycle, which can affect the entire ecosystem. It will take several tens or hundreds of years to find out whether cloning of endangered animals will affect the ecosystem.

This question may be even more relevant in relation to the restoration of extinct species than in relation to endangered species – history has shown that interference with ecosystems has often led to the destruction of the animal and plant world living in those systems.<sup>257</sup> Does a human have the right to disrupt natural cycles and revive endangered species of animals? This ethical issue can only be resolved based on proven facts confirming or refuting the adverse effects of animal cloning on animal populations and the ecosystem. Fiester wrote that “in both areas of agricultural cloning and cloning for conservation, cloned animals may have a serious impact on the environment, either by breeding with non-clones

---

<sup>256</sup> Choi, C. (2009, February 11). *First extinct-animal clone created*. National Geographic. <https://www.nationalgeographic.com/science/2009/02/news-bucardo-pyreanean-ibex-deextinction-cloning/>.

<sup>257</sup> Fiester, A. (2005). Ethical issues in animal cloning. *Perspectives in Biology and Medicine*, 48(2), 328–343. [http://repository.upenn.edu/bioethics\\_papers/35](http://repository.upenn.edu/bioethics_papers/35).

or due to some unforeseen expression of a gene that has ramifications for the larger ecosystem”.<sup>258</sup> This means that cloning not only endangered or extinct species can affect the environment, but ordinary cloned animals can harm other animals and the environment.

Thus, cloning is a very controversial way of reproducing animals. For several decades, disputes about the benefits and dangers of animal cloning have not ended. On the one hand, cloned animals can contribute to the development of scientific, medical, pharmacological, therapeutic industries. Cloned animals are used for the producing of drugs, pharmacological products, as well as animal products for human consumption. Opponents of animal cloning question the safety of cloned animal products. But the most criticized issue is the cloning of domestic and endangered species of animals. Cloning pets has a small impact on society, in most cases it is only needed to comfort their owners. Many scientists and animal advocates believe pet cloning should not become a commercial industry. Cloning often exposes clones and animal donors to suffering and greater mortality risks. Cloning of endan-

---

<sup>258</sup> Fiester, A. (2005). Ethical issues in animal cloning. *Perspectives in Biology and Medicine*, 48(2), 328–343. [http://repository.upenn.edu/bioethics\\_papers/35](http://repository.upenn.edu/bioethics_papers/35).

gered animals, according to some researchers, may affect the entire ecosystem in the future. Objections to animal cloning, such as the effect of cloning on a population of unwanted animals, can easily be addressed, but animal health, their population, and the environmental impact of cloning require more serious attention from the public and politicians. The most reasonable solution is to legally prohibit cloning for domestic purposes and to allow animal cloning only for purposes useful to the whole society.

### **Bibliography**

- BBC News. (1999, April 27). *Scientists clone a goat*. <http://news.bbc.co.uk/2/hi/science/nature/329107.stm>
- BBC News. (2002, February 15). *First pet clone is a cat*. <http://news.bbc.co.uk/2/hi/science/nature/1820749.stm>
- BBC News. (2008, April 21). *S Korea trains sniffer-dog clones*. <http://news.bbc.co.uk/2/hi/asia-pacific/7359242.stm>
- Bio. (2016, March 10). *Animal biotechnology: All about animal cloning*. <https://www.bio.org/advocacy/letters/animal-biotechnology-all-about-animal-cloning>
- Buzzle. (n.d.). *Animal Cloning*. <https://www.buzzle.com/articles/animal-cloning/>
- Choi, C. (2009, February 11). *First extinct-animal clone created*. National Geographic. <https://www.nationalgeographic.com/science/2009/02/news-bucardo-pyrenean-ibex-deextinction-cloning/>

- Fiester, A. (2005). Creating Fido's twin: Can pet cloning be ethically justified. *Hastings Center Report*, 35(4), 34–39. [http://repository.upenn.edu/bioethics\\_papers/30](http://repository.upenn.edu/bioethics_papers/30)
- Fiester, A. (2005). Ethical issues in animal cloning. *Perspectives in Biology and Medicine*, 48(2), 328–343. [http://repository.upenn.edu/bioethics\\_papers/35](http://repository.upenn.edu/bioethics_papers/35)
- Humane Society of the United States. (2002, February 14). *Cat cloning is wrong-headed*. <http://hdl.handle.net/10822/520423>
- Petland, W., & Gumpert, D. (2007, December 14). *USDA bets the farm on Animal ID program*. The Nation. <https://www.thenation.com/article/archive/usda-bets-farm-animal-id-program/>
- Radford, T. (2015, December 23). *UK couple have dead dog cloned in South Korea*. The Guardian. <https://www.theguardian.com/science/2015/dec/23/uk-couple-await-birth-of-two-clones-of-dead-dog>
- Shiels, M. (2004, April 27). *Carbon kitty's \$50,000 price tag*. BBC News. <http://news.bbc.co.uk/2/hi/science/nature/3663277.stm>
- Shukman, D. (2014, January 14). *China cloning on an 'industrial scale'*. BBC News. <https://www.bbc.com/news/science-environment-25576718>
- Smith, L., Bordignon, V., Babkine, M., Fecteau, G., & Keefer, C. (2000). Benefits and problems with cloning animals. *The Canadian Veterinary Journal*, 41(12), 919–924. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1476349/>
- Smith, L., Bordignon, V., Babkine, M., Fecteau, G., & Keefer, C. (2000). Benefits and problems with cloning animals. *The Canadian Veterinary Journal*, 41(12), 919–924. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1476349/>

