



LEGAL STATUS OF STRAY ANIMALS: WAYS AND MEANS OF SOLVING THE CURRENT URBAN ISSUE

Situación legal de los animales callejeros: formas y formas de resolver problema urbano actual

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ABSTRACT

The **purpose** of the study is to conduct a legal analysis of the current Russian model of handling animals without an owner (stray animals), identify its advantages and disadvantages, and propose comprehensive measures aimed at solving the problem of stray animals, including legal, organizational and cultural aspects. **Research methods:** the article uses a qualitative analysis of regulatory legal acts (federal and regional legislation of Russia), judicial practice, as well as a comparative analysis of foreign legislation and practice (USA, Europe, Asia, etc.). **Results.** In Russia, the OSVV (trapping-sterilization-vaccination-return) model is used, which is not effective enough to reduce the number of stray animals and their aggressiveness. The authors proved that regional legislation on the treatment of stray animals varies significantly and sometimes contradicts federal laws. There are significant problems in the legal regulation of ownership of stray animals and liability for harm caused by them.

Conclusions: The authors propose a comprehensive solution to the problem, including legal measures (clear legislative consolidation of ownership of stray animals for municipalities); organizational measures (changing the waste management system to reduce the food supply of stray animals), as well as cultural and moral measures (development of educational and awareness-raising programs).

Keywords: stray animals; court; law; euthanasia; aggressiveness

RESUMEN

El propósito del estudio es realizar un análisis legal del modelo ruso actual de manejo de animales sin dueño (animales callejeros), identificar sus ventajas y desventajas y proponer medidas integrales destinadas a resolver el problema de los animales callejeros, incluidos los aspectos legales, organizativos y culturales. Métodos de investigación: el artículo utiliza un análisis cualitativo de los actos jurídicos reglamentarios (legislación federal y regional de Rusia), la práctica judicial, así como un análisis comparativo de la legislación y la práctica extranjeras (EE.UU., Europa, Asia, etc.). Resultados. En Rusia, se utiliza el modelo OSVV (captura-esterilización-vacunación-retorno), que no es lo suficientemente efectivo como para reducir el número de animales callejeros y su agresividad. Los autores demostraron que la legislación regional sobre el tratamiento de animales callejeros varía significativamente y, a veces, contradice las leyes federales. Existen problemas significativos en la regulación legal de la propiedad de animales callejeros y la responsabilidad por los daños causados por ellos. Conclusiones: Los autores proponen una solución integral al problema, que incluye medidas legales (consolidación legislativa clara de la propiedad de animales callejeros para los municipios); medidas organizativas (cambio del sistema de gestión de residuos para reducir el suministro de alimentos a los animales callejeros), así como medidas culturales y morales (desarrollo de programas educativos y de sensibilización).

Palabras clave: animales Callejeros; Tribunal; ley; eutanasia; agresividad,

INTRODUCTION

The problem of stray animals (animals without owners according to the official terminology) is extremely urgent for most Russian cities. The attitude of citizens to stray animals is ambivalent: citizens



who have not been attacked by packs of stray dogs treat them neutrally or even sympathetically (and often feed them at public transport stops and on children's playgrounds). On the contrary, city residents affected by attacks of stray animals are very aggressive and often support the most radical initiatives to euthanize all stray cats and dogs. The latter group of citizens becomes larger over time and there is every reason for this. For example, in the settlement of Krasny Mayak, Rostov Region, in March 2024, a pack of homeless dogs attacked a 7-year-old girl walking down the street to buy bread (the child received 30 stitches in hospital) (Kirillov, 2024); according to estimates of Rospotrebnadzor of Volgograd Region, in 2023, stray animals in the region bit an average of 21 persons per day, which is about one person per hour (Petrov, 2023).

In addition to the threat of infection with rabies through bites, homeless animals often infect humans with other diseases, including tuberculosis, tularemia, leptospirosis, brucellosis, anthrax, fungal diseases, allergies, etc. Stray dogs exterminate wild fauna, which destroys biodiversity of city and suburban forests.¹ They often attack farm animals, exterminate poultry of rural residents and small cattle. For example, stray dogs bit to death 10 sheep and injured another 8 in the Republic of Bashkortostan in October 2022.² This means that uncontrolled treatment of stray animals poses a threat not only to the life and health but also to the property of Russian citizens. But how Russia solves this issue? Now, animals without owners are captured, chipped, vaccinated and released back onto the streets of cities. In search of food, these animals inevitably gather in packs to provide themselves with food and protection. Partial capture of individual animals of stray populations and their placement in shelters does nothing to solve the issue since the population size depends on the food resources (and many waste containers in cities are not closed), diseases of individual animals as well as other factors that are not associated with the state policy. Withdrawal and sterilization of individual animals lead to a burden on the regional budget but do not reduce the number or aggressiveness of stray dog populations.

Therefore, the circle is closed – the number of these animals increases and the harm caused by them to the life, health and property of citizens grows every year. The following question arises in this case: whose rights must be of greater importance to legislators and law enforcers: those of unarmed city residents or packs of stray dogs? How the state plans to protect the life and health of its citizens? Answering this question, animal rights activists appeal to humanism: dogs and cats do not lose their owners of their own free will, they are living beings and people should treat them accordingly. Meanwhile,

¹ Homeless animals as one of the issues of the urban environment <<http://www.hintfox.com/article/bezdomnie-zhivotnie-kak-odna-iz-problem-gorodskoj-sredi.html>> (accessed September 23, 2024)

² Explanatory note to draft law no. 241812-8 "On Amendments to Certain Legislative Acts of the Russian Federation" <<https://sozd.duma.gov.ru/bill/241812-8>> (accessed September 23, 2024).



the issue of humanism is not so unambiguous. Threats of attacks by stray dogs generate another round of social aggression of city residents against stray animals, which manifests itself in their cruel treatment and rejection of citizens who sympathize with animals and try to feed them. At the same time, both sides of this conflict constantly appeal to the authorities to solve this issue. However, until recently, all decisions of Russian public authorities only aggravated this conflict since officials were determined to fight not against the causes of the appearance of stray cats and dogs but the animals themselves.

