

**BUY-OUT OF PETS BECAUSE OF THEIR UNPROPER TREATMENT
UNDER CIVIL LEGISLATION OF RUSSIA AND POST-SOVIET COUNTRIES**

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Abstract

The article deals with one of the compulsory methods of ownership right termination - the buy-out of pets if they are treated improperly. The authors draw attention to the specifics of this reason, which is associated with the buy-out subject, i.e. with an animal. They performed the comparative analysis of "pet improper treatment" and "cruel animal treatment" concepts, the problem of their differentiation is studied. They performed the comparative legal analysis of the legal regulation issues concerning the compulsory buy-out of pets in the civil legislation of the post-Soviet countries.

Keywords

Civil law – Principle of property inviolability – Civil legislation – Post-Soviet countries

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Introduction

"The greatness and moral progress of a nation can be measured by the way this nation treats animals"
Mahatma Gandhi

Traditionally, animal protection has been associated with criminal and administrative law. Punishment is imposed if animal abuse has occurred. Besides, Russian Federation adopted and entered into force the Federal Law No. 498 (December 27, 2018) "On Responsible Treatment of Animals and Amendments to Certain Legislative Acts of Russian Federation" (hereinafter - the Law on Animal Treatment) which provided a specific definition of animal abuse. However, the treatment of animals can be not only cruel but also inappropriate. In this case, the means of civil law are applied. At the same time, such an "abundance" of terminology cannot contribute to the stability and uniformity of law enforcement practice in any way.

In contrast to the domestic legislation relating to the pre-revolutionary and Soviet reincarnation of legal doctrine development, the issues of animal protection had been considered in foreign legislation for a long period of time. The first society for the protection of animals was founded in England in 1824. By 1866 the American Society for the Prevention of Animal Cruelty was established in the USA¹. Also, it is necessary to name the European Convention for Domestic Animal Protection (ETS No. 125), concluded in Strasbourg on November 13, 1987 (Russia does not participate in this convention)².

Considering that the civil legislation in the republics of the post-Soviet space is largely influenced by external legal values, the study of pet buy-out issues in case of their improper treatment is relevant and interesting.

Methods. Various general scientific methods and means of logical cognition were used in the work: analysis and synthesis, systemic, functional, and formal-logical approaches. The development of conclusions became possible due to the application of content analysis, formal legal and comparative legal methods.

Discussion and results

The humane and conscientious attitude towards animals is one of the fundamental problems of modern civilized society. One step remains, as a rule, from the cruel animal treatment to the cruel treatment of a person. This issue has been the object of scientific research many times³. Thus, one of the outstanding philosophers of our time, Sommer Dario Salas noted: "The ill-treatment of animals implies a whole range of behaviors that cause an animal unnecessary pain, suffering, or stress, from ordinary negligence with maintenance and care to malicious intentional murder.

¹ <https://www.britannica.com/science/cruelty-to-animals>

² European Convention for the Protection of Domestic Animals (ETS No. 125), concluded in Strasbourg on November 13, 1987. Reference Legal System "ConsultantPlus".

³ A. Arluke; J. Levin; C. Luke and F. Ascione, "The relationship of animal abuse to violence and other forms of antisocial behavior", Journal of Interpersonal Violence Vol: 14 num 9 (1999) y E. Alleyne; L. Tilston; C. Parfitt and R. Butcher, "Adult-perpetrated animal abuse: development of a proclivity scale", Psychology, Crime & Law. Vol: 21 num 6 (2015): 570–588.

Almost a quarter of cases concerning willful cruelty to animals are associated with a particular form of family violence (highlighted by us). Domestic violence is the most common form of violence, followed by abuse against children and adults.

The analysis of animal abuse reports leads to the conclusion that domestic animals are the first victims: in 88% of cases, cruelty was manifested against dogs, cats and rabbits⁴.

Attention is drawn to the fact that most of the cruelty manifestations is carried out precisely in relation to domestic animals, which are traditionally devoted to a man - dogs, cats and rabbits create comfort at home. So, dogs protect their owners, even despite the cruelty towards them by the latter. Of course, other domestic animals are also subject to improper treatment, but those that were mentioned above cause the desire to satisfy sadistic needs. In this case, their gullibility is used.

