

Animal Law in Kazakhstan: A Survey

Maria Baideldinova and Federico Dalpane¹

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Bibliography

1. Introduction

Environmental law as a branch of law and as a specific academic field is well established in Kazakhstan,² in fulfillment of art. 38 of the Constitution: 'Citizens of the Republic of

¹ Maria Baideldinova is Assistant Professor at the School of Law of KIMEP University of Almaty (Kazakhstan), where she teaches Animal Law. Federico Dalpane is Assistant Professor at the School of Law of KIMEP University and teaches history of political and legal thought.

² The Republic of Kazakhstan is a unitary, presidential republic, based on the principles enshrined in the Constitution, adopted in 1995: article 1 states that Kazakhstan is a democratic, secular, rule-of-law and social state, and that its main value is the human being, his/her life, rights and freedoms. Kazakhstan is actively involved in regional integration processes and in various forms of international cooperation. Article 8 of the Constitution confirms this: 'The Republic of Kazakhstan respects principles and norms of international law, follows a policy of cooperation and of relations of good neighborhood among the states [...]'. Kazakhstan signed and ratified The International Covenant on Civil and Political Rights (ICCPR), The International Covenant on Economic, Social and Cultural Rights (ICESCR), The United Nations Convention on the Rights of the Child and others. The Republic of Kazakhstan is a former Soviet republic that became independent in 1991 following the Soviet Union's demise. Kazakhstan's legal system, however, belongs to

Kazakhstan must preserve nature and protect natural resources.' The foundational documents of Kazakhstan's environmental law, however, enshrine an anthropocentric approach to the preservation of nature that not many animal lawyers would regard as sufficient.³ No mention is ever made in Kazakhstan's law of an intrinsic value of nature or of animals. Yet the large body of legal acts regarding animals does not consistently adopt a crudely utilitarian perspective on animals, and does not unambiguously exclude a concern for animals for their own sake. Ambiguities and contradictions are frequent in the hundreds of acts variously related to animals. To a closer examination, this appears to be more the result of the ad-hoc nature of most acts than the codification of a specific philosophical view of animals. At this time, therefore, a systematic interpretation of Kazakhstan's animal-related laws is necessary to uncover the frequent implicit references to the humane treatment of animals as sentient beings. It is hoped that this interpretation of animal-related laws will pave the way to the adoption of a law against animal cruelty and/or on animal welfare. In the meanwhile, animal lawyers must try to make the most of the existing legislation.

Kazakhstan's legislation on animals is very recent, having developed for the most part in the 2000s. The number of legal acts that variously regard animals counts several hundreds, although they are formally mostly rules and instructions, which occupy the lowest place in the hierarchy of legal acts in Kazakhstan. Some of those legal acts are fully dedicated to various aspects of human-animal interaction, while others consider animals as one of the 'details' of various social activities, for instance the quality certification of consumer goods that include components of animal origin. Neither, however, considers the intrinsic value of animals, but rather address them from the perspectives of public health or environmental protection.

There is no legally stipulated classification of animals, and generally speaking the object and the scope of animal law in Kazakhstan remain largely indeterminate. It is not entirely clear, for instance, if birds and fishes are included in the term 'animals', or which animals exactly are considered as agricultural animals or as pets. There is a small set of 'universal' provisions that apply to all sorts of animals regardless of their use; bigger by far is the number of provisions that are specific to some particular use of the animals by humans, like farm animals, wildlife, or pets.

the civil law tradition since pre-Soviet times due to the territory's gradual incorporation into the Russian Empire during the 18th and 19th centuries (as explained by Zhenis Kembayev, "Legal History of Kazakhstan", in *Introduction to the Law of Kazakhstan*, ed. Zhenis Kembayev (The Hague: Kluwer Law International, 2012), 1-21. See also *idem*, "Basic Features of the Legal System", in *Introduction to the Law of Kazakhstan*, ed. Zhenis Kembayev (The Hague: Kluwer Law International, 2012), 23-35). After the Soviet Union's collapse, not unlike the other former Soviet republics, Kazakhstan started sweeping legislative reforms to enable a market economy. In this regard, the Interparliamentary Assembly of the Member States of the Commonwealth of Independent States (hereinafter CIS) played a substantial role. To this day, the Interparliamentary Assembly of the CIS develops legislative models and frameworks for the drafting of national laws with a view to harmonize the legislations in the former USSR space. The full text of the CIS model laws is available in Russian language at

http://www.iacis.ru/activities/documents/modelnye_kodeksy_i_zakony/ (accessed Dec. 14, 2013).