In our view, the solution to this very difficult and urgent social problem can be only comprehensive, including measures to prevent neglect of domestic animals, strengthening of control and liability (with respect to their owners), development of the practice of sterilization of animals, change of the concept of special shelters for animals, establishment of the grounds for euthanasia, improvement of record and registration of animals. The search for these effective solutions should reasonably involve the consideration of the very interesting experience of European, Asian and other countries, which can be used (in different aspects) in the course of reforming Russian legislation on the treatment of animals without owners.

Based on the foregoing, In the first part of this article, we analyze federal and regional Russian legislation on the treatment of animals without owners (stray animals), showing its advantages and disadvantages; in the second part, we will identify the influence of judicial practice on the legal regulation of the treatment of animals without owners; in the third part, we will propose a set of legal and other measures to improve the treatment of stray animals, including euthanasia, waste management, etc.

1. GENERAL DESCRIPTION OF RUSSIAN LEGISLATION ON THE LEGAL STATUS OF STRAY ANIMALS (ANIMALS WITHOUT OWNERS)

Until recently, the legal regime of stray animals was determined mainly by bylaws and was rather unsystematic. The situation began to change after the adoption of Federal Law No. 498-FZ of December 27, 2018 "On Responsible Treatment of Animals and on Amendments to Certain Legislative Acts of the Russian Federation". Its below provisions are the most interesting in our view. First, the law provides a normative classification of animals distinguishing animals without owners, game animals, farm and other animals. Second, the Law vests the main powers for the treatment of animals without owners in state authorities of constituent entities of the Russian Federation. Third, the Law includes many requirements regarding the prohibition of cruel treatment of animals, their care and outdoor time rules, peculiar features of using service dogs and animals for cultural and entertainment purposes, etc. Fourth, the main purpose of the Law is to gather stray animals in shelters not forever but for some time. These animals are recorded, marked, vaccinated, sterilized and return to the streets (other options are the



natural death of animals or transfer to new owners). The law specifically emphasizes that their killing is prohibited, except in cases of unbearable suffering due to injuries (diseases) incompatible with the life of animals. This killing must be done by experts using humane methods. Fifth, the law establishes that it is prohibited to return unmotivated aggressive stray animals to their former habitat; they must be kept in shelters for life, until their natural death. Therefore, the model proposed by the legislator can be designated as "CSV" - capture, sterilization, vaccination, and return of animals to their previous place.

The ambiguity of certain provisions of federal legislation as well as its references to the legislation of constituent entities of the Russian Federation led to interesting discussions in the regions and caused different formulations of regional laws regarding the organization of the work of shelters and euthanasia. Three regional models can be distinguished in this regard. The first of them is presented in Law of the Republic of Buryatia No. 185-VII of November 22, 2023 "On Establishing the Procedure for Treating Animals without Owners and Defining a List of Such Activities in the Territory of the Republic of Buryatia". Article 8 of the Law establishes a list of the grounds for euthanasia of animals without owners received in shelters. In addition to those specified in the federal law (injuries, diseases, physical suffering), the Law adds other three important paragraphs: danger to humans (unmotivated aggression), the fact that a specific animal (which can be identified) has attacked a person and recognition of animals as unclaimed after 30 days (euthanasia is carried out on the 31st day in the shelter). This law is drawn up on the basis of the world's best regulatory practices. Among the grounds for euthanasia (besides those specified in the federal law), the second group of regional laws mentions only euthanasia of unmotivated aggressive animals without owners (Republic of Altai)³ or animals with rabies (Rostov Region),⁴ although according to laws of other regions, these animals must be kept in shelters for life (Saratov Region).⁵ A number of laws of constituent entities of the Russian Federation contain definitions of signs of unmotivated aggression and even the necessity defense rule, within the framework of which a person is allowed to kill stray animals that attack him (Stavropol Krai).⁶ Finally, the third group of regions has not adopted their

³ Law of the Republic of Altai No. 91-RZ of December 19, 2014 (revised on December 22, 2023) "On Granting Local Government Bodies in the Republic of Altai with Certain State Powers of the Republic of Altai to Organize Activities in Treating Animals without Owners in the Territory of the Republic of Altai". In: Legal Reference System "Garant", accessed September 23, 2024.

⁴ Procedure for organizing the activity of shelters for animals in the territory of Rostov Region and animal welfare standards for them. Approved by Decree of the Government of Rostov Region No. 48 of January 31, 2020. In: Legal Reference System "Consultant Plus", accessed September 23, 2024.

⁵ Law of Saratov Region No. 116-ZSO of October 2, 2023 "On the Procedure for Treating Animals without Owners and on Defining a List of Such Activities in the Territory of Saratov Region". In: Legal Reference System "Garant", accessed September 23, 2024.

⁶ Law of Stavropol Krai No. 34-kz of April 6, 2021 (revised on December 22, 2023) "On Some Issues in the Area of Treatment of Animals without Owners in the Territory of Stavropol Krai". In: Legal Reference System "Garant", accessed September 23, 2024.



own laws on treating stray animals (Volgograd Region) or their laws do not contain any fundamental innovations in the area of treatment of stray animals. From this short review, we can conclude that the legislator of the Republic of Buryatia has the most radical position (providing for a wide range of grounds for the euthanasia of animals without owners). Other regions regulate more specific issues of capture, transportation and maintenance of animals without owners, which do not go beyond the scope of authorities of the regions stipulated by the federal legislation. Meanwhile, the establishment of rules of euthanasia of stray animals in the laws of constituent entities of the Russian Federation (even where it includes animals showing unmotivated aggression or having rabies), except the cases provided for by the federal law (injuries, diseases), until recently contradicted the current federal legislation, which was confirmed by judicial practice.

2. INFLUENCE OF DECISIONS OF THE CONSTITUTIONAL COURT AND COURTS OF GENERAL JURISDICTION ON THE DEVELOPMENT OF LEGISLATION ON STRAY ANIMALS

2.1. HISTORY OF JUDICIAL DISPUTES ON THE LEGAL REGIME OF STRAY ANIMALS

Russia belongs to the countries of the continental legal family, where judicial precedent (in contrast to the Anglo-Saxon legal family) is not a source of law. Nevertheless, decisions of higher judicial authorities influence the interpretation of particular legal rules, especially when the Plenum of the Supreme Court of the Russian Federation issues resolutions.