The most dangerous thing is the improper handling of animals, which is carried out by children. The American scientists Alexander Duncan, Jay C. Thomas, Catherine Miller note that the children who were cruel to the animals themselves were the witnesses or the victims of harsh treatment⁵.

It is necessary to share the position by Sommer Dario Salas, who writes the following: "Cruelty is not a feature of this or that culture, but rather a deep-rooted property of human nature. In countries like China, Korea, Taiwan, etc., dogs and cats are subjected to tremendous torture before being served in local restaurants. They are scalded alive, and then they strip their skin"⁶.

It is noteworthy that these states and other countries of Southeast Asia consider themselves to be civilized, of course, but at the same time, the methods they choose to kill these animals for a meal have nothing to do with civilization.

Thus, the problem of pet protection from inappropriate treatment is certainly relevant. In Russia, the issue of domestic animal protection from inappropriate treatment is regulated by the RF Civil Code. In this regard, it is necessary to turn to the analysis of the relevant legal provision. Thus, according to the Article 241 "The buy-out of domestic animals in case of their improper treatment" of RF Civil Code: "When a domestic animal owner treats them clearly violating the rules established by the law and the accepted social norms of animal humane treatment, these animals can be taken away from the owner by the court and bought-out by the person who has filed a relevant appeal in court. The buy-out price is determined by the agreement of the parties, and by the court in case of some dispute"⁷.

⁴ Animal abuse, HSUS, United States Humanitarian Society". REDVET Electronic Journal on Veterinary Medicine, Vol: VIII, issue 12 (2008).

⁵ Alexander Duncan; Jay C. Thomas and Catherine Miller, "Significance of Family Risk Factors in Development of Childhood Animal Cruelty in Adolescent Boys with Conduct Problems". Journal of Family Violence. Vol: 20 num 4 (2005).

⁶ Dario Salas Sommer, What is the value of a man?: Trans. from Spanish. (Moscu: Codex, 2014), 98.

⁷ RF Civil Code (Part One) No. 51-FZ issued on November 30, 1994. Collection of RF Legislation. - 1994. - № 32. - Article 3301.

Some authors note that the content of Article 241 of the RF Civil Code was initially incorrect. So, S.I. Danilova points out the following: Thus, it turns out that the person who really treats animals humanely, feels a sense of pity and compassion for them. He is initially in the situation that is obviously unfair and (from the moral point of view) humiliating to him. After all, he sees that a careless owner treats his pet rudely, and wants to stop the torture of an unfortunate animal by removing the latter from the property of its rightful owner, and he must also pay to the one who is an offender actually, because he violates the principle of humane treatment of animals and, thus, the law. Moreover, if we are talking about a purebred animal, then, as a rule, these are quite considerable sums of payments to those who should be punished for inappropriate treatment of their pets and from whom the animal must be confiscated by the relevant services⁸. It is difficult to disagree with such a position, since a conscientious person, driven by humanistic considerations, initially finds himself in the situation of an obliged person - it is necessary to prove the fact of improper treatment, to pay the cost of the animal being seized.

We will return to the issue of domestic animal buy-out legal regulation. Now it should be noted that not all countries of the post-Soviet space have included similar RF provisions in their civil laws. This may be due to national traditions to a certain extent (the states of the Transcaucasus - Azerbaijan, Armenia, Georgia; the states of Central Asia - Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan). However, it does not explain the absence of special rules in the Baltic states (Latvia, Lithuania, Estonia).

Similar provisions are present in the Civil Code of the Republic of Belarus - No. 218-3 (Art.242) (December 7, 1998) and the Civil Code of the Republic of Moldova (Book One. General Provisions) - No. 1107-XV (Art.341) (June 6, 2002). With insignificant textual differences, it should be noted that the civil laws of these countries are characterized by the same problems as the RF Civil Code.

These problems are the following ones:

1) The problem of the wording content - "the owner treats them explicitly violating the rules established by law and the norms of animal humane treatment accepted in society". First of all, such an evaluative notion as "clearness" makes an issue. How can we determine the difference between the categories of "explicit" and "not explicit" violation?