³ Beginning with the Environmental Code of the Republic of Kazakhstan, #212-III of January 9, 2007.

2. Universal Legal Acts

2.1 Civil Code

The legal acts that contain 'universal' provisions are the Civil Code, General Part (adopted in 1994), the Law on Veterinary Medicine (2002), the Code of Administrative Offenses, also known as Administrative Code (2001), and the Criminal Code (1997).

The Civil Code handles animals as things and properties and does not distinguish between different categories of animals. The articles that specifically concern animals are articles 124 'Animals' and 246 'Ownerless animals'. Article (Art.) 124 states that the same rules that apply to things apply to animals, unless specific legislation provides for otherwise. In other words, the Civil Code univocally establishes that animals are things, which in some cases, however, can be objects of additional regulation, and/or be exempt from certain regulations that regard things in general. Art. 246 is in the chapter regarding the acquisition of property rights on things. This article establishes that under certain circumstances and after a certain period of time⁴, the ownerless animal can become a property of the person who found the animal. The article is worth quoting:

“The one who captured ownerless *livestock, other domestic animals or other domesticated animals* must return them to the owner, and if the location of such is unknown, must inform no later than within 3 days the organs of internal affairs and local executive organs [...] which take measures to search for the owner.”⁵

This allows us to conclude that cats and dogs, which the Law on Veterinary Medicine implicitly counts as agricultural animals (livestock), are not counted as such in the Civil Code. Also of interest is the conclusive part of the article, which takes into account the particular character of animals as things, namely the possibility of affective attachment of the animal towards the owner. It says:

“In case of appearance of the previous owner of the animals after their passage to the property of another person, the [previous] owner has the right, in the presence of circumstances that confirm the retention of affective attachment to him/her from the side of these animals, or in case of cruel treatment or other improper treatment of them by the new owner, to demand the transfer back of the animals on conditions agreed with the new owner, and in case of lack of such agreement – through the court.”

2.2 Law on Veterinary Medicine

The Law on Veterinary Medicine was adopted in 2002.⁶ Its preamble establishes that 'the Law determines the legal, organizational and economic basis of the exercise of activities in the sphere of veterinary medicine and aims to the provision of veterinary-sanitary

⁴ After the announcement of search of the owner, 6 months – for 'working and large horned livestock' (horses, camels, cows) and 2 months – for other domestic animals.

⁵ Emphasis added.

⁶ Law of the Republic of Kazakhstan # 339-II of July 10, 2002.

safety'. According to article 3, the main aims of the Law are: protection and cure of animals from diseases; protection of the health of the population from the diseases common to both animals and humans; providing for veterinary-sanitary safety; protection of the territory of Kazakhstan from introduction and diffusion of contagious and exotic animal diseases from other countries; control over the safety and quality of veterinary preparations, food and food supplements; elaboration and usage of means and methods of diagnostics, fight against animal diseases and provision of veterinary-sanitary safety; prevention and liquidation of contamination of the environment during the performing of veterinary activities by natural persons or legal entities; advancement of veterinary science, preparation and improvement of the qualification of veterinary specialists.

The Law on Veterinary Medicine, although geared more toward agricultural animals, establishes basic notions that apply to all kinds of animals. For instance, basic principles of maintenance of animals (art. 25), which must be done in accordance with sanitary and veterinary standards; the competences of state organs in the sphere of veterinary medicine (chapter 2), veterinary control (chapter 3), veterinary measures for the prevention of zoonoses (chapter 4) etc., which regard all kinds of animals. The law also orders measures that are specific to only some categories of animals, but leaves the categories insufficiently defined; as a consequence, in the application of the law different situations are conflated together. For example, the obligatory registration of animals regards exclusively agricultural animals (art. 32), but the lack of definition of the term 'agricultural' and in the absence of separate rules regarding cats and dogs, these norms are applied by veterinary doctors to pets as well, thus conferring even to cats and dogs the status of agricultural animals.