With respect to the subject of this article, the influence of courts of general jurisdiction on the settlement of the issue of treatment of stray animals is as below. First, courts provided interpretation for various terms even before the adoption of the Federal Law "On Responsible Treatment of Animals...". For example, Ruling of the Administrative Judicial Division of the Supreme Court of the Russian Federation No. 33-APG15-5 of June 10, 2015, found unlawful the attribution by the regional law of feral dogs to objects of hunting.⁷ Second, courts previously had a negative position regarding the legality of the CSVR procedure, that is, release of stray animals (dogs and cats) back onto the streets after their chipping and vaccination.⁸ Courts considered these actions as violation of the citizens' right to a safe living that creates factors of a harmful impact on people and worsens the sanitary and epidemiological situation.⁹

⁷ Ruling of the Administrative Judicial Division of the Supreme Court No. 33-APG15-5 of June 10, 2015. In: Legal Reference System "Garant", accessed September 23, 2024.

⁸ Appellate Ruling of the Administrative Judicial Division of the Supreme Court of the Russian Federation No. 78-APA19-4 of March 27, 2019. In: Legal Reference System "Garant", accessed September 23, 2024.

⁹ A similar position was specified in Appellate Ruling of the Supreme Court of the Russian Federation of January 25, 2017 in case No. 41-APG16-12. In: Legal Reference System "Garant", accessed September 23, 2024.



Third, judicial practice has significantly changed after the adoption of the Federal Law "On Responsible Treatment of Animals...". For example, Appellate Ruling of the Third Appellate Court of General Jurisdiction No. 66a-1127/2020 of November 5, 2020 found invalid the rule of the regional law in terms of the possibility of catching animals without owners for the purpose of their euthanasia and regulating their number by killing these animals in cases aimed at preventing the spread and eliminating foci of contagious diseases of neglected animals.¹⁰ This ruling was subsequently upheld, and the cassation appeal was dismissed.¹¹ Therefore, long before the adoption of the current Federal Law "On Responsible Treatment of Animals...", courts of general jurisdiction had an active position on issues of interpreting legal rules governing the treatment of animals without owners, which often filled gaps in the law. This trend continues also today. Now, we observe gradual formation of judicial practice of compensation for non-pecuniary damage caused to the health or property of citizens by animals without owners. For example, the court upheld a claim for compensation for the damage that was caused to a citizen's car by stray dogs and was the consequence of omission of the local government body (urban district Astrakhan).¹² In another case, a district prosecutor filed a lawsuit against the Administration of Krasnoselkupsky District (Yamalo-Nenets Autonomous District) for compensation for non-pecuniary damage, stating that the prosecutor's office, on the basis of a citizen's statement, investigated the fact that a child had been bitten by a stray dog, as a result of which the child had suffered bodily injuries, in particular, a bite wound of the right lower leg. As a consequence, the child is afraid of dogs, has a strong fear and is afraid to go out on her own. It is impossible to establish the dog's owner so this dog is neglected. As a result of consideration of the case, compensation for non-pecuniary damage in the amount of 30,000 rubles was collected from the district administration.¹³

It is fair to note that judicial practice also includes opposite decisions on refusing compensation for non-pecuniary damage to citizens. The developing judicial practice of compensation for non-pecuniary damage to citizens bitten by stray dogs (local government bodies are defendants in these cases) gives occasion to reflect. First, it is quite understandable when the court recovers non-pecuniary damage from the owners of private dogs (domestic animals). In case of wild animals, courts refuse categorically to

¹⁰ Appellate Ruling of the Third Appellate Court of General Jurisdiction No. 66a-1127/2020 of November 5, 2020. In: Legal Reference System "Consultant Plus", accessed September 23, 2024.

¹¹ Cassation Ruling of the Fourth Cassation Court of General Jurisdiction of April 8, 2021 in case No. 8a-4210/2021 (88a-9259/2021). In: Legal Reference System "Consultant Plus", accessed September 23, 2024.

¹² Decision of Kirovsky District Court of Astrakhan of October 17, 2023 in case No. 2-3692/2023. <<https://sudact.ru/regular/doc/vKyU2Fmg0kgZ/>> (accessed September 23, 2024)

¹³ Decision of Krasnoselkupsky District Court of Yamalo-Nenets Autonomous District of October 26, 2023 in case No. 2-201/2023 <<https://sudact.ru/regular/doc/bVzP5qff60dV/>> (accessed September 23, 2024)



compensate for damage to citizens who suffered from elk-vehicle collisions¹⁴ or whose crops were trampled by wild boars.¹⁵

Meanwhile, by virtue of Article 4 of Federal Law "On Fauna" No. 52-FZ of April 24, 1995, wild animals are in state ownership. Refusing to compensate for the harm caused by wild animals, the state as the owner disclaims all responsibility.

In our case, the ownership of animals without owners is not defined statutorily, however, by virtue of Article 7 of the Federal Law "On Responsible Treatment of Animals...", most functions in this area belong to state authorities of constituent entities of the Russian Federation (rather than local government bodies). However, courts recover non-pecuniary damage exactly from local government bodies although they are not owners of these dogs. This is indicative of another gap in law, which courts of general jurisdiction try to fill in the absence of statutory regulation.

2.2. CONTRIBUTION OF THE CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION TO THE LEGAL DOCTRINE OF CLASSIFICATION OF CERTAIN ANIMAL SPECIES

Constitutional courts of any country play an important role in ensuring legality and protection of constitutional rights and freedoms of citizens. In Russia, the Constitutional Court of the Russian Federation is an essential body of judicial power vested with the right to interpret constitutional rules as well as to verify the compliance of provisions of federal laws and other regulatory legal acts with the Constitution of the Russian Federation. The Constitutional Court of the Russian Federation has the right to declare a certain legal rule (or a legal act in general) inconsistent with the Constitution of the Russian Federation, due to which it is suspended and the legislative body of the country usually makes the necessary amendments to this regulatory legal act within a short time. It is also very important that the Constitutional Court of the Russian Federation has the right to consider complaints of citizens regarding violation of constitutional rights and freedoms, which contributes to their protection and ensures law and order in the state. However, decisions of the Constitutional Court of the Russian Federation are particularly significant for the development of the scientific legal doctrine since they often include provisions affecting scientific theories.

