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Торайғыров университета

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PROBLEMS OF REALIZATION OF CONFISCATION OF EXOTIC ANIMALS

In this article, based on the involvement of a complex of sources and literature, the problem of the implementation of the confiscation of exotic animals is considered. Nowadays, cases have become more frequent that exotic species of animals and tropical birds are imported to our country for pleasure or profit. Under such circumstances, exotic animals and tropical birds are not at all attracted to our cool latitudes. But despite the prohibitions, they are taken to our country, because these are illegally imported animals, and later they may become hostages of human crimes and amusements. The relevance of the topic is due to the social significance of the protection of animals: wild, domestic, without an owner, as well as used for cultural and entertainment purposes. This is the sphere of realization of all the qualities of members of society – the reduction of social tension and the prevention of social conflict, and especially in relation to the so-called stray animals, in the aspect of meeting the mass needs of people.

Keywords: animals, recovery, responsibility, threat of extinction, legal protection of wildlife.

Introduction

The problem of animal cruelty is particularly acute in the modern world. The reason for cruelty to animals is often a distorted need, some individual in power, as well as the venting of aggression on a defenseless creature.

In most states, full-fledged laws on the protection of animals from cruelty and arbitrariness of man have already been adopted and are in force, which is dictated not only by caring for them, but also by statistical data on the beneficial impact of such norms on society. Thus, Germany became the first country in the world where animal rights have been protected by the Constitution since 2002.

Austria has one of the most progressive laws in Europe in this area, prohibiting, for example, keeping dogs on chains, cupping ears and tails, keeping puppies and kittens in stuffy pet store windows, killing animals without anesthesia or stunning. The principle of humane treatment of animals also finds its regulation in international law. Thus, the UN Economic and Social Council is discussing the World Declaration of Animal Welfare, which also contains guarantees against cruelty to animals. The Council of Europe, the European Union and the World Veterinary Organization have adopted a joint declaration on animal welfare in Europe [1, p. 5].

At the end of 2021, the President of Kazakhstan signed a law to toughen penalties for cruelty to animals.

The criminal legal protection of animals from ill-treatment also does not seem to be effective: Article 339 of the Criminal Code of the Republic of Kazakhstan, which establishes responsibility for cruelty to animals, is used extremely rarely and the practice on it is not diverse. This situation is caused by the following reasons: the futility of the investigation, the lack of forensic techniques and experience in investigating such crimes (the initiation of cases «spoils statistics» to law enforcement agencies); a lower position in the hierarchy of objects of criminal law protection, which means the priority of investigating crimes against other goods; lack of human, material and other resources (for example, when proving the intent of doghunters, it is necessary to conduct expensive studies of dog corpses to identify the cause of death and the type of deadly poison, which are not carried out in all subjects of the Republic of Kazakhstan). Usually there is no direct evidence of the guilt of the knackers, because they get rid of the corpses, and potential witnesses, in an attempt to help a dying animal or in a daze from what they saw, do not contact the police and cannot record the offense due to its excessive cruelty, eyewitnesses are afraid to testify in court [2, p. 8–9].

Materials and methods

A comprehensive study of animal welfare involves the use of various methods of cognition corresponding to the diversity of aspects of this topic. Practical and theoretical methods of cognition were used to understand socio-legal phenomena in the study of animal protection in Kazakhstan.

Based on the case in practice on 08.07.2020, the branch of the Russian State University of the Department of Justice of the Pavlodar region «Pavlodar Department for the Execution of Judicial Acts» received a resolution of the Specialized Administrative Court of Pavlodar on the confiscation of a wild animal species: an African lion named «Simba» on November 05, 2019, located according to a safe receipt from citizen S.

According to Letter No.1-090420220/1 dated April 09, 2020, the African lion is included in Annex II of CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora) by the RSE on the right of economic management «Institute of Zoology» of the Committee of Science of the Ministry of Education and Science of the Republic of Kazakhstan) [3, p. 7].

Confiscation of property is the compulsory gratuitous seizure and conversion into State ownership of property owned by a convicted person, obtained by criminal means or acquired with funds obtained by criminal means, as well as property that is an instrument or means of committing a criminal offense.

