

RECENT DEVELOPMENTS IN ANIMAL LAW IN KAZAKHSTAN

by Maria Baideldinova* and Federico Dalpane**

Abstract

This note follows up on our survey of animal law in Kazakhstan published in the *Global Journal of Animal Law* in 2013¹. The last five years in Kazakhstan have been particularly fruitful in terms of legislative innovations in animal law, with about 100 new legal acts. The sectors which were most affected are regulations about agricultural animals and regulations about companion animals. Some new legal acts concern animals in general. This increase in legislation is connected with Kazakhstan's membership in the WTO and in the Eurasian Economic Union, and with a qualitative leap in animal protection activism.

* Assistant Professor, School of Law, KIMEP University, Kazakhstan; email <maria@kimep.kz>.

** Assistant Professor, School of Law, KIMEP University, Kazakhstan; email <dalpane@kimep.kz>.

¹ Baideldinova, Maria and Federico Dalpane. *Animal Law in Kazakhstan: A Survey*. *Global Journal of Animal Law* n. 2 (2013). <https://ojs.abo.fi/index.php/gjal/article/download/1298/1608>, acc. 2 Oct. 2017.

1. Introduction

Kazakhstan's legislation regarding animals comprises hundreds of acts of various nature. Until very recently, this legislation was rather outdated, especially in the sense that it reflected a traditional, strictly "anthropocentric" approach, whereby any measure of care for animals was only required as a means to ensure public health.² Concerns for animal welfare for the sake of animals were absent or, in some exceptional cases, only implicit.

During the last three years only, Kazakhstan has adopted about 100 new legal acts concerning animals. The traditional anthropocentric approach still prevails, but certain steps towards a more animal-centric approach have been made. For instance, some of the acts contain, although without definition, the term "animal welfare"; others are clearly based on the concept of "five freedoms"³. The number of acts that are based on the animal-centric approach has increased.

The new legislation concerns especially agricultural animals and pets, namely cats and dogs. Some of the new legal acts regard animals in general, independently of human use. We believe that this upsurge in legislative activity is connected to two circumstances. The first is Kazakhstan's recent accession to the WTO and its membership in the Eurasian Economic Union, both of which have prompted an effort to harmonise the domestic legislation with international standards. The second circumstance is a qualitative leap in animal protection activism.

2. Agricultural animals

Agricultural animals have always occupied an important place in the economy of Kazakhstan. The legislation that protects their welfare, however, is very recent and subject to frequent change. This

² Ibid.

³ 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, Five Freedoms:

<http://webarchive.nationalarchives.gov.uk/20121007104210/http://www.fawc.org.uk/freedoms.htm> , acc. 2 October 2017.

upsurge in legislative activity is probably connected with Kazakhstan's participation in regional and global trade agreements. In 2010, Kazakhstan, together with Russia and Belarus, formed the Eurasian Customs Union, which is now the main pillar of the Eurasian Economic Union (EAEU)⁴. Along with all other goods and services, the EAEU regulates the trade of agricultural animals and products of animal origin among the member states. This has likely had an impact on Kazakhstan's legislation concerning animals. Kazakhstan's accession to the World Trade Organization in 2015, however, is probably the main driver of legislative change in this area. Accession to the WTO required a more systematic approach to agricultural animal welfare, and a rapid, sweeping update of the legislation.

The EAEU's regulations on animals reflect the EAEU's declared intent to meet the WTO standards⁵. The new legal acts represent a marked improvement over the previous legislation, although they still fail to provide an explicit definition of animal welfare and generally reflect a traditional anthropocentric approach.

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 29 May 2014⁶.

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 necessary to protect human life and health, animals and plants. So, animal health, which is a necessary condition of animal welfare, is declared as one of the concerns of the organization.

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 phytosanitary quarantine measures, while

⁴ 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.

⁵ On WTO's animal welfare initiatives see Lurié, Andrew, and Maria Kalinina. *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 no. 3 (2015): 431-487. <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1848&context=auilr> , acc. 2 Oct. 2017.