- Stocum, D. (2020, March 4). *Somatic cell nuclear transfer*. Encyclopedia Britannica. <https://www.britannica.com/science/somatic-cell-nuclear-transfer>
- The Human Society of the United States. (n.d.). *Welfare issues with genetic engineering and cloning of farm animals* [Report]. <https://www.humanesociety.org/sites/default/files/docs/hsus-report-issues-genetic-engineering-cloning-farm-animals.pdf>
- Watanabe, S. (2013). Effect of calf death loss on cloned cattle herd derived from somatic cell nuclear transfer: Clones with congenital defects would be removed by the death loss. *Animal Science Journal*, 84(9), 631–638. <https://doi.org/10.1111/asj.12087>

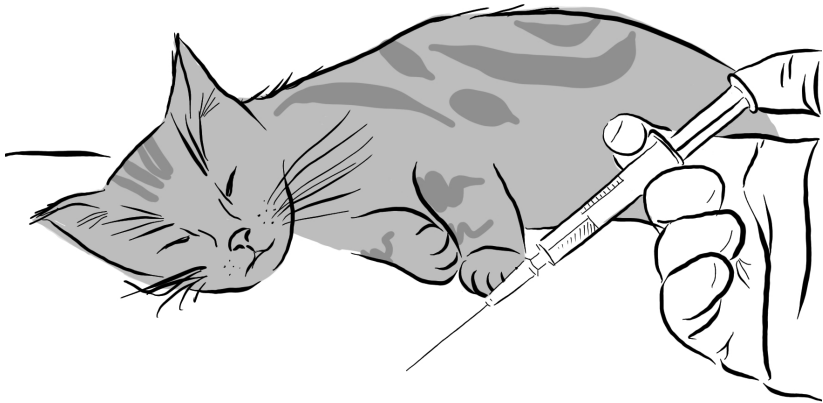
## V. ANIMALS AND RELIGION





**Ekaterina Sinchilo**

**COMPARATIVE ANALYSIS ON THE ISSUE  
OF EUTHANASIA IN ISLAM AND HINDUISM:  
ETHICAL AND LEGAL PERSPECTIVES**



### *Abstract*

Euthanasia is the process of ending life deliberately in order to stop suffering and relieve pain. It is a practice applied to humans as well as to animals. The difference is that human euthanasia in all countries where it is legal is only possible on a voluntary basis. Thus, it is prohibited to end someone's life without their consent. On the contrary, animal euthanasia, firstly, has no illegal status in any existing country; secondly, it can hardly be performed with the consent of the animal as animals are believed to be unconscious creatures, which are unable to communicate with people to the extent of expression of their consent or dissent. Thereby, the issue of euthanasia of animals is considered to be extremely controversial, causing discussions and disagreements between people. Different opinions on animal euthanasia are often a result of certain religious beliefs towards animals. This chapter will indicate the representation of animal welfare and the issue of euthanasia in Islam, namely, in the Qur'an and the Hadiths; and will discuss how these teachings influenced the attitudes towards euthanasia and the practicing of euthanasia in Muslim-majority states such as Iran. Then, how animals are viewed in Hinduism will be demonstrated; also followed by the analysis of actions and opinions on euthanasia of those who confess Hinduism (e.g., in the United Kingdom) or live in the Hindu-majority regions (e.g., India). Finally, the two religious approaches and their impact on people's mindsets will be compared; the chapter will be concluded by the author's predictions on the future influence of these religions on the legal level.

**Key words:** animal euthanasia, animal welfare, Islam, Hinduism, religion.

## Introduction

The word “euthanasia” originated from two Greek words: *eu* – “good” and *thanatos* – “death”, literally meaning “an easy or happy death”. It is also sometimes defined as “the merciful hastening of death”, often limited to willful and merciful actions to kill one who is injured or terminally ill. However, the reasons for animal euthanasia are not limited to incurable and painful diseases, but also include laboratory experiment procedures, overpopulation of stray animals in the streets and in the shelters, their aggressive behaviour, and even the inability of an owner to take care of their pet. Supposedly, it is done by the most painless means possible. Still, this point is a matter of discussion because there are many ways of euthanising animals, which are not stressless and painless. For instance, euthanasia by gunshots is still widely practiced all over the world. In some cases, the first shot does not kill an animal but continue causing suffering until the moment it is shot to death. Moreover, there is an outdated but still used method of euthanasia of unadopted dogs and cats in the shelters – gas chambers. It is not only agonising for the euthanised animal but also stressful for the animals around, that see and hear it suffering. *People for the Ethical*

*Treatment of Animals (PETA)*, the largest international animal rights organisation, highlights that the most painless, dignified and quick way of ending animal's life is intravenous injection of pentobarbital sodium. If the injection is done by a trained professional, then it can be considered compassionate, merciful; so-called 'true euthanasia'.<sup>259</sup> Animal euthanasia is practiced all over the world and there are no general international regulations on when and how it can be conducted. Thus, every country creates its own set of regulations of this issue; or in the case of some countries, no regulations at all. Naturally, inside one country there is also no unified population's opinion on whether it is ethical and morally right to euthanise animals. The people's views depend on a number of factors, e.g., on the population of stray dogs, the shelters' ability to manage caught animals, the importance of animals for testing in cosmetics and medical industries in certain countries. Definitely, cultural and religious backgrounds, too, have a very significant impact on the way animals are treated in different societies.

---

<sup>259</sup> People for the Ethical Treatment of Animals. (n.d.). *Euthanasia*. Retrieved May 08, 2020, from <https://www.peta.org/issues/animal-companion-issues/overpopulation/euthanasia/>.