As it is manifest from the name of the law and from its declared tasks, the Law on Veterinary Medicine is not oriented to the protection of animals for their own sake, but to public health.

2.3 Administrative Code

The Code of Administrative Offenses (adopted in 2001, also known as Administrative Code) provides for punishments for unlawful behavior of people in human-animal interaction. Some of them regard particular categories of animals, others – all animals. Thus, under the Administrative Code the following is punishable: violation of the state property of wildlife; violation of rules regarding the protection of the habitat of animals; illegal hunting; illegal fishing; violation of rules of hunting and fishing; violations in the sphere of veterinary activity; and violation of the rules of maintenance of dogs and cats.

2.4 Criminal Code

The Criminal Code of the Republic of Kazakhstan, adopted in 1997, is largely a revision of the Criminal Code of the Kazakh Soviet Socialist Republic of 1959. The Criminal Code punishes the same unlawful behavior that is punished by the Administrative Code when committed to a larger extent or intensity; for example serious violations of environmental law, including those that harm wildlife. More importantly, the Criminal Code occupies the

central place in Kazakhstan's animal law because it contains the only explicit norm against animal cruelty in the whole legal system, article 276 'Cruel treatment of animals'. Nonetheless, this legacy article is formulated in an unsatisfactory, anachronistic way that may impede the prosecution even of odious acts against animals. Article 276 'Cruel treatment of animals' states:

“The cruel treatment of animals that resulted in their death or injury, if this act was committed out of motives of hooliganism, or with usage of cruel methods, or in the presence of minor children, is punished with a fine in amount from 100 to 200 of monthly calculation index, or with correctional labor for a period up to 1 year, or with imprisonment for a period of up to one year. The same action, committed by a group of persons, group or persons under preliminary collusion or organized group, or multiple times, is punished with a fine in amount from 500 to 800 of monthly calculation index, or with correctional labor for a period up to two years, or with imprisonment for a period of up to two years.”

We will now examine how the article's language warrants only a very narrow interpretation, allowing its application only in very rare cases. *Firstly*, the expression 'cruel treatment' is not defined.⁷ The prevailing interpretation is that the expression refers to acts of violence like inflicting wounds. The article excludes many cases of objectively cruel treatment towards animals, especially negligence, such as leaving an animal without water, food or veterinary assistance, as well as it excludes the organization of animal fights. Abandoning a pet does not fall under the legal definition of cruelty either. In order to arrive at an operative definition of 'cruelty', the law would need to take into account general or at least widespread perceptions of the term in society. There are signs, indeed, that Kazakhstani society is becoming more aware of the plight of animals. The legal statistics show that in the last decade or so the number of complaints of animal cruelty has sharply increased, with almost 800 complaints registered between 2005 and 2013. Yet in the same period only a few cases of animal cruelty were opened.⁸ Because the term 'cruel treatment' is left indeterminate, in practice its interpretation rests with law enforcement agencies, which tend to avoid an extensive interpretation of the term by a general principle of restraint in the exercise of criminal procedures. *Secondly*, the article mentions causation of death or injury, omitting, for instance, distress or psychological suffering. *Thirdly*, in order to be considered as cruel treatment punishable under the Criminal Code, the action must meet one or more of the following conditions: to be committed out of motives of hooliganism, or with usage of cruel methods, or in the presence of minor children.⁹ The reference to 'hooliganism' is particularly worrying, because it means that, theoretically,

⁷ In fact, the expression 'cruel treatment' is not defined in any legal act, including those that mention the cruel treatment of children and of other persons.

⁸ From 2005 till 2013, the courts of Kazakhstan considered only 11 cases on animal cruelty, while in the same period of time the law enforcement agencies rejected almost 800 complaints. Data provided by the Committee of Legal Statistics and Special Records of the General Prosecutor's Office of the Republic of Kazakhstan. See Alina Davar, *Legislative Regulation of Cruel Treatment of Animals in Kazakhstan: Problems and Solutions* (unpublished Master's Thesis, KIMEP University, Almaty, Kazakhstan, August 2013).