Thus, the requirements for animal maintenance and treatment are set out in Chapter 3 of Animal Treatment Law. Item 1 of the par. 1 of Article 9 of the mentioned Law states that the general requirement for animal keeping is to ensure their proper care. The requirement is certainly important, but it is hard to determine if care is clearly legal or not. For example, an owner feeds his animal with the food he cooks by himself. Is it proper care? Another thing is when an owner does not feed his pet at all and it is forced to look for the food itself. In this case, it is about the fact that the owner does not fulfill his duty.

And the definition of the following concept content "norms of a humane attitude towards animals adopted in society" is a completely different matter. Such an evaluative concept as "the norms of humane treatment" makes the application of this legal provision very problematic. How can we determine the content of the concept "humanity", as well as the "norms of humane treatment"? The absence of a statutory concept of humanity does

⁸ S. I. Danilova, The problems of animal treatment legislative regulation in Russia and the ways of their solution. Reference legal system "Consultant Plus". 2013.

not allow us to establish what it is about - about a humane attitude towards a person or to all living things in general. Besides, the absence of formally fixed norms of a humane relationship deprives the reflections on this topic of any basis.

2) There is the issue with the essence of the phrase "animals can be withdrawn". It turns out that even if the fact (facts) of animal improper handling is established, this is not the determining factor for an animal withdrawal from its owner. As is known, for example, in most cases dogs are very devoted to their owners and in the case of their improper treatment, they do not cease to consider their owner as of the sole one. How can some court act in such circumstances - how can you exercise your right?

3) The Civil Code determines that if an applicant's claim is satisfied, the buyout price is determined by some agreement of the parties, and in the event of a dispute - by a court. As was noted above, if an animal is purebred, then its value can be significant. And if the parties do not come to an agreement, the court will determine its price by an independent assessment. And it may be turned out that the applicant will not be able to pay it.

Besides, as a rule, the people who are not indifferent to an animal fate, do not suspect that an obligatory condition for an animal confiscation in case of improper handling is its buyout from an owner.

Those are the main problems of the pet buying out if they are mistreated.

Besides, the legislation contains the wording of animal abuse concept - in the Criminal Code of Russia (the Criminal Code of Georgia, Ukraine, Belarus, Kazakhstan, Lithuania, Moldova, Latvia, Kyrgyzstan, and Estonia), as well as in Animal Treatment Law.

Thus, part 1 of Article 245 of the RF Criminal Code states that cruel treatment of animals is the treatment that causes him pain and (or) suffering, as well as hooliganism or mercenary motives that caused his death or injury. It seems that the RF Criminal Code provides for the most extreme forms of cruelty against animals, and the thing is not only about domestic animals. The use of this concept for the interpretation of Article 241 of the RF Civil Code seems to us unlikely since the list of animal improper treatment manifestations of improper handling seems broader here.

In its turn, the new Law on the Responsible Handling of Animals establishes that cruel treatment of animals that caused or could lead to death, injury or other damage to health (including an animal torture by hunger, thirst or other actions), the violation of animal handling requirements established by this Law, other laws and other regulatory legal acts of Russian Federation (including an owner's refusal to keep an animal), which caused harm to an animal's health, or the owner's failure to help animals in a life-threatening condition when the owner had such an opportunity(p. 5 of Article 3).

In our opinion, this definition fully discloses the content of the term "improper handling of a pet". Here the thing is about beatings, torturing by hunger, thirst, failure to assist an animal and other acts. At that, we talk not only about domestic animals but also about wild animals. This circumstance limits the possibility of this definition within the Civil Code of Russia.

Conclusions

Summing up, it should be noted that the civil law mechanism for the protection of animals from inappropriate treatment is not effective and is based on the use of evaluative concepts, which makes it difficult to use it in law enforcement. If the relevant provisions of the criminal law are applied, then the relevant civil law provisions are almost not applied. In our opinion, in this case, it is necessary to reform the provisions of Article 241 of the RF Civil Code in accordance with Animal Treatment Law.

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