¹⁴ Appellate Ruling of Vologda Regional Court No. 33-4889/2014 of October 22, 2014. In: Legal Reference System "Consultant Plus", accessed September 23, 2024.

¹⁵ Resolution of the Commercial Court of the Central District of August 13, 2014 in case No. A14-14457/2013. In: Legal Reference System "Consultant Plus", accessed September 23, 2024.



Resolution of the Constitutional Court of the Russian Federation No. 55-P of December 4, 2023 is one of such decisions. It provides an interpretation of the provisions of Article 231 of the Civil Code¹⁶ and identifies its correlation with the powers of local government bodies.¹⁷ The reason for the Constitutional Court of the Russian Federation to consider the constitutionality of the provisions of Article 231 of the Civil Code was a complaint from the urban district "City of Novodvinsk" (Arkhangelsk Region), from which, according to the decision of the commercial court, a particular amount of money was collected in favor of the State Budgetary Institution "Novodvinsk City Center for the Control of Animal Diseases" as reimbursement for costs of maintaining caught and buried neglected animals.

Referring to Article 231 of the Civil Code, the commercial court stated that the defendant (the administration of the urban district) had to accept the animals as municipal property after 6 months of their stay in temporary facilities. Since the defendant avoided it (as well as maintaining these animals), thereby it saved particular funds at the plaintiff's expense. In its turn, the applicant stated that the acquisition of the municipal ownership of neglected domestic animals (and the establishment of the burden of their maintenance) against the will of the municipality contradicts the Constitution of Russia.

Having considered the complaint, the Constitutional Court of the Russian Federation noted that municipal ownership must first of all include the property necessary for solving the tasks assigned to the local government; it is unacceptable to transfer property from state ownership to municipal ownership on a unilateral basis without taking into account the will of local government bodies; the rules of the Civil Code regarding the treatment of neglected animals are based on the assumption that neglected domestic animals may have owners and they are only temporarily left without supervision. At the same time, the powers of state authorities of constituent entities of the Russian Federation include establishing the procedure for organizing the activity of shelters for stray animals and standards for maintaining animals in them as well as organizing measures for treating animals without owners. It is possible to provide local government bodies with state powers with respect to activities for treating animals without owners and many constituent entities of the Russian Federation have adopted the relevant laws. The activities for treating animals without owners are primarily aimed at maintaining public safety both in the sense of eliminating a possible physical threat to citizens from these animals and in the sense of ensuring sanitary and epidemiological well-being. The fact that the goals of the activities for treating animals without owners include return of lost animals to their owners serves for consideration of the rights and legitimate

¹⁶ Civil Code of the Russian Federation No. 51-FZ of November 30, 1994. Part 1.

¹⁷ Resolution of the Constitutional Court of the Russian Federation No. 55-P of December 4, 2023 "In the Case Concerning the Review of the Constitutionality of Paragraph 1 of Article 231 of the Civil Code of the Russian Federation in Connection with the Complaint of the Urban District of Arkhangelsk Region 'City of Novodvinsk'". In: Legal Reference System "Garant", accessed September 23, 2024.



interests of animal owners and does not change the nature of these activities as activities in the field of public safety. The mechanism for public authorities to carry out activities in the area of treating animals without owners, established in the Federal Law "On Responsible Treatment of Animals..." and containing specific measures aimed first of all at ensuring public safety, is not directly related to the rule of transfer of neglected animals into municipal ownership stipulated by the Civil Code and does not in any way affect the issues of acquisition by public legal entities of the right of ownership of animals without owners.

Consequently, the rules of treating neglected animals stipulated by the Civil Code of Russia are not applicable to cases of treating animals without owners (stray animals); there are also no grounds for attributing animals without owners to municipal property. In our view, the following important doctrinal conclusion follows from this resolution of the Constitutional Court of the Russian Federation: there are three fundamental legal regimes for animals, each of them is determined by a certain federal law: the regime of domestic farm animals (Civil Code), the regime of animals without owners – cats and dogs left without owners (determined by the Federal Law "On Responsible Treatment of Animals...") and the regime of wild animals (determined by the Federal Law "On Fauna"). The provisions of the Civil Code cannot apply to the other two types of animals, and the profile laws adopted with respect to them do not apply to domestic farm (neglected) animals. It is not entirely clear which general rules of the Civil Code regarding animals (primarily farm animals) will apply to other types of animals (for example, animals without owners) in the absence of a special rule in the profile law, in particular, to what extent the rules of the Civil Code on the emergence of private ownership, possession, use and management of such animals and other similar rules will apply to them. In the scientific doctrine, it is necessary to discuss the classification of all types of animals, specifying their legal regime, which can be of interest to legislative authorities. Finally, the question of ownership of animals without owners requires an answer since this issue in relation to other groups of animals has been resolved.

2.3. LEGAL POSITION OF THE CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION ON THE ISSUE OF REGULATING EUTHANASIA OF ANIMALS WITHOUT OWNERS BY REGULATIONS OF CONSTITUENT ENTITIES OF THE RUSSIAN FEDERATION

Since the situation with the number of stray animals in different regions varies significantly (as well as financial, organizational or other capabilities of regional authorities), Federal Law No. 498-FZ of December 27, 2018 "On Responsible Treatment of Animals..." stipulates a fairly broad list of powers of state authorities of constituent entities of the Russian Federation in the field of treating animals without owners, specifically indicating that state authorities of constituent entities of the Russian Federation have the right to establish the procedure for treating animals without owners and to determine the list of



measures for the relevant activities by legislative acts. This rule resulted in a fast growth of regional legislation on treating animals without owners.