⁶ Treaty on the Eurasian Economic Union (English version): https://docs.eaeunion.org/docs/en-us/0017353/itia_05062014_doc.pdf, acc. 2 Oct. 2017.

art. 56 (5) provides that a coordinated approach in the identification, registration and traceability of animals and products of animal origin be used in accordance with the acts of the Commission. 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.

Decision of the Council of the Eurasian Economic Commission № 94

This is a very detailed and comprehensive EAEU 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 employs 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.

We focus, here, 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, requires 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 living conditions, inadequate or poor-quality nutrition and 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

prohibits delaying 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.

3. Animals in general

Most of the legal acts considered above reflect the traditional “anthropocentric” approach to animal welfare. The following two legal acts, instead, establish a wholly new approach to animal welfare, which amounts to a small revolution:

Rules on the Treatment of Animals⁷

Although a rather brief document, Kazakhstan's *Rules on the Treatment of Animals* of 2014 – an Order of the acting Minister of Agriculture – contains new, groundbreaking provisions. First, they introduce and define terms, which are new to Kazakhstan's legislation on animals, such as euthanasia and 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” of animals. Third, paragraph 5 of the *Rules*, which regulates the obligations of natural persons and legal entities towards animals in their possession, is clearly based on the “five freedoms” of animal welfare. Moreover, it sets forth principles of animal treatment in previously underregulated spheres like animal testing and animals used for entertainment.

Rules on Keeping Animals in Captivity and Semi-captivity⁸

The brief *Rules on Keeping Animals in Captivity and Semi-captivity* 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.);

⁷ Order of the acting Minister of Agriculture of the Republic of Kazakhstan of December, 30, 2014, № 16-02/701.

⁸ Order of the Minister of Agriculture of the Republic of Kazakhstan of February, 25, 2015, № 18-03/125.

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 do relinquish the traditional “anthropocentric“ approach to animal welfare for a more modern approach. Hopefully they will inform the future legislation on animals.

The following newly enacted legal acts, instead, 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.

Rules of Railway Transportation and Rules of Auto Transportation⁹

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

Rules of Commercialization of Animals¹⁰

This document does not contain direct rules for animal welfare or animal keeping, but provides for the obligatory identification of animals, which is necessary to ensure traceability and, hence, to afford some protection of animals against abandonment and maltreatment. It also obliges the seller to vaccinate the

⁹ Order of the Minister of Investments and Development of the Republic of Kazakhstan of April 30, 2015 № 545 and № 546 respectively.

¹⁰ Order of the Minister of Agriculture of the Republic of Kazakhstan of December 19, 2014, № 16-04/679.

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.)

Veterinary (veterinary-sanitary) requirements for the objects of industry, which are involved in breeding, commercialization of animals¹¹

This is a very detailed document describing the specifics for the husbandry of various kinds of agricultural animals, the necessary equipment, conditions, such as temperature, humidity, space, admissible construction materials, etc. These norms seem to make factory farming impossible. There is in fact a presumption that the animals are pastured in open spaces, when the climate permits.

Others

There are further examples of legal acts regarding animals, which came into force around the date of Kazakhstan's accession to the WTO. These acts regard documentation 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, sometimes with very minor changes:

- Rules of Organization of Slaughter of Animals, Designated for Further Commercialization¹²;
- Rules on Planning and Conducting of Veterinary Measures Against Especially Dangerous Diseases of Animals¹³;
- Rules on Quarantining of Animals¹⁴;
- Rules on Identification of Agricultural Animals¹⁵;
- Rules on Creation and State Record of Zoological Collections¹⁶;
- Guidelines on State Protection of Animal World¹⁷;

¹¹ Order of the acting Minister of Agriculture of the Republic of Kazakhstan of May, 29, 2015, № 7-1/498.

¹² Order of the Minister of Agriculture of the Republic of Kazakhstan of April, 27, 2015, № 7-1/370.

¹³ Order of the Minister of Agriculture of the Republic of Kazakhstan of June 30, 2014, № 16-07/332.

¹⁴ Order of the Minister of Agriculture of the Republic of Kazakhstan of December 30, 2014, № 7-1/700.

¹⁵ Order of the Minister of Agriculture of the Republic of Kazakhstan of January 30, 2015, № 7-1/68.

¹⁶ Order of the Minister of Agriculture of the Republic of Kazakhstan of February 20, 2015, № 18-03/118.