## 1. Islam and Animal Welfare

In Islam all living creatures are considered to be God's creatures like humans, thus people should treat them with respect and compassion. According to the Islamic teachings, humans as representatives on Earth have power over animals as well as responsibility to all living creatures, and are prohibited from using them recklessly for satisfying all their wills. Generally, humans are not allowed to kill animals for any other purpose than out of necessity. Sports hunting, animal branding, animal caging, animal fighting etc. are strongly prohibited in Islam. The world is Allah's creation and it belongs to Him; thus, he will definitely see people's behaviour towards animals. If humans mistreat other living creatures, they will be accountable to God (Qur'an 26:155–156). Allah's guidance for humans of how they should deal with animals is contained in the two main sources of law in Islam: the Qur'an and the Hadiths.

First, the Qur'an, literally meaning "the recitation" – is the most important religious text in Islam and is claimed to be a revelation from God (Allah). The verses of the Qur'an incorporate instructions for people on how they should live in compliance with God's wisdom. It was revealed by God to Muhammad, who started to

convey God's message to the masses. Muslims consider the Qur'an as Muhammad's miracle and an evidence of his prophethood. The Qur'an is divided into 114 chapters i.e., *Surahs*, literally meaning 'a fence, enclosure, or any part of a structure'.

"And the earth, He has assigned it to all living creatures" (Qur'an 55:10). This is a citation from the Qur'an, indicating the significant place of all animals including mammals, birds, insects, rodents and water creatures in the Islamic religion. The importance of animals is evident from the fact that out of 114 Surahs, six are devoted to animals:

- The Cow (Surah 2);
- The Cattle (Surah 6);
- The Bee (Surah 16);
- The Ant (Surah 27);
- The Spider (Surah 29);
- The Elephant (Surah 105).

Although all these Surahs provide detailed information on how people can use animals, simultaneously they command humans to treat animals with kindness and concern: The Qur'an actually forbids human actions which may lead to harm; transgress not in the

balance, and weigh with justice, and skimp not in the balance ... earth, He set it down for all beings (Surah Ar-Rahman 55:8-10).<sup>260</sup> Moreover, in the Qur'an animals have certain rights e.g., to have food and water, to be protected. Hence, the responsibility of humans towards animals is to feed them, give them water, attentively take care of them, protect them, and use them for the satisfaction of human needs, but only in compliance with the Qur'an. For example, in the story of Prophet Salih and the ancient nation of Thamud was said that even a camel, if thirsty, has the right to drink (Qur'an 54:27-32, 7:73, 11:64, 26:155-156).<sup>261</sup>

Other important Islamic texts that teach kindness towards animals are the *Hadiths*. Hadith in Arabic language in terms of Islam can be defined as a report or narration, describing what was said or done by Prophet Muhammad. Importantly, although both the Qur'an and the Hadiths were written in accordance with

---

<sup>260</sup> Rahman S. A. (2017). Religion and animal welfare – An Islamic perspective. *Animals: an open access journal from MDPI*, 7(2), 11. <https://doi.org/10.3390/ani7020011>.

<sup>261</sup> Min, M., & Zaw, C. (2016). Animal care: An Islamic perspective with particular reference to unwanted pets – stray dogs and cats. *International Journal of Business, Economics and Law*, 9(5), 153–165. [https://www.researchgate.net/publication/318722967\\_ANIMAL\\_CARE\\_AN\\_ISLAMIC\\_PERSPECTIVE\\_WITH\\_PARTICULAR\\_REFERENCE\\_TO\\_UNWANTED\\_PETS\\_-\\_STRAY\\_DOGS\\_AND\\_CATS](https://www.researchgate.net/publication/318722967_ANIMAL_CARE_AN_ISLAMIC_PERSPECTIVE_WITH_PARTICULAR_REFERENCE_TO_UNWANTED_PETS_-_STRAY_DOGS_AND_CATS).

Prophet Muhammad's words, the Prophet himself distinguished his words from the Word of God. The Word of God is eternal and uncreated, whereas the words of Prophet were created and were said by a human; nonetheless, as they were inspired by the Word of God, they are indeed very valuable. The Hadiths express the concern of Prophet Muhammad for animals and his will to restrain humans from hurting them. As was indicated in the Holy Qur'an: "And We have sent you O Muhammad not but as a mercy for all that exists". (Qur'an 21:107). Hence, the Prophet Muhammad came to help not only humans but also animals, advocating compassionate treatment of them and cursing those who mistreat other living beings: "Whoever is kind to the creatures of God is kind to himself." (Hadith: Bukhari); "May God curse anyone who maims animals". (Hadith: Bukhari). Also, in the Hadith *Bukhari* it is said that the Prophet Muhammad urged against violent practices, e.g., notching camels' ears and putting rings around their necks. The Prophet Muhammad prohibited shooting at tied animals – a practice that was widespread before the arrival of the Prophet (Jami` at-Tirmidhi 1475). A number of Hadiths prohibit beating animals, branding animals, caging



birds, making animals fight, killing tiny harmless creatures like ants, frogs, bees etc.

Overall, both the Qur'an and the Hadiths prescribe merciful and kind treatment of animals with respect of their needs and rights. As for the usage of animals for the satisfaction of the needs of humans, for example, to satisfy hunger, Islamic religious texts provide for what is *halal* (lawful) to eat and what is *haram* (unlawful) to eat. It is prohibited to eat animals that died by themselves, blood, the meat of pigs, and any food that is not dedicated to God.<sup>262</sup> Besides, there are certain strict laws of slaughter that ban humans from the violent killing of animals. It is *haram* to slaughter an animal by strangling it to death, beating it to death, and to consume the meat of an animal killed by a fall, killed by being smitten by a horn, or eaten by a wild beast (Qur'an, Surah 5). Notably, there can be exceptions. In Islamic jurisprudence it is known as "law of necessity": "That which is necessary makes the forbidden permissible".<sup>263</sup> If there is no alternative Allah will forgive and give

---

<sup>262</sup> Kihlander, K. (2019, November 15). *What each major religion says about animal rights*. Sentient Media. <https://sentientmedia.org/what-each-major-religion-says-about-animal-rights/>.