⁹ In this case children under 14 years of age.

somebody may escape prosecution for any cruel action against an animal if the perpetrator can mention a plausible motive that excludes an act of gratuitous violence committed out of mere insensate 'hooliganism'.¹⁰

The law enforcement agencies' propensity for a restrictive interpretation of article 276 is reinforced by the views expressed in the most used scholarly commentaries to the criminal code. Although in Kazakhstani law such commentaries – however authoritative – do not have legal force, their practical influence at least in some matters is significant. Unfortunately, in matters of animal cruelty the most used commentaries are not helpful. For instance, the most widely used commentary disregards the preposition 'or' in the article, commenting it in a comprehensive way, as if all the three components (hooliganism plus cruel methods plus presence of minors) had to be simultaneously present in order for an action to be considered as cruel treatment.¹¹ Moreover, this commentary embraces a very narrow interpretation of cruel methods, intending only, for instance, burning alive, extracting organs of a live animal, gouging out the eyes of a live animal, cutting off its extremities etc.¹² As a result, violations of the rules of maintenance of companion animals, of the standards for keeping agricultural animals, or of the rules of hunting, are unlikely to be punished as cruel treatment of animals under article 276. The violation of implicit animal welfare standards would most likely lead to administrative liability. Criminal liability, due to the backwardness of the letter and of the prevailing interpretation of the article, remains unused, even in cases of evident cruelty. This anachronistic state of affairs is hopefully bound to change also because of the increasing awareness of the correlation between animal cruelty and the propensity for serious crimes against humans.¹³

One last observation is that article 276 is in the chapter 'Crimes against public health and public morality', which means that the object of the crime is not the animal itself, its health and corporal integrity, but public health and public morality. Until this anachronism is eliminated and the intrinsic value of animals is recognized, it will remain extremely difficult to step up the fight against cruelty.

¹⁰ The following case appeared in the press in 2011: A man killed two cats with a hammer. Questioned by the police, he declared that he had done so to protect children from infested animals and was acquitted. See the website Petropavlosk.kz, <http://www.pkzsk.info/?p=2599> (accessed Oct. 29, 2013).

¹¹ Isidor Sh. Borchashvili, *Kommentarii k Ugolovmonu Kodeksu Respubliki Kazakhstan* [Commentary to the Criminal Code of the Republic of Kazakhstan] (2nd edition, Almaty: Zheti Zhargy, 2007; 1st edition, Karaganda: Poligrafiya, 1999). Prof. Borchashvili was one of the original authors of the Criminal Code. Although generally regarded as very authoritative, this commentary was first published in 1999 and was not updated in regard to animals. Borchashvili's commentary appears to have been used, in particular, by the investigator of the above-mentioned case involving two cats.

¹² Even the latest commentaries do not challenge this interpretation. See, for example, Igor I. Rogov and Sattar M. Rakhmetov, eds., *Kommentarii k Ugolovmonu Kodeksu Respubliki Kazakhstan* [Commentary to the Criminal Code of the Republic of Kazakhstan] (3rd edition, Almaty: Norma-K, 2012), that offers a slightly broader interpretation, but still too restrictive.

¹³ This link, indeed, is mentioned by Sattar M. Rakhmetov in his comment to article 276 in Igor I. Rogov and Sattar M. Rakhmetov, eds., *Kommentarii*, 290.

3. Specific Legal Acts

3.1 Agricultural Animals

Most legal provisions concerning animals can be found in a vast number of legal acts intended to regulate distinct uses of the animals. The best-represented branch in Kazakhstan's law on animals is agriculture. The main legal act that regulates the status of agricultural animals, establishes the main principles of their registration, vaccination, transportation etc. is, as it was mentioned above, the Law on Veterinary. Besides that law there are a number of regulations that regard slaughter, conditions of maintenance, classification of breeds etc. Factory farming is neither prohibited nor especially regulated by the Kazakhstan laws.