¹⁷ Order of the Minister of Agriculture of the Republic of Kazakhstan of February 27, 2015, № 18-03/146.

- Rules of Hunting¹⁸;
- On Approval of the maximum permissible load rates on a total area of pastures¹⁹;

and many others.

4. Pets and stray population control

Rules on pet-keeping and rules on the population control of stray animals are being created on the local level²⁰. Here animal protection activism is probably the main driver of legislative change. Within the considered period of time many territorial units have revised their rules about owned and ownerless cats and dogs, but so far only the cities of Astana and Almaty have introduced significant novelties.

New principles of capture and culling of Astana

The Rules on Capture and Culling of Stray Dogs and Cats in the City of Astana²¹ were created in 2015, but significant amendments were made in July 2017.

The 2015 edition of the Rules provided for the following process of capture and culling of stray animals: any ownerless animal (that is, any unaccompanied cat or dog) would be captured by a specialized organization, brought to the establishment, and killed within three days. There were only minimal and very vague regulations, or even no regulations concerning the admissible means to capture stray animals, the ways of transportation, and the overall conditions in which animals should be kept within the establishment, until their death. The requirement of almost immediate killing made it difficult for the owners of lost animals to retrieve them, or for animal rescue volunteers to intervene. Finally, capture and killing were considered as the only possible way to regulate the stray population.

¹⁸ Order of the Minister of Agriculture of the Republic of Kazakhstan of February 27, 2015, № 18-03/157.

¹⁹ Order of the Minister of Agriculture of the Republic of Kazakhstan of April 14, 2015, № 3-3/332.

²⁰ The Republic of Kazakhstan has 14 administrative territorial units called *oblast* and two so called cities of republican significance (Almaty and Astana), which are in many ways similar to *oblasts*. The local representative bodies of every *oblast*, as well as Almaty's and Astana's, which are called *maslikhat*, create Rules on pet-keeping and Rules on the capture and culling of stray dogs.

²¹ Decision of the Maslikhat of the city of Astana of December 23, 2015, № 448/62-V. Amended by the Decision of the Maslikhat of the city of Astana of July 07, 2017, № 169/21-VI.

The 2017 amendments remove all those flaws. They fill the legislative gaps and eliminate the vagueness about the means of capture and transportation of the animals and the conditions of captivity. The period of time during which the captured animal is kept within the establishment is prolonged for up to two months; further, the specialized organization must post on its website a picture of every captured animal. Finally, there is a legislative acknowledgement that sterilization is the most effective means of regulation of the stray population. There is a new requirement for the capturing organization to sterilize and vaccinate all the captured animals and to transfer them to the shelter after two months. The creation of the state shelter is also a novelty.

Roadmap for the control of the stray population in the city of Almaty and discussion of new rules

In the city of Almaty the new rules are still under discussion, in consultation with animal activists and the citizenry, but are expected to come into force by the end of 2017. The author Maria Baideldinova is participating in this consultation, together with the animal law interest group created within Kazakhstan's lawyers' association KazBar²².

In the meanwhile, Almaty's local authorities have created a Roadmap on the Welfare of Domestic Animals, which addresses also the control of the stray population. Many of the provisions incorporated in the newly amended Astana Rules also appear in the Roadmap, such as: creation of several state shelters, prolongation of the period of keeping of captured animals, improving of the process of placement of ownerless animals to new families. Additionally, on the insistence of animal protection NGOs and KazBar's animal law group, the Roadmap allows applying the sterilization method to regulate the stray population. It presumes obligatory neutering for owned animals (with few exceptions) and allows applying the capture-neuter-release method.

5. Conclusion

After a period of slow and intermittent legislative activity, in the last five years we have registered an upsurge in legislation about animals, which is likely connected with Kazakhstan's membership in the EAEU and in the WTO, and with animal protection activism. Beside the several measures taken to

²² More about KazBar: www.kazbar.kz. The KazBar animal law interest group was created in January 2017.

improve the overall legislative framework, some progress in the conceptual approach to animal welfare can be appreciated. Hopefully this more modern, less anthropocentric approach to animal welfare will inform a new generation of legal provisions that will recognize the best international experiences.