<sup>263</sup> Islamic Dietary Laws. (n.d.). Wikipedia. [https://en.wikipedia.org/wiki/Islamic\\_dietary\\_laws#:~:text=According%20to%20the%20Quran%2C%20the,dedicated%20to%20other%20than%20God.&text=\(Quran%202%3A173\)%20](https://en.wikipedia.org/wiki/Islamic_dietary_laws#:~:text=According%20to%20the%20Quran%2C%20the,dedicated%20to%20other%20than%20God.&text=(Quran%202%3A173)%20)

mercy to those who e.g., ate *haram* food (Qur'an 2:173). Modern *halal* industrial standards also emphasise the importance of humane treatment of all living creatures, providing them with food, water and organising appropriate environment for animals to live there.

## 2. Islam and Euthanasia

Having stated what Islam's attitude towards animals is by analysing the text of the Qur'an and some Hadiths, it is evident that the issue of animal welfare is covered by Islam explicitly. Again, people have power over animals and can use them out of necessity e.g., to satisfy hunger, to travel, to guard them, and to hunt them. At the same time, it is prohibited to harm animals – animals cannot be used for satisfying humans' enjoyment and entertainment; animals should be respected by humans; if an animal is slaughtered, a human has to feel sorry for the animal in order to get mercy from Allah for killing the living creature; animals may not be killed unless there is a justifiable reason. Then, is animal euthanasia permissible in Islam? According to its teachings, animals have to be treated by humans with mer-

---

This, necessary%20makes%20the%20forbidden%20permissible.%22.

cy and in such a way as to minimise their suffering and pain, because for Islam animals are conscious creatures. Hence, it can be claimed that Islam is not against animal euthanasia if it is performed in order to relieve the animal's pain. However, modern Muslim scholars argue with each other on whether it is acceptable to put an animal to death.

Importantly, human euthanasia is prohibited by Islam. Still, in some countries it can be performed as a medical practice. Human euthanasia and animal euthanasia, however, are not viewed as the same thing. Some Muslim Scholars claim that if the animal which is *haram* to eat gets sick and is unlikely to be cured, it is *halal* to euthanise it, otherwise it may become a burden to you financially and, consequently, will be a waste of money. Still, Islamic *fatwa* – a non-binding opinion of a professional jurist on a certain question about *Sharia* (Islamic Law), requested by an individual, judge, or government – does not give clear answers regarding which type of slaughter is acceptable; rather, most Islamic jurists view all types of euthanasia as a murder. Nevertheless, one Hadith states that killing an animal is better than torturing it: “If you kill, kill well, and if you slaughter, slaughter well. Let each one of you sharpen

his blade and let him spare suffering to the animal he slaughters”<sup>264</sup> (Hadith 17). Thus, to let an animal die without water or food is haram, but it is halal to kill it or slaughter it if it is done in the least violent way. Besides, another Hadith illustrates that it is permissible to euthanise a dog if it is terminally ill or it has an infection that is dangerous for human’s life: “order of killing dog was concerned with the rabid dogs”. The inference is that an animal can be killed (euthanised) if it becomes a burden for its owner and they cannot keep it anymore, if it has a severe illness or a dangerous infection, and in order to relieve its pain. Some scholars also believe that euthanising an animal for the use of its skin, which in theory protects people from suffering, is allowed. Even if the animal is *haram* and is not ill. However, if it is not beneficial or helpful for people to kill an animal to relieve its pain, there is an argument among *Faqih* (classical Islamic jurists). Some scholars claim that it is prohibited to euthanise an animal because it is a living, conscious creature that was given rights by Allah, thus in order not to commit sin,

---

<sup>264</sup> Min, M., & Zaw, C. (2016). Animal care: An Islamic perspective with particular reference to unwanted pets – stray dogs and cats. *International Journal of Business, Economics and Law*, 9(5), 153–165. [https://www.researchgate.net/publication/318722967\\_ANIMAL\\_CARE\\_AN\\_ISLAMIC\\_PERSPECTIVE\\_WITH\\_PARTICULAR\\_REFERENCE\\_TO\\_UNWANTED\\_PETS\\_-\\_STRAY\\_DOGS\\_AND\\_CATS](https://www.researchgate.net/publication/318722967_ANIMAL_CARE_AN_ISLAMIC_PERSPECTIVE_WITH_PARTICULAR_REFERENCE_TO_UNWANTED_PETS_-_STRAY_DOGS_AND_CATS).

humans must let the animal die its natural death. On the contrary, other classical jurists' representatives of the Hanafi School and the Maliki School of Islamic Law, claim that if an animal is in pain, it is halal to euthanise it. For example, Imam Haskafi from the Hanafi School says that "It is permitted to slaughter a cat or dog for a benefit. And it is better to slaughter a dog if it is close to death." Imam Ibn Abidin, commenting to his statement, claims that "... for in slaughtering the dog, one is relieving it from pain. Tahtawi said that this ruling is not restricted to a dog". (Radd al-Muhtar ala 'l-Durr al-Mukhtar 6/474, Kitab al-Sayd).<sup>265</sup> The representative of the Maliki School, Imam al-Dardir, states that "It is permitted to slaughter a donkey or mule if one loses hope in its recovery [due to its illness], rather it is recommended to end its suffering" (Sharh Mukhtasar al-Khalil with Hashiyat Dasuqi 2/108).<sup>266</sup>

The point on which most scholars agree is that if an animal is dangerous for society, it is allowed by Shariah to kill it or euthanise it. The "law of necessity" seems to be applicable here. In Islam

---

<sup>265</sup> Mufti, M. ibn A. (2012, January 3). *Mercy killing of animals to end their suffering*. Seekers Guidance. <https://seekersguidance.org/answers/hanafi-fiqh/mercy-killing-of-animals-to-end-their-suffering/>.