The legislative acts to be mentioned within this paragraph are: Law on Livestock Breeding¹⁴, Law on Beekeeping¹⁵, Veterinary standards for the keeping of animals in private farms within the boundaries of settlements¹⁶, Decision of the Commission of the Customs Union on the application of veterinary and sanitary measures in the Customs Union¹⁷ and others.¹⁸

3.2 Pets

As described above, pets, surprisingly, seem to be covered by the term 'agricultural animals' except in the 'Rules of maintenance of cats and dogs'.¹⁹ Such rules are issued by the local representative bodies and apply exclusively to the territory of the correspondent territorial unit. In most cases the provisions coincide across territorial units, but still some slight differences can be observed. For instance, the rules of Astana establish a list of dangerous dog breeds and order a special treatment for them, while others (Almaty) do not. For some reason the list of dangerous dog breeds may also vary across the regions.²⁰ On the other hand, the rules of all the territorial units, along with a general order to dog owners to provide for the safety of other animals and people, contain a provision that a dog should appear in public places exclusively on leash and with a muzzle. All rules agree

¹⁴ Law of the Republic of Kazakhstan, #178-I of July 9, 1998.

¹⁵ Law of the Republic of Kazakhstan, #303-II of March 12, 2002.

¹⁶ Affirmed by the Decree of the Minister of Agriculture #28 of January 24, 2008.

¹⁷ St. Petersburg, # 317, June 18, 2010.

¹⁸ One of the most humane and advanced regulations is the one of June 27, 2007 regarding keeping and pasture of agricultural animals (#44/429). They state that the owners of livestock have to 'treat agricultural animals humanely, to keep them in accordance with their biological characteristics and in a case of their illness to refer immediately to veterinary assistance' and 'do not leave the agricultural animals unattended and to prevent their vagrancy'.

¹⁹ The creation of such rules is of a competence of local representative bodies (*Maslikhat*). Because of this, titles and contents of these rules may vary across territorial units. For instance, the latest Rules were the modified Rules on the Maintenance of Cats and (as a separate document) the Rules on the Maintenance of Dogs of the city of Almaty (adopted in 2013).

²⁰ For instance the Rules of maintenance of pets of the city of Astana of February 9, 2007, for some reason, include the Labrador Retriever in the list of dangerous dogs. This is surprising given the Labrador's universal reputation as a good-natured and non-aggressive animal and its very frequent use worldwide in rescue teams, as a guide dog for the disabled, or other similar tasks.

that it is not allowed to leave a pet unattended, and that the conditions of maintenance must not violate the veterinary-sanitary norms and the allowed level of noise.

3.3 Wildlife

Wildlife protection occupies a big portion of Kazakhstan's animal-related legislation. The protection of wildlife as a natural resource has indeed the longest tradition. The main legal acts in this sphere are the Law on the Protection, Reproduction and Usage of Wildlife²¹ and the Law on Specially Protected Natural Territories.²² The Environmental Code of 2007 also gives much attention to the preservation of wildlife. In all of these acts wildlife is approached as a natural resource, worth preserving as all other natural resources. As all other natural resources, wildlife is considered as a property of the State and only the State has the right to use it, unless this right is granted to private persons within the limits of the Law on the Protection, Reproduction and Usage of Wildlife.

In the domain of wildlife protection Kazakhstan is member of a few bilateral and multilateral international agreements. Among them are the Cartagena Protocol on Biosafety;²³ the Ramsar Convention;²⁴ the CMS Convention;²⁵ the CITES;²⁶ the Framework Convention for the Protection of the Marine Environment of the Caspian Sea;²⁷ the Agreement between the Government of the Republic of Kazakhstan and the Government of the Republic of Turkey in the Sphere of Animal Health,²⁸ and others.

3.4 Hunting and fishing regulations

The basic discipline of hunting and fishing, including the prohibition of illegal, not licensed hunting and fishing can be found in the Environmental Code. The Water Code and the Forestry Code also contain some relevant norms. The detailed regulation, however, is provided in sub-legal acts: acts of Governments and decisions of local representative and executive bodies, such as the Rules of Hunting on the Territory of Kazakhstan.²⁹

The Rules of Hunting, among others, establish the prohibited methods of hunting, among which: sport hunting with usage of air-, auto- or motor-vehicles as well as motor-

²¹ Law of the Republic of Kazakhstan, #593-II of July 9, 2004.