According to the decree of the Government of the Republic of Kazakhstan «Some issues of accounting, storage, evaluation and further use of property converted (received) into state ownership on separate grounds» dated July 26, 2002 N 833, the procedure for accounting, storage, evaluation and further use of property converted (received) into state ownership on separate grounds is defined.

The legislator has provided for more transparent schemes, especially with regard to exotic animals, as well as animals listed in the Red Book, when transferring such animals to specialized institutions, state bodies. During the execution of the enforcement proceedings, notifications were sent to the local executive body for taking measures to transfer the biological asset of the individual «African Lion» to the ownership of the state. According to the act of acceptance of the transfer dated September 11, 2020, the individual «African Lion» biological asset was accepted on the balance of the KGKP «Karaganda State Zoological Park». The main condition for the gratuitous use of confiscated animals is the maintenance of these animals only for the purpose of their conservation and reproduction, as well as for scientific and cultural and educational purposes [4, p. 11].

The African lion has acquired a new home in the person of the Karaganda State Zoological Park.

«No private person can keep animals in their homes, even if you tried to reproduce conditions like in a circus or in a zoo».

Results and discussion

In this paper, questions are raised not only on traditionally considered issues of animal protection, but also on problems related to the attitude of society as a whole and each person and citizen individually to this problem, humanity, improving the regulation of the protection of homeless animals and the specifics of their rights. The developed proposals can be used in further scientific research on the regulation of relations related to the protection of homeless animals and the organization of shelters for them [5, p. 117].

A special role is played by the legal defects of the composition itself. The legal construction of the norm on animal cruelty requires significant processing and

updating. Criminal liability occurs only if there is a combination of: consequences – death of an animal or injury; direct intent (only if there is a motive – hooligan or mercenary); method of commission. Accordingly, at present, it seems impossible to qualify some acts as criminally punishable [6, p. 162]. The subject of the crime is a sane individual who has reached the age of 16. At the same time, it is necessary to pay attention to the fact that according to statistical data, in more than 40 % of cases, the subjects of such crimes are persons aged 14 to 17 years. In this regard, in my opinion, the legislator needs to consider lowering the age from which criminal responsibility for this crime begins to 14 years. From the point of view of child psychology, a normally developing child should understand long before the age of 14 that it is impossible to cause pain to a living being [7, p. 15]. According to the child psychologist S. Merkulova, a child already at the age of 5 realizes that a dog or cat is alive and experiencing pain. The second difficulty of law enforcement in this area is the fact that animals are related to property, in the treatment of which citizens must adhere to the principle of humanity. It is in this legislative detailing of animals as a thing, an inanimate object, that the starting point of the existing problem with regard to the prevention and punishment of cruelty to animals lies [8, p. 5].

It is necessary to unambiguously determine the subject of the crime. It seems that it would be most reasonable to provide legal protection to vertebrate animals, since they have the most complex nervous system and, accordingly, are most sensitive to pain. The size of the sanction is incommensurable with international standards. Like any encroachment on a living being, this crime should be punished with excessive fines, as it is mostly done now. For example, in the United States, imprisonment for up to 10 years is threatened as punishment for intentionally causing the death of animals [9, p. 110].

In addition, in view of the fact that recently there has been a trend of increasing cruelty to animals using the most sophisticated methods, and persons who have committed this act are assigned the mildest type of punishment – a fine. In some cases, as judicial practice shows, criminal cases are terminated altogether due to active repentance. Thus, criminals avoid punishment for the committed act, thereby increasing the degree of public danger of the crime in question. This problem can be solved by increasing the terms of punishment and transferring this crime to the category of medium-gravity crimes [10, p. 50].

Conclusions

Thus, the proposals of animal rights activists to introduce a ban on the creation and operation of mobile menageries, animal exhibitions, dolphinariums, oceanariums and contact zoos. This provision will have a suspensive period in order to provide the owners of these organizations with time to carry out procedures

for the liquidation or reorganization of their business. It will no longer be possible to repeat the experience of many breeders of rarities and get a graceful serval at home, for example. There are thousands of videos on the Internet showing these graceful cats jumping from cupboards and doors onto beds and sofas. From now on, Kazakhstanis will not be able to repeat such videos, and it will be possible to see the spotted curiosity only in the zoo.