<sup>266</sup> Mufti, M. ibn A. (2012, January 3). *Mercy killing of animals to end their suffering*. Seekers Guidance. <https://seekersguidance.org/answers/hanafi-fiqh/mercy-killing-of-animals-to-end-their-suffering/>.

certain things are allowed or prohibited depending on the circumstances. The same notion is applicable to the animals used for research purposes. On the one hand, according to one of Hadiths, it is not permissible to hurt animals even for medical purposes: “When a physician consulted the Prophet about putting frogs in medicine, he forbade him to kill them”.<sup>267</sup> On the other hand, nowadays animal testing facilitates the process of saving people’s lives. Thus, it is agreed by many Muslim scholars that animal testing is acceptable but there should be 1) no other alternatives at all; 2) it should be performed with minimal harm to the animal. Consequently, if the animal is in pain during the experiment or after, it is more merciful to euthanise it.

Islam, generally, is against animal suffering and cruelty against animals; it acknowledges humans’ responsibility for animals and allows euthanasia only in extreme cases. However, among average citizens Islamic religious texts are sometimes misinterpreted or used as a «justification» for putting animals to death without any real reason to do it. This happens because of the complexity of the main source of knowledge and law – the Qur’an. It

---

<sup>267</sup> Mishkat al-Masabih 4545, Chapter 1b: Section 2, Book 23: Medicine and Spells. <https://sunnah.com/mishkat:4545>.

is believed among Muslims that the original Qur'an is in Arabic language, while a Qur'an written in other languages is just an interpretation. Moreover, it is not an easy text to comprehend. Muslims are deemed to believe that understanding of every word or sentence is not that important; what matters is the overall perceiving of God's Word. It seems that such belief may cause these misunderstandings and misinterpretations, no matter whether they are accidental or deliberate. Dr. Ayoub M. Baderker, a veterinary surgeon, claims that during *Ramadan* (the month of prayer and reflection) people tend to come with their dogs to clinics to euthanise them.<sup>268</sup> They come for two reasons: 1) Islam prohibits them from keeping dogs; 2) their pets are terminally ill. The problem with the first point is that although it is not hygienic to keep a dog in house, it is not *haram* to keep it as a pet. The problem with the second one is that, when owners are asked why their animals are in such a terrible condition, they answer that Islam does not permit them to touch a dog, thus they could not bring it earlier. As a consequence, during Ramadan, a lot of ill dogs

---

<sup>268</sup> Banderker, A. (n.d.). *Animal abuse and welfare in Islam*. Animals in Islam. Retrieved April 20, 2020 from <https://www.animalsinislam.com/islam-animal-rights/dogs/>.

are euthanised, while a lot of healthy dogs are put into shelters. Overall, although Islamic religious texts claim that people should be responsible for all animals and not harm them when there is no need, these misinterpretations still occur.

Muslims' opinions towards euthanasia vary significantly. Although Islamic Law is based on the Qur'an and the Hadiths, due to the variety of Schools, there is a variety of interpretations and even misinterpretations. Legally, in Muslim-majority countries such as Iran, animal euthanasia is not prohibited. Moreover, there, in the case of stray dogs, it is a widespread practice. In 2019 there were protests outside Tehran's city hall after citizens saw a video demonstrating a killing of dogs and puppies by injections that caused a lot of pain and suffering to them.<sup>269</sup> Even though Islam prohibits killing animals violently, the government did it. Not surprisingly, Tehran's citizens were confused and started protesting. As was mentioned, the interpretations vary, the opinions vary, no matter who is to be considered: Islamic legal jurists or ordinary citizens. Still, Islam plays a great role in formulating laws and practices in

---

<sup>269</sup> Esfandiari, G., & Zarghami, M. (2019, August 20). *Iranians protest state's brutal killing of stray dogs*. Radio Free Europe. <https://www.rferl.org/a/iran-dogs-killing-strays/30119463.html>.



Muslim-majority states, therefore it can be assumed that a unified view or any legal regulations on the topic of animal euthanasia are not likely to appear there anytime soon.

### 3. Hinduism and Animal Welfare

In Hinduism all life is believed to be sacred. “The human role is not separate from nature. All objects in the universe, beings and non-beings, are pervaded by the same spiritual power”<sup>270</sup> – is a phrase declared by the Hindu delegation in 1986 in the Italian town called Assisi during the meeting on the environmental issues between representatives of the major world religions. Animals in Hinduism, similar to Islam, should be respected by humans. However, the explanation behind the importance of such respectful treatment of animals is different from the Islamic one. Unlike Islam, where the God’s Word guides this idea of respect towards animals, in Hinduism they are respected and treated as sacred due to the notion of *Ahimsa* (principle of non-violence, non-injury or absence of desire to harm any living creature, which comes from ancient Hindu scriptures i.e., *the Vedas* (meaning wisdom)). Even-

---

<sup>270</sup> BBC Bitesize. (n.d.) *Animal rights. What does Hinduism teach about animal rights?* <https://www.bbc.co.uk/bitesize/guides/z3ygjxs/revision/5>.

tually, Ahimsa seems to be the basis of ethics in Hinduism. *Yajurveda 13:47* (the most ancient Veda) states: “No person should kill animals helpful to all. Rather, by serving them, one should attain happiness”.<sup>271</sup> Moreover, Hindus believe in the notion of *Reincarnation* – the rebirth of a mental capacity i.e., soul or *Atman*. Hindus believe that *Atman* lives many “lives” and can be reborn in the different bodies, including animals’ bodies, time after time. The whole cycle of birth, death and rebirth in Hinduism is called *Samsara*. *Karma* (actions and consequences of them) is a determining factor in which form *Atman* will be reborn. The important point is that *Karma* is always present in human life. It can be good or bad, depending on the actions people do during their lives, but it is impossible to get rid of it. If a human causes unnecessary suffering or death, it contributes to Bad *Karma* and so-called *Karmic debt* which is accumulated while humans are violent towards each other and animals; which presupposes that these actions will return to humans in future. The worse actions are done throughout one’s life, the higher probability of this human’s soul to be reborn in the animal form.