The key problem, which the regions tried to solve in different ways, was the attitude to the issue of euthanasia of stray animals, its grounds and procedures. The Constitutional Court of the Russian Federation made its contribution to the public discussion on this subject as it adopted Resolution No. 38-P of July 18, 2024.¹⁸

In it, the Constitutional Court of the Russian Federation emphasized that, by virtue of the amendments made to the Federal Law "On Responsible Treatment of Animals..." in July 2023, constituent entities of the Russian Federation are entitled to take additional measures to resolve issues of treating stray animals on the basis of their regional peculiarities. However, euthanasia of animals without owners cannot be done arbitrarily. Among the legitimate grounds for euthanasia of stray animals, the Constitutional Court of the Russian Federation distinguished their illness, aggressiveness and attacks on people. At the same time, the load of shelters or the need to optimize budget expenditures cannot be attributed to these grounds. Moreover, the Constitutional Court of the Russian Federation introduced into the legal field the concept of extraordinary situation to ensure the safety of citizens from attacks by stray animals, due to which euthanasia will be justified (animal diseases, lack of guarantees of citizens' rights in case of release of these animals back onto the streets, etc.). Only then can the return of animals without owners to the streets be legally prohibited. In other words, in addition to diseases (for example, rabies) or injuries and suffering of animals, it will be lawful to carry out euthanasia in case of their aggression or attacks on people. Euthanasia of healthy animals without owners in shelters can be done only in extraordinary situations the parameters of which are determined by the laws of constituent entities of the Russian Federation.

Once the mentioned extraordinary situation ends, the grounds for euthanasia of animals must also cease to exist. In our view, this resolution of the Constitutional Court of the Russian Federation deserves high praise, both from the point of view of the legal technique and in terms of offering the public a compromise in a situation where citizens and public associations are excessively politicized and the discussion between them increasingly goes beyond the legal framework. In the near future, a constructive dialogue is required regarding the procedure and parameters of the extraordinary situation, public participation in recognizing it as such, the mechanism for determining its duration and the criteria for

¹⁸ Resolution of the Constitutional Court of the Russian Federation No. 38-P of July 18, 2024 "In the Case Concerning the Review of the Constitutionality of Part 4 of Article 7, the first paragraph of part 1 and part 7 of Article 18 of the Federal Law 'On Responsible Treatment of Animals and on Amendments to Certain Legislative Acts of the Russian Federation' in Connection with the Request of the Supreme Court of the Republic of Buryatia". In: Legal Reference System "Garant", accessed September 23, 2024.



recognizing it as no longer existing. Like any evaluative category, the extraordinary situation can be negatively assessed for its ambiguity; on the other hand, constituent entities of the Russian Federation would have new opportunities for their own rulemaking and consideration of the specific features of the region.

Another doctrinal conclusion following from the analysis of the legal positions of the Constitutional Court of the Russian Federation is that, unlike most democratic countries, where the parliaments and the discussions that take place there are the driver of enhancing legislation on stray animals, in Russia the Constitutional Court of the Russian Federation is increasingly often the main source of proposals for changing legislation.

Resolution of the Constitutional Court of the Russian Federation No. 12-P of June 2, 2015 on the complaint of OOO "Zapolyarneft" is its best-known previous resolution which directly affected the change in the federal environmental legislation. The Constitutional Court of the Russian Federation declared unconstitutional a number of legal rules that did not make it possible to consider the actual costs incurred by the person causing harm when eliminating forest pollution in the estimation of the harm caused to forests from oil spills. Afterward, as a result of this decision, amendments with a similar meaning were made to Article 78 of the Federal Law "On Environmental Protection". In our case, we observe a similar situation, when the wording of the legal position of the Constitutional Court of the Russian Federation directly requires the regional legislative body to determine the criteria for an extraordinary situation. In our turn, we should note that an extraordinary situation could be the situation where the number of citizens bitten by stray dogs exceeds a certain quantitative value, for example, 100 injured citizens per month. It can be suspended if the number of stray dogs (or the number of bites) decreases as a result of the measures taken regarding euthanasia.

3. WAYS AND METHODS OF SOLVING THE ISSUE OF ANIMALS WITHOUT OWNERS

3.1. EUTHANASIA AS A METHOD OF SOLVING THE ISSUE OF STRAY ANIMALS

Scholars from the United States were the first to raise the issue of treating animals without owners including legal regulation of euthanasia of these animals. For example, Suzette Daniels studied the issue of euthanasia of animals according to their owners' wills and conducted an interesting analysis of judicial practice in the United States (Daniels, 2004); the issues of euthanasia of whales that wash up on the shores of New Zealand (Dewey, 2007) and euthanasia of confiscated animals were raised (Liebman, 2004). Anthony E. LaCroix (2006) notes that the elimination of cats posing a threat to birds by animal control agencies typically involves trapping the animals and then killing them by means of carbon monoxide



poisoning. This has been criticized as an inhumane and dangerous practice because the cats die a slow, suffocating death and carbon monoxide poses a hazard to animal control personnel. As a result, animal advocate groups have proposed to use lethal injection with sodium pentobarbital, which is considered a more humane method of euthanasia. Christen Wiser (2013) notes that owners of unwanted horses may turn to euthanasia. The author considers firearms the most affordable humane means of euthanasia.

Nikki Leung (2014) states that methods of euthanasia vary by animal for a combination of reasons for physiological differences, cost-efficiency and regulatory compliance. State laws may also vary as to which methods of euthanasia on which species are permissible. Common methods of euthanasia are usually by injectables, inhalants, or physical means (including firearms). Claudine Wilkins (2012) specifies who may order the euthanasia of a dog. If a court in the United States finds that a dog has seriously injured a human or presents a danger to humans, it may adopt a decision on its euthanasia. This decision can be made if the owner of the dog has been convicted of a violation of any state criminal law and the crime was related to that dog or if any local governmental authority has filed with the court a civil action requesting the euthanasia of the dog.