²² Law of the Republic of Kazakhstan, #175-III of July 7, 2006.

²³ Montreal, May 15, 2000. Ratified by Kazakhstan through the Law of the Republic of Kazakhstan #43-IV of June 17, 2008.

²⁴ The Convention on Wetlands of International Importance, especially as Waterfowl Habitat, Ramsar, February 2, 1971. Kazakhstan joined it through the Law of the Republic of Kazakhstan # 94-III of December 13, 2005.

²⁵ The Convention on the Conservation of Migratory Species of Wild Animals, Bonn, June 23, 1979. Kazakhstan has joined it through the Law of the Republic of Kazakhstan # 96-III of December 13, 2005.

²⁶ The Convention on International Trade in Endangered Species of Wild Fauna and Flora, Washington, March 3, 1973. Kazakhstan joined it through the Law of the Republic of Kazakhstan #372-1, April 6, 1999.

²⁷ Signed in Teheran by Caspian Sea littoral states, entered into force on August 12, 2006. Ratified by Kazakhstan through the Law of the Republic of Kazakhstan #97-III of December 13, 2005.

²⁸ Almaty, August 15, 1995. Affirmed by the Resolution of Government of Kazakhstan #237 of February 20, 1997.

²⁹ Affirmed by the Resolution of Government of Kazakhstan #21458 of December 31, 2004 (latest amendments on July 2, 2012).

boats; by persons under effect of alcohol or drug intoxication; on animals in helpless conditions or during disasters (those trying to save themselves during storm, flood, fire, when crossing water reservoirs, on ice-crusted ground, exhausted due to the lack of food, waterfowl on ice air holes); destroying living holes of animals (except cases when it is needed to save hunting-dog); with usage of night sight and silent shooting equipment, laser aimers; usage of illuminants; usage of pneumatic and throwing weapons (except for scientific purpose); usage of cartridges with bullets of armor-piercing, incendiary or bursting action with shifted center of gravity; with burning or in other way destroying of vegetation; with the use of crossbows, traps, trapping pits, through the establishment of large traps without warning signs noticeable to humans, hooks, bird glue, smoking out, driving out the animals on ice crust, on deep snow or on viscous salt marshes, using traps for bear, ungulates and birds; usage of poisons and explosives and others. The prohibition of certain hunting methods shows that the government aims to prevent unnecessary suffering.

Other sub-legal acts regarding hunting and fishing, concern quantitative limits within which the animals can be hunted, registration of hunting birds, management of hunting by the state and local executive bodies etc.

3.5 Animals Used for Entertainment

There are no specific regulations determining the legal destiny of animals used for entertainment. However, a rather progressive document can be applied, the Rules of Keeping Animals in Captivity and Semi-Captivity.³⁰ This sub-legal act does not limit the species, which are included in the term 'animals'. It says, however, that these Rules are based on the above-mentioned Law on Protection, Reproduction and Usage of Wildlife, which in its turn, does not determine the species to include, but most likely is not applicable to agricultural animals and pets. 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.

3.6 Animal Testing

Animal testing is another under-regulated field of animal law in Kazakhstan. Animal testing as an aspect of the activities meant to ensure the security of goods is regulated by

³⁰ Affirmed by the Resolution of the Government of Kazakhstan #736 of June 2, 2012.

the rules of the Customs Union between Kazakhstan, Russia and Belarus.³¹ According to these rules, animal testing is not a necessary requirement for the products imported into or produced on the territory of the Customs Union. At the same time, the rules do not explicitly prohibit animal testing.

Experiments on animals, however, are widely used in the testing of medicaments and drugs. In order to regulate such experiments, Kazakhstan has adopted certain rules.³² These regulations contain rules on how the laboratories have to be equipped and how the experiments should be documented, while such questions as methods of euthanasia of under-test animals or allowed limits of numbers of animals for the experiments remain disregarded.