---

<sup>271</sup> BBC Bitesize. (n.d.) *Animal rights. What does Hinduism teach about animal rights?* <https://www.bbc.co.uk/bitesize/guides/z3ygjxs/revision/5>.

The Vedas presupposes the concept of *Sarva-bhuta-hita* (adherence to the good of all living creatures), which signifies that humans should view every life the same way in any creature despite its appearance. The Vedas even say that if a human does not understand the importance of animals' lives, they do not understand the true meaning of life and are likely to lose their humanity. Thus, killing an animal can be considered as an infringement of Ahimsa, explaining the reason for why so many Hindus' adhere to vegetarianism. As said in the ancient scripture: "If there were nobody who ate meat there would then be nobody who kills living creatures. The person who kills living creatures kills them for the sake of the people who eat meat" (Mahabharata 13:115). However, vegetarianism, especially in the modern times, is widespread only among Hindus from the higher castes; lower castes tend to eat meat. Moreover, with the waves of Globalisation and Westernisation, vegetarianism becomes less popular. Some Hindus even say that the disappearance of vegetarianism actually leads to the extinction of Hinduism as a religion. Still, although ordinary Hindus are not bound to be vegetarians, Hindu priests and high-ranking people have to be vegetarians in order to achieve an absolute state of purity.

Furthermore, many Hindu gods have animals as their ‘vehicles’ and have special connection with them. Hence, animals are considered to be very important and respected by Hindus. In Hinduism many animals are venerated. Perhaps, the most sacred animal is a cow. Some Hindus even perform rituals, praising their cows. Cows’ meat is the most unacceptable meat for Hindus: even if someone is not a vegetarian, eating beef is seen as the highest form of impurity. Notably, it is the only type of meat that is prohibited by Hinduism. Mahatma Gandhi once said that “Cow Protection takes the human being beyond his species... (It) is the gift of Hinduism to the world; and Hinduism will live as long as there are Hindus to protect the cow”.<sup>272</sup>

Unlike Islam where some animals are impure, thus it is prohibited and sinful to eat their meat, in Hinduism animals themselves are not impure rather it is impure to eat them because they are part of Samsara. However, similar to Islam, Hinduism does not accept usage of animals for entertaining purposes. In India, for example, where the majority of people are Hindus, wild animals are illegal in circuses, because trainers use chains, sticks etc. to make an animal obey. This is

---

<sup>272</sup> BBC Bitesize. (n.d.) *Animal rights. What does Hinduism teach about animal rights?* <https://www.bbc.co.uk/bitesize/guides/z3ygyxs/revision/5>.

against Ahimsa which assumes that violence should be absent.<sup>273</sup> The use of animals' skin for clothing is not prohibited but is better to be avoided. This point is also quite similar to what Islam states. The attitude towards testing on animals is also similar to Islam. Most Hindus does not support animal testing. In India it is illegal to test on animals in the cosmetics industry. However, in case of medicines' testing, Hindus take it easily, even though it is also against Ahimsa.

#### **4. Hinduism and Euthanasia**

Hinduism assumes a number of opinions on the notion of euthanasia. The majority of Hindus claim that euthanasia is unacceptable because it separates Atman from body at the unnatural time and under unnatural conditions. Consequently, Karma of the specialist who conduct euthanasia damages. At the same time, Atman that was in the body of an euthanised animal will have to be reborn in the animal form in the next lives repeatedly until the body dies its natural death and the prescribed term of embodiment is finished. Only after karmic sentence is accomplished, Atman can be released and transmigrate to the human body, in which form it can reverse its

---

<sup>273</sup> Raisbeck, P., Sikabofori, B. (n.d.). *Animal rights in religion. Sikhism & Hinduism*. Animal Rights in Religion. <https://animalrightsinreligion.wordpress.com/>.

actions; have a good Karma; and become closer to the acquirement of complete freedom from birth and death. Besides, other Hindus believe that euthanasia is unacceptable because it breaks the non-violent principle of Ahimsa. Still, some Hindus think that euthanasia is a way to fulfil humans' moral obligations, because the one who performs it, relieves pain and suffering of the animal. It seems that unlike Islam, where euthanasia can be viewed and justified as an act of mercy, in Hinduism the true act of mercy is absence of killing.