Susan J. Hankin (2009) proposes to specify in the state laws of the United States that requests for euthanasia of a healthy companion animal exclusively for the owner's convenience (that is, when the animal is not ill and does not suffer) is a form of animal abuse and, consequently, shall be rejected. Rebecca J. Huss (2007) notes that shelter workers performing stray animal euthanasia are often under a high level of stress. That has a negative impact on shelter employee wellbeing.

Russian scholars have joined this discussion in recent years. They think that killing companion animals is permissible only to stop suffering in case of an incurable disease or the consequences of an acute injury incompatible with life. It must be performed painlessly. Euthanasia of domestic animals can be done for a number of reasons: if the animal refuses food and water for a significant period of time, if it is extremely restless for a long time, which is accompanied by aggression towards humans and animals, bites, salivation and a tendency to escape, if there are signs of diseases common to humans and animals or incurable diseases that cause excessive suffering or if the animal suffers from contagious diseases common to humans and animals. However, there is no unified scientific approach to animal euthanasia yet (Doinikov, 2023). V. Galindabaeva (2013) cites figures showing that despite several tens of millions of budget funds spent, the number of unsterilized neglected dogs in Kazan did not decrease. A number of authors write about the inadmissibility of euthanasia of healthy animals since this would be a manifestation of an immoral and irresponsible human attitude (Osipova et al, 2021).

The given doctrinal opinions and discussions were based on the analysis of the current international and Russian legislation. If we refer to the international experience of solving the issue of



stray animals, we will find two approaches. The first approach is "capture-sterilization-return" (CSR; or capture-sterilization-vaccination-return (CSVR)) used in Russia, India, Turkey, Bulgaria, some countries in the Middle East, South and Southeast Asia) (Rybalko, 2006). The second approach is returnless capture with lifelong maintenance in shelters or with killing (some countries in Western and Eastern Europe, the United States, Canada, Australia, Japan, South Korea, etc.). At the same time, one approach can be used as the main one, and the other approach as auxiliary.

Supporters of the CSR method usually refer to its humaneness and effectiveness, which are achieved by leaving animals alive and healthy with an insignificant human impact on them. Supporters of the returnless capture method also speak of its effectiveness and humaneness, which are achieved because animals find their owners or they are killed in order to avoid turning into stray animals (Doinikov, 2022). Meanwhile, both approaches have their disadvantages. The disadvantage of the CSR is that after these procedures animals are on the street and they have to find food on their own. These animals gather in packs defending themselves from real or seeming dangerous human behavior, and, consequently, there is a risk of attack on humans and other wild and domestic animals, a risk of transmitting diseases, etc. The disadvantage of the returnless capture is the impossibility for new animals to replace those that have left and the negative attitude of part of society and animal rights activists to this method. Let us consider the legislative experience of various countries in detail.

Many countries use the following approach: animals are delivered to shelters and if the old or new owners are not found, within 7-14 (or up to 60) days they can be killed (the United States, Great Britain, Iceland, Norway, Romania, France). For example, Norway has the Act on Responsible Dog Management,¹⁹ according to which if owners do not take dogs within a reasonable time but not less than one week (after the interested party is notified in person or through a corresponding announcement), the police can sell, replace or kill the dog. Article 6 of Law of the French Republic No. 99-5 of January 6, 1999 "On Dangerous and Homeless Animals and Animal Protection" stipulates that mayors take all necessary measures to prevent the emergence of stray dogs and cats. They may order that these animals be kept on a leash and that dogs be muzzled. They must take homeless dogs and cats caught in municipal areas to shelters where they are kept for the period established by Articles 213-4 and 213-5. Landowners, tenants, farmers or sharecroppers can withdraw stray dogs and cats from the streets. The withdrawn animals are delivered to shelters. Article 213-4 describes the procedure for determining the fate of stray animals: after they are received in shelters, the shelter workers try to find owners for them. If within 8

¹⁹ Lov om forsvarlig hundehold (hundeloven) <<https://lovdata.no/dokument/NL/lov/2003-07-04-74>> (accessed September 23, 2024).



days owners for them are not found, the animals are considered abandoned and pass into the ownership of the shelter. The shelter may transfer the animal to a specialized organization protecting animals, which searches for new owners for it. Moreover, the shelter's veterinarian may euthanize the animal. The costs of its capture, search and maintenance are borne by the owner.²⁰

According to Article 24 of the Act on Animal Welfare of Iceland, if the keeper fails to retrieve the animal within a week of being notified of its capture, or if the keeper has not been identified within two weeks, the municipality may treat the animal as semi-feral and dispose of it accordingly. The municipality shall be regarded as the keeper of any animal of which it has taken custody. If the keeper has not been found, the municipality may dispose of the animal to a new owner, sell it to recover the costs incurred, or order the animal to be put down.²¹ Government Emergency Ordinance No. 155/2001 approving the program management of stray dogs is in force in Romania. According to its provisions, return of homeless dogs and cats to the street after sterilization is against the law. A search for owners for them is carried out for 14 days after they arrive at the state shelter. Afterward, the animals are euthanized. The costs of finding them are borne by the owner of the animal. Moreover, all animals are subject to identification and registration.²²

In Australia, homeless dogs are also kept in shelters. Their owners are searched for for 7 working days after their arrival. After the specified period stray dogs are euthanized.²³ In Great Britain, any dog received in a shelter, after seven days, can be given to a new owner, transferred to a private shelter or destroyed.²⁴ In the United States, different states have different time periods between catching and euthanizing stray animals, however, they are usually from 48 hours to 7 days (Wisch & Dillingham, 2017). According to Articles 5(1) and 15 of the Animal Welfare Act of Finland (247/1996), an animal that is being cared for may not be left without care or abandoned. The municipality must organize shelters of temporary care for dogs and cats and similar small-sized pets and hobby animals found straying and ensure their maintenance in these shelters. An animal must be kept for the minimum of 15 days, after

²⁰ LOI no 99-5 du 6 janvier 1999 relative aux animaux dangereux et errants et à la protection des animaux <<https://drive.google.com/file/d/14XiHthZnwN2vk3ETvJ6ij9ZDiQY-S64F/view>> (accessed September 23, 2024).