4. Proposal for an Animal Welfare Law

It is evident that Kazakhstan's legal system needs a single, nation-level law on animal welfare, which would fill the indicated legislative gaps. As of late 2013 no official steps were taken in this direction, but several animal protection NGOs, including Kazakhstan Animal Rescue and Education (KARE)³³ in collaboration with veterinarian doctors, other animal specialists, and KIMEP University's Professor of Animal Law Maria Baideldinova are drafting a proposal of animal welfare law to be submitted to the Parliament for consideration. In this regard, while not unaware of the recent reforms in the animal protection legislation of several European countries, it is the former Soviet Union space that Kazakhstan's animal law community looks more naturally to for inspiration. In particular, an initiative of the Commonwealth of Independent States (hereinafter CIS) needs to be mentioned. We refer to the Model Law on the Treatment of Animals approved by the Interparliamentary Assembly of the CIS State Members on October 31, 2007³⁴. While a CIS model law is not directly applicable, and it does not *per se* bind the CIS member states to issue a corresponding statute, it must be taken into account by national legislatures whenever they draft a statute on the same matter. For this reason Kazakhstan's animal law community regards the CIS model law on the treatment of animals as influential, even if its full effects will only start when Kazakhstan's legislature will draft a comparable law on animals.

The preamble declares that the model law intends to 'determine the legal basis of the treatment of animals, and is aimed to the protection of animals from cruel treatment, and on guaranteeing security and other rights and legal interests of citizens during the treatment of animals'. The model law addresses a wide range of situations arising in

³¹ For instance, with regard to cosmetics, there are the Technical Regulations of the Customs Union TP TC 009/2011 of September 23, 2011, affirmed by a Decision of the Commission of the Customs Union.

³² 'Sanitary-epidemiologic requirements for the laboratories', affirmed by the Resolution of the Government of Kazakhstan #13 of January 10, 2012 and 'Rules for carrying of medical-biologic experiments, pre-clinical (non-clinical) and clinical research', Affirmed by the Decree of the Minister of Health of the Republic of Kazakhstan #697 of November 12, 2009.

³³ <http://www.kare.kz> (accessed Dec. 14, 2013).

³⁴ *Model'nyi zakon ob obrashenii s zhivotnymi* [Model Law on the Treatment of Animals]. <http://www.iacis.ru/upload/iblock/f94/218.pdf> (accessed Dec. 14, 2013). The members of the CIS Interparliamentary Assembly are Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Ukraine; Afghanistan as observer. On CIS model laws see also above, footnote 2.

human-animal interaction. It regards agricultural animals, companion animals, animals used in entertainment, service animals, laboratory animals and wild animals.

Art. 4 enunciate the main principles the model law is based on:

- Protection of animals from suffering and death, prevention of cruel killing of animals;
- Guarantee of security, rights and legal interests of citizens;
- State regulation and control in the sphere of the treatment of animals;
- Limitation of the usage of animals for educational, scientific, and medical purposes;
- Restoration of damages caused by the animal to other animals or to the health and/or property of citizens, or to the property of organizations;
- Restoration of damages caused to the animal by a person other than the possessor;
- Participation of citizens and public organizations in the development and realization of programs and measures in the sphere of the treatment of animals.

The model law features modern and progressive provisions, including: prohibiting the usage of equipment which can injure an animal; prohibiting the maltreatment of animals, including passive maltreatment, such as bringing to starvation; prohibiting from forcing an animal to perform excessive physical efforts; prohibiting the breeding of animals with congenital defects; limiting the range of species one can keep as a pet etc.). On the other hand, the Model Law does include a few controversial provisions that the Kazakhstani proponents of an animal welfare/animal cruelty law do not recommend (for instance, limiting the number of pets one can own; identifying dog breeds which must be considered as especially dangerous and thus subject to special provisions; mandating the constant usage of leash and muzzle for dogs whenever walked in public places; and others). In conclusion, it does not seem unreasonable to anticipate that Kazakhstan will adopt a law on animal protection along the lines of the CIS model law of 2007.