The clear justification that a lot of Hindus adhere to the particular view that opposes euthanasia of an animal even if it is terminally ill, is their reactions on the killing of sick Sacred Cow of the largest Hindu temple in the UK. The 13-year-old cow, named Gangtori, was secretly killed by the RSPCA (Royal Society for the Prevention of Cruelty to Animals) on December 13, 2007. The Hindu community reacted: "Cows are sacred to Hindus, and the killing of a cow is considered to be an outrageous act. The killing of a cow at a temple amounts of religious sacrilege of the worst kind".<sup>274</sup> Notably, similar situation happened in July 2006, when

---

<sup>274</sup> Does animal euthanasia equal mercy killing? (2008, January). *Care for Cows in Vrindavan*, 4–12. <http://www.careforcows.org/cfc/download/newsletters/CFCNewsJan08.pdf>.

a sacred bull – Shambo, despite Hindu community’s refusals, was put to death by RSPCA right after it was diagnosed with tuberculosis. The slaughter of Gangtori led to a peaceful protest outside of the RSPCA building in Sussex. The head of the Hindu Forum of Europe, Sudarshan Bhatia, stated: “This issue has incensed and united everyone. They are extremely shocked and angry about this, and the completely underhanded way it was conducted. The entire episode is shameful and I am disgusted with how our peaceful and law-abiding community has been dealt with”.<sup>275</sup> This incident with Gangtori and the earlier one with the bull, named Shambo, led not only to the peaceful protests but also to the revitalisation of the UK’s Hindu community, and other countries’ Hindu communities as well. The representative of the UK community, actor Ravin Ganatra stated that if the animal welfare law allows for Jewish and Muslims to slaughter animals in accordance with their religious texts, then Hindu community requests a law that will help to keep animals alive even if they are ill. The government was asked by the major Hindu organisations

---

<sup>275</sup> Does animal euthanasia equal mercy killing? (2008, January). *Care for Cows in Vrindavan*, 4–12. <http://www.careforcows.org/cfc/download/newsletters/CFCNewsJan08.pdf>.

to introduce regulations that will prevent such situations from happening again.

Nonetheless, some Hindus claim that euthanasia can be conducted for other reasons than for the sake of the pain relief. For instance, there is an upward tendency in the Hindu-majority third world countries', animal rescue organisations to end cows' and other stray animals' lives if their treatment requires a long amount of time. They say that it is useless to catch a cow and treat it once, if there is a high probability that it will need further medical treatment. Hence, animals are put to sleep either because of the inability or incompetence, or unwillingness to help stray animals and not because they are so terminally ill that it is impossible to cure them.

The perspective on the animal euthanasia can be claimed to vary in terms of species and conditions. If the cows are the most sacred animals in Hinduism and their slaughter is highly unacceptable, the killing of e.g., stray dogs is more widespread even in Hindu-majority regions of India. However, in 2001 India introduced the so-called ABC Rules which prohibited killing stray dogs and urged regional authorities to stop overbreeding and overpopulation of dogs in the streets by building and equipping shelters. The



Supreme Court declared: “It needs no great learning to appreciate that dog or animals are not encroachers on earth and there is no question of eliminating them ....it is the duty of every citizen to have compassion to animals including dogs.... All state functionaries such as municipalities cannot ignore this obligation”.<sup>276</sup> Even though India is a secular state, meaning that there is no official religion, it is still a Hindu-majority country (almost 80% of the total population is affiliated by Hinduism). Hence, it can be considered that prevention of killing stray dogs on the legal level is a result of the long influence of Hindu ideas on the Indian society.

Comparing the attitudes towards animal euthanasia in Islam and Hinduism, several conclusions can be derived. First, euthanasia in both religions is justifiable if it is aimed at relieving pain and suffering of animals. However, in case of Islam, if euthanasia is performed for the good of an animal and by the least harmful way, God will forgive the human; in Hinduism, even if the act of euthanasia is proceeded in order to help animal, it will have negative consequences at any rate, because the soul is separated from the body at the unnatural time and thus it will not be able to transmigrate

---

<sup>276</sup> People for Animals India. (n.d). *Animal Birth Control*. <https://www.people-foranimalsindia.org/animal-birth-control.php>.

to the human body unless the prescribed embodiment is fulfilled. Additionally, in Islam if there is a special condition when there is no alternative but to kill an animal to save human's life, then, again, God will give his mercy to the human and will forgive them. In Hinduism the situation is also exactly the same as with the relieving of pain of a terminally ill animal. Lastly, legal perspectives on animal euthanasia is also very different in Islam- and Hindu-majority regions. As Islamic religious texts such as the Qur'an and the Hadiths are the basis for the Islamic Law, which references are a part of most Muslim-majority states' constitutions, thus having an evident and severe impact on the policies conducted by these states and their legal frameworks, Hinduism is a state religion only in Nepal which in constitution is said to actually be a secular state. Hence, Hinduism does not have a direct and extreme influence on the policies and law legal frameworks of some Hindu-majority states. It can be only assumed that it e.g., had influence on formulating laws, which prohibits killing and euthanising of healthy stray dogs.

## **Conclusion**

Euthanasia is a worldwide used practice of putting animals to sleep. It can be performed for different reasons and by a range

of methods, though international organizations concerning animal well-being claim that it should be conducted by the least painful methods and in order to relieve suffering of animal but only if there is no other way out. Peoples' opinions on the animal euthanasia vary across the world and are influenced by many factors, including religious ones. This article demonstrated that Islamic religious texts explicitly reveal what are animals' roles in the lives of humans and vice versa. Harming animal is not appropriate unless there are special conditions when the life of the human can be saved by killing an animal (like if the animal is infected with dangerous disease for the human); ending animal's life in order to relieve its pain by some Islamic Law Schools is equal to murder, whereas others accept it as a way to help animal stop suffering. Nevertheless, there are a lot of controversies and misinterpretation of Islamic religious texts regarding animals and a debate whether it is permissible or not to euthanise animal is still ongoing. As for the second part of the article's analyses, Hinduism is also very detailed in regard of animal welfare and euthanasia. Hindus believe in Reincarnation and Samsara, thus killing an animal binds Atman to the animal form of body unless it dies by natural death. Hence, for some of Hindus

euthanasia is inappropriate. Moreover, due to the notion of Ahimsa, euthanising an animal is an act of cruelty, so against Ahimsa. Still, for some it is a way to relieve suffering which is permissible to be performed. Overall, both religions are explicit on animal welfare but how representatives of these two religions view euthanasia in particular is strongly dependent on how they perceive religious texts. There is no even one direct phrase on euthanasia written in original religious texts that will surely define how supporters of one or another religion have to view animal euthanasia. As for the legal perspectives, the ideas on animal's treatment and killing in Muslim-majority states are more influential in terms of possible creation of legal regulations. As was mentioned, this is due to the fact that Islam has impact on the legal frameworks of most of Muslim-majority states. On the contrary, Hinduism is much less influential in these terms. Still, it can be considered that to some extent it affects the introduction of new laws in Hindu-majority and non-majority regions of the world.