²¹ Act of Iceland on animal welfare (2013, 8 April, No 55) <https://www.government.is/library/04-Legislation/Act%20no%2055_2013-on%20animal%20welfare--mai-2015.pdf> (accessed September 23, 2024).

²² Law no. 258 of 26 September 2013 amending and supplementing Government Emergency Ordinance no. 155/2001 approving the program management of stray dogs <https://cmvro.ro/files/download/legislatie/legislation-en/law_258.pdf> (accessed September 23, 2024).

²³ Code of Practice for the Welfare of Dogs in the A.C.T. <<https://drive.google.com/file/d/1fZCfzpzHuSBAtIzVnuBN8YP133QFauSL/view>> (accessed September 23, 2024).

²⁴ Environmental Protection Act 1990 <<https://www.legislation.gov.uk/ukpga/1990/43/section/149>> (accessed September 23, 2024).



which the municipality has the right to sell, give away or kill the animal.²⁵ According to the Animal Protection Act of Croatia (NN 102/17, 32/19), the search for owners, sterilization, maintenance and veterinary protection are carried out at the expense of municipalities, and in the case of lost animals – at the expense of their owners. The found animals are transferred to shelters. If within a period of 14 days, the owner has not submitted a request for the return of the animal, the shelter shall become the owner of the animal (Article 65). The Croatian Act also lists the conditions under which such stray animals may be killed (Art. 11).²⁶ Article 12 of the European Convention for the Protection of Pet Animals (1987) provides for principles for the treatment of animals including requirements for the reduction of the number of homeless animals. Most European countries have joined the Convention (Russia is not among them). Provisions of the Convention are both approved and criticized in scientific literature (both veterinary and legal) (Khorkov & Rubashkin, 2020).

In its turn, India does not use euthanasia for homeless dogs. The country introduced a sterilization program but it did not achieve the set goals. Now in India, the only thing discussed is feeding stray dogs not in crowded places but at least in places specially designated for this purpose (Jha, 2022). China does not have any special laws relating to stray dogs at a national or local level. As stated on the website of China Biodiversity Conservation and Green Development Foundation, many places in China have introduced local regulations involving stray dogs, but due to the low level of legal effect, insufficient law enforcement, too light penalties and insufficient supporting facilities, the feasibility of these regulations is poor.²⁷ Nevertheless, China implements registration of domestic dogs, it is necessary to obtain a permit to have a dog, there is a fee for its maintenance, restrictions on walking in unauthorized places as well as fines for violating these rules.²⁸

In 2019, Brazil adopted a law prohibiting euthanasia of animals except in cases where it is necessary for medical reasons.²⁹ The above brief overview leads to the conclusion that the international experience of a humane attitude to stray animals, which Russian animal rights activists like to refer to, indicates a widespread practice of euthanasia of stray animals that are not only ill (aggressive) but also

²⁵ Animal Welfare Act (247/1996, amendments up to 1430/2006 included)

<<https://www.finlex.fi/fi/laki/kaannokset/1996/en19960247.pdf>> (accessed September 23, 2024).

²⁶ Zakonozaštitiživotinja (NN 102/17, 32/19) <<https://www.zakon.hr/z/257/Zakon-o-zaštiti-životinja>> (accessed September 23, 2024).

²⁷ China local governments launch crackdown on dogs after child was mauled

<<https://www.theguardian.com/world/2023/oct/24/china-local-governments-launch-crackdown-on-dogs-after-child-was-mauled>> (accessed September 23, 2024).

²⁸ Emergency legal aid in China. Domestic animals <<https://chinahelp.me/pets>> (accessed September 23, 2024).

²⁹ Lei que proíbe a eutanásia de cães e gatos saudáveis foi aprovada <<https://www.jornalcontabil.com.br/lei-que-proibe-a-eutanasia-de-caes-e-gatos-saudaveis-foi-aprovada/>> (accessed September 23, 2024).



for which it is not possible to find new owners as of a particular day of keeping the stray animal in a state (municipal) shelter.

3.2. REGISTRATION AND OTHER METHODS OF REDUCING THE NUMBER OF STRAY ANIMALS: THE CURRENT SITUATION IN RUSSIA AND WAYS TO IMPROVE IT

Settlement of the issue of stray animals only by means of their capture and euthanasia will mitigate this problem, however, its complete resolution requires a whole set of organizational, economic, legal, veterinary, moral, ethical and other measures.

3.2.1. ORGANIZATIONAL MEASURES TO SOLVE THE ISSUE

Registration is one of the components of the set of measures to control the number of domestic animals. Legislation in most developed countries contains rules specifying that animals must be identified so that owners can be held legally liable. For now, Russia has successfully carried out the registration of farm, service, pedigree and some other animals. Consequently, subject to proper organization, this measure could be implemented also in relation to all companion animals (captured stray animals are already registered and chipped before their release back onto the street). A federal executive veterinary authority could carry out this registration (maintain the register), while veterinary clinics could directly enter data into the register. This will form the database of domestic animals and their owners and in case of capture of a marked stray animal on the street, it will be possible to hold its owner liable. Every domestic animal must have a veterinary passport, be chipped and vaccinated. Births and deaths of animals must be registered. After registration, a tax on domestic animals can be introduced (as it is done in some European countries) and spent specifically for the maintenance of shelters and the capture of stray animals. In this case, the transfer of stray animals from shelters to new owners can be made free of charge.

Microchipping all companion animals will resolve the issue of compensation for harm caused to citizens by bites of domestic dogs. In the event of bites of such a dog, the proof procedure in cases of compensation for the inflicted harm is simplified, since the chip will contain the individual number of the animal, according to which it is easy to identify its owner. Availability of chips will simplify also settlement of disputes about the ownership of lost animals that are taken by other people (Berry, 2010). In order to encourage cat and dog owners to register and microchip the animals, it is possible to discuss the following incentives (at the expense of regional or local budgets): their inclusion in special bonus programs (discounts on food, veterinary services and goods for animals), free educational programs (on animal care), admission to participation in state (municipal) exhibitions and competitions only for registered



animals, creation of convenient and simple municipal online services for pet registration and introduction of the system of moral incentives for owners.