5. Analysis: The Good News

Analyzing Kazakhstan's animal-related legislation in the absence of an animal welfare or animal cruelty law, the following considerations can be made. Many legal acts and their sub-legal amendments are more recent than the Criminal Code (1997) and the commentary that many regard as the most used at least in these matters (Borchashvili, *Kommentarii*, 1999). The norm that regards the cruel treatment of animals was inherited by our modern legislation in almost unchanged form from the correspondent article of the Criminal Code of the Kazakh Soviet Socialist Republic, which was adopted in 1959. The acts analyzed above, instead, are from the 2000s. We argue that this hints that the development of Kazakhstan's animal legislation is indeed directed towards humanization and the increase of guarantees of animal welfare. But the anachronistic formulation of the article 276 of the current Criminal Code hampers progress.

Recent legal or sub-legal acts and their amendments, although lacking the definition of animal welfare, or even the explicit declaration of the principles of animal welfare and intrinsic value of animals, implicitly contain indications on principles of

animal welfare. The traces of these principles can be found in several legal acts, even if for the moment they are in most cases connected to human health and welfare. For instance, in the above-mentioned hunting rules, the prohibition of methods of hunting that cause injury to animals without causing instant death can be considered as an implicit adhesion to animal welfare principles. Some of those methods, in fact, are prohibited because they can be dangerous for human beings as well (poisons, traps without warning signs noticeable to humans). Other bans on hunting methods may have been introduced to protect the species from mass destruction and to protect the ecosystem from too violent interference (usage of explosives, destroying the living holes, burning or otherwise destroying the vegetation). But, at the same time, other prohibitions (for instance, the prohibition to hunt animals that are in helpless conditions or during disasters) seem to aim to the protection of animals themselves. Whichever aim the legislature pursued here, these Rules seem to express some concern for the plight of wild animals subject to hunting.

Hints of an implicit adhesion to animal welfare standards can be found also in the legislation in the sphere of agriculture. There are for example regulations that order to allow a minimum, specified space for agricultural animals, obligatory vaccination as method of prevention of diseases, rules on the transportation of agricultural animals, obligatory identification of agricultural animals as prerequisite for the prevention of zoonoses and (in our understanding) of animal cruelty.

The rules that regard animals in captivity, which are applicable also to animals in zoos and circuses, and the rules on the maintenance of cats and dogs,³⁵ require supplying the animals with food and water, and the obligation of the owner to treat the animal in a humane manner.

All of this demonstrates that animal welfare standards, and the recognition of certain behaviors as wrong or cruel, are present in the legislation of Kazakhstan, even if they remain implicit for now, covered in the language of public health, public order, or species preservation. A tentative list of these implicit principles may be the following:

- Animals are things of a unique nature because they remain affectively attached to the owner
- Animals in captivity must be provided with healthy food
- Animals must be timely vaccinated as a mean of disease prevention
- Humane methods of trapping and killing of wild animals are required
- The government controls the extraction of animals from nature
- The keeping of animals regardless of the purpose must meet the minimum sanitary-hygienic requirements.

It may not be much yet, but we interpret this as an indication that the legislation is becoming ever more humane, while the sanctions act as an anchor for the further development of animal legislation and its harmonization with the modern reality of Kazakhstani society and international requirements.

³⁵ Not in all cities, so far.

In the meantime, as mentioned above, failing a thorough reformulation of the article 276 of the Criminal Code, the much-needed reform of the law must be anticipated by updating the interpretative approach to the existing legislation.

6. Conclusions

The analysis of a large body of mostly ad-hoc legal acts shows that explicit definitions of animal cruelty and animal welfare are still missing. This contrasts with the available evidence that public awareness of and concern for animal issues is increasing, not to mention the unjustifiable chasm between Kazakhstan's animal law and many foreign laws that have explicitly and systematically addressed the issues of animal cruelty and/or animal welfare. Taken in its literal form, then, the present Kazakhstani legislation on animals appears to be seriously anachronistic. On the other hand, the principles of cruelty prevention and of animal welfare do implicitly inform quite a few norms. Far from being monolithic and definitive, the present legislation reveals itself as unsettled, unstable, and its contradictions bound to be resolved by interpretation. As Kazakhstan is rapidly reforming and modernizing its legislation in a number of matters there is hope that a specific law against animal cruelty and/or a law on animal welfare is also on the horizon.

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