## Bibliography

- AVMA Panel on Euthanasia. American Veterinary Medical Association (2001). 2000 Report of the AVMA Panel on Euthanasia. *Journal of the American Veterinary Medical Association*, 218(5), 669–696. <https://doi.org/10.2460/javma.2001.218.669>
- Awan, J. A., & Rahim, S. F. (2018). Animal rights and welfare in Islam. *International Journal of Avian & Wildlife Biology*, 3(6), 427–430. <https://medcraveonline.com/IJAWB/IJAWB-03-00135.pdf>
- Banderker, A. (n.d.). *Animal abuse and welfare in Islam*. Animals in Islam. Retrieved April 20, 2020 from <https://www.animalsinislam.com/islam-animal-rights/dogs/>
- BBC Bitesize. (n.d.) *Animal rights. What does Hinduism teach about animal rights?* <https://www.bbc.co.uk/bitesize/guides/z3ygyxs/revision/5>
- Does animal euthanasia equal mercy killing? (2008, January). *Care for Cows in Vrindavan*, 4–12. <http://www.careforcows.org/cfc/download/newsletters/CFCNewsJan08.pdf>
- Esfandiari, G., & Zarghami, M. (2019, August 20). *Iranians protest state's brutal killing of stray dogs*. Radio Free Europe. <https://www.rferl.org/a/iran-dogs-killing-strays/30119463.html>
- Kihlander, K. (2019, November 15). *What each major religion says about animal rights*. Sentient Media. <https://sentientmedia.org/what-each-major-religion-says-about-animal-rights/>
- Min, M., & Zaw, C. (2016). Animal care: An Islamic perspective with particular reference to unwanted pets – stray dogs and cats. *International Journal of Business, Economics and Law*, 9(5), 153–165. [https://www.researchgate.net/publication/318722967\\_ANIMAL\\_CARE\\_AN\\_ISLAMIC\\_PERSPECTIVE\\_WITH\\_PARTICULAR\\_REFERENCE\\_TO\\_UNWANTED\\_PETS\\_-\\_STRAY\\_DOGS\\_AND\\_CATS](https://www.researchgate.net/publication/318722967_ANIMAL_CARE_AN_ISLAMIC_PERSPECTIVE_WITH_PARTICULAR_REFERENCE_TO_UNWANTED_PETS_-_STRAY_DOGS_AND_CATS)

- Mufti, M. ibn A. (2012, January 3). *Mercy killing of animals to end their suffering*. Seekers Guidance. <https://seekersguidance.org/answers/hanafi-fiqh/mercy-killing-of-animals-to-end-their-suffering/>
- Murata, S., & Chittick, W. C. (1994). *The vision of Islam* (p. 305). Paragon House.
- Panel, A. V. M. A. (2001). On euthanasia, American Veterinary Medical Association. *2000 report of the AVMA Panel on Euthanasia*. *J Am Vet Med Assoc*, 218, 669-96.
- People for Animals India. (n.d.). *Animal Birth Control*. <https://www.peopleforanimalsindia.org/animal-birth-control.php>
- People for the Ethical Treatment of Animals. (n.d.). *Euthanasia*. Retrieved May 08, 2020, from <https://www.peta.org/issues/animal-companion-issues/overpopulation/euthanasia/>
- Pickthall, M. W. (1999). *The meaning of the glorious Qur'an: text and explanatory translation*. Amana Publications.
- Rahman S. A. (2017). Religion and animal welfare – An Islamic perspective. *Animals: an open access journal from MDPI*, 7(2), 11. <https://doi.org/10.3390/ani7020011>
- Raisbeck, P., Sikabofori, B. (n.d.). *Animal rights in religion. Sikhism & Hinduism*. Animal Rights in Religion. <https://animalrightsinreligion.wordpress.com/>
- Szűcs, E., Geers, R., Jezierski, T., Sossidou, E. N., & Broom, D. M. (2012). Animal welfare in different human cultures, traditions and religious faiths. *Asian-Australasian Journal of Animal Sciences*, 25(11), 1499–1506. <https://doi.org/10.5713/ajas.2012.r02>

**For notes**

**ANIMAL LAW IN KAZAKHSTAN, RUSSIA, AND  
WORLDWIDE: COLLECTION OF ESSAYS**

**Editors: Maria Baideldinova,  
Federico Dalpane, Daria Chernyaeva**

Подписано в печать 12.05.2021 г.  
Формат 60x84<sup>1</sup>/<sub>16</sub>. Бумага офсетная. Гарнитура «Garamond».  
Объем 14 печ. л. Тираж 30 экз. Заказ № 806.



9786012396348

Издано в ТОО «Издательство LEM»  
050008, г. Алматы, ул. Ауэзова, 82, уг. ул. Мынбаева, тел./факс 375-51-33,  
[www.lem.kz](http://www.lem.kz), [info@lem.kz](mailto:info@lem.kz).