Expansion of the use of the Internet in the work of shelters is another aspect of digitalizing the treatment of stray animals. In addition to posting photographs and text information about the animals kept there for the purpose of finding new owners, digital technologies can be used for the purpose of providing feedback for public authorities and the population (for example, by creating special online platforms where citizens could send information about packs of stray and aggressive dogs on the streets). Having received a request for their capture with a clear reference to the location, authorized officials could promptly go to the site and take aggressive animals without owners from the streets). It will be possible to monitor the movement of stray animals through a video surveillance system and certain models of chips will allow tracking of their movements.

Chipping and registration of companion animals will require awareness-building work with their owners regarding increasing the chances of finding and returning such animals to their owners if these animals get lost. The third organizational aspect of treating stray animals refers to changing the waste management system. The fact is that the size of the population of stray animals largely depends on the food resources, in particular, access to food waste. Various countries face this issue. For example, the number of stray dogs has been continuously growing in major cities in Nepal due to the surplus food available in municipal waste owing to a lack of proper disposal of household waste materials, which acts as the source of food for stray dogs (Acharya, 2023). In Russia as well, not all waste containers are equipped with a tightly closing lid that prevents animals from accessing their contents. The resolution of this issue will rapidly reduce the food resources for stray animals, which will decrease their number or lead to migration to suburban areas where landfills are located. Euthanasia of stray animals will not be efficient without the settlement of this issue. If the food resources are preserved, the size of the population of dogs will be the same soon. Moreover, the capture of all dogs and cats will lead to an increase in the population of crows, pigeons, rats and other similar animals, which will have worse consequences for the sanitary condition of cities than ill cats and dogs (Zhrebchikova & Afonyushkin, 2008). All this will require awareness-building work with the population regarding the inadmissibility of feeding stray cats and dogs near residential building entrances and on children's playgrounds (under the threat of bringing citizens to administrative liability if it is introduced).

3.2.2. LEGAL MEASURES TO SOLVE THE ISSUE OF STRAY ANIMALS

The question of ownership is one of the central issues of the legal status of stray animals. The Constitutional Court of the Russian Federation expressed its opinion on the inadmissibility of mandatory



attribution of stray animals to municipal property (without the consent of the municipalities themselves), courts of general jurisdiction collect non-pecuniary damages from local government bodies in case stray animals bite citizens (in a similar manner, these damages are collected from owners of private dogs). The Federal Law "On Responsible Treatment of Animals..." regulates only issues of public safety rather than ownership, the Civil Code does not say anything about ownership of stray animals either. In our view, this issue should be resolved in favor of the regulatory establishment of municipal ownership of stray animals since there is a direct analog for this solution: stray farm animals, after six months from the date of their discovery, become the property of the citizen with whom they stay during this time, and in case of this citizen's refusal, they become municipal property.

Another important legal question relates to the terminology. The Federal Law "On Responsible Treatment of Animals..." uses the term animals without owners, which, in our view, is not optimal. The fact is that also many other species of animals are "without owners", for example, wild animals, as well as crows, pigeons, sparrows and rats living in cities but not covered by any law. If we want to define the terminology, then the term neglected animals should be used to refer to farm animals that have temporarily lost their owners (these animals are mentioned in the Civil Code), and the term stray animals should be used to refer to companion animals abandoned by their owners in settlements.

The third problem is that illegally imported exotic animals (parrots, crocodiles, ostriches, etc.) are sometimes confiscated from citizens. The current procedure for treating confiscated wild animals in captivity, the return of which to their habitat is impossible, does not provide for their euthanasia although this would be the simplest and most logical path.

Fourth, in Russia, Article 8.54 of the Code of Administrative Offenses is dedicated to administrative liability for violating the rules of treating animals without owners. The said Article does not provide for the liability of animal shelter owners for non-compliance with the requirements for activities involving treatment of animals as well as for non-compliance with the *requirements* for activities involving treatment of animals without owners. In the latter case, the law does not specify which *requirements* exactly, however, it is obvious that it refers to the rules stipulated by the federal laws. Since Russia is a federal state, its constituent entities have additional powers to treat stray animals. It is necessary to include new sets of elements of offenses in regional codes of administrative liability (liability for failure to register a domestic animal, for non-compliance of local government bodies with the schedule for catching animals in the territory of urban districts and municipal districts and with the procedure and time frame for responding to citizens' requests for catching animals without owners, liability of owners for leaving their dogs outside on their own, etc.).

The fifth legal issue of treating stray animals is that animals can experience not only physical suffering but also emotions (which is recognized at the legislative level). This provides sufficient grounds for raising the question of the possibility of enshrining also the mental suffering of animals as one of the additional grounds for their euthanasia in the federal law (along with the already stipulated physical suffering).

3.2.3. MORAL AND CULTURAL MEASURES TO SOLVE THE ISSUE

A humane attitude to stray animals must be developed by means of educational courses in environmental ethics in preschool, secondary and higher educational institutions (Gorbunov, 2013). It is necessary to encourage public activity and involve children in volunteer activities, including through the development of a system of private shelters and the participation of children in their work. Measures of state information support of social associations creating (participating in the work of) shelters for stray animals should be developed. It is very important to disseminate information about the problems of stray animals and the need to care for them through the media (radio, television) and through social networks on the Internet, to introduce a system of temporary adoption of animals from shelters by individual citizens with active support from public authorities, to organize drawing competitions and concerts in support of a humane attitude to animals and to develop awareness-raising activities of citizens.

CONCLUSION

The degree of moral health of society can be determined by how it treats those who are unable to take care of themselves – children, the disabled and animals. This problem has several important aspects in relation to stray animals. On the one hand, their emergence indicates the low level of legal and moral culture of society, including violation of the current rules for keeping animals by animal owners. On the other hand, many small tragedies of domestic animals left without owners lead to public problems associated with the deterioration of the sanitary condition of municipal territories and the threat to the life and health of citizens from bites and diseases common to humans and animals. The settlement of this problem requires a set of organizational, legal, cultural, moral and other measures. They include introducing mandatory registration of all domestic companion animals, changing the waste management policy, resolving ownership