As a result of the conducted research, legislative gaps in the field of animal cruelty were identified. The question of the subject of the crime remains open, since the definition that the practice focuses on is fixed only in the comments. It is not a legal norm and concerns only animals and birds. The disposition of Article 339 does not reflect such a type of crime as the ritual killing of an animal. In such cases, the cruel treatment of animals does not pursue the goal of causing torment, pain and suffering. It is obvious that there are no hooligan and selfish motives. Meanwhile, the cruelty of sacrifice, especially with a public demonstration in the media or the Internet, causes great harm to public morality. Therefore, it is proposed to amend the disposition of Article 339 of the Criminal Code of the Republic of Kazakhstan «Cruelty to animals for ritual purposes, in order to cause him pain and suffering, as well as from hooligan or mercenary motives»

Not all cases of group commission of a crime fall under the concept of complicity. If a group of people systematically carries out cruelty to animals, and only one of the group has reached the age of criminal responsibility, then it is impossible to qualify such actions as co-execution due to the lack of subjective signs of complicity; it also often does not look like «mediocre harm». At the same time, the degree of public danger increases significantly. To solve this problem, it is possible to amend the provisions of the General Part of the Criminal Code of the Republic of Kazakhstan, namely, to introduce such a criminal category as «a group method of committing a crime without signs of complicity.» Accordingly, many compositions of the Special Part of the Criminal Code of the Republic of Kazakhstan can be supplemented subsequently with the appropriate qualifying feature. Based on the fact that recently there have been more and more crimes related to animal cruelty, it is considered necessary to toughen criminal penalties.

It seems that the implementation of these proposals will contribute to the effective fight against crimes in this area and will increase the level of humane treatment of animals in society.

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ЭКЗОТИКАЛЫҚ ЖАНУАРЛАРДЫ ТӘРКІЛЕУДІ ЖҮЗЕГЕ АСЫРУ МӘСЕЛЕЛЕРІ

Бұл мақалада көздер мен әдебиеттер жиынтығын тарту негізінде экзотикалық жануарларды тәркілеуді жүзеге асыру мәселесі қарастырылады. Біздің уақытымызда экзотикалық жануарлар мен тропикалық құстардың түрлері ләззат алу немесе пайда табу үшін біздің елге әкелінеді. Мұндай жағдайларда экзотикалық жануарлар мен тропикалық құстар біздің салқын ендіктерімізге мүлдем тартылмайды. Бірақ тыйымдарға қарамастан, олар біздің елге әкелінеді, өйткені бұл заңсыз әкелінген жануарлар, кейінірек олар адам қылмысы мен көңілді барымтаға айналуы мүмкін.

Кілтті сөздер: жануарлар, өндіріп алу, жасаукершілік, құрып кету қаупі, жануарлар дүниесін құқықтық қорғау.

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ПРОБЛЕМЫ РЕАЛИЗАЦИИ КОНФИСКАЦИИ ЭКЗОТИЧЕСКИХ ЖИВОТНЫХ

В данной статье на основе привлечения комплекса источников и литературы рассматривается проблема реализации конфискации экзотических животных. В наше время участились случаи завоза в нашу страну экзотических видов животных и тропических птиц ради удовольствия или наживы. При таких обстоятельствах, экзотических животных и тропических птиц вовсе не тянет в наши прохладные широты. Но несмотря на запреты, их везут в наши страны, ведь это незаконная ввозимая живность, в последствии возможно становятся заложниками людских преступлений и забав. Актуальность темы обусловлена социальной значимостью защиты животных: диких, домашних, не имеющих хозяина, а также используемых в культурно-зрелищных целях. Это сфера реализации всех качеств членов общества – снижение социальной напряженности и предупреждения социальной конфликтности, а особенно в отношении так называемых бродячих животных, в аспекте удовлетворения массовых потребностей людей.

Ключевые слова: животные, взыскание, ответственность, угроза исчезновения, правовая охрана животного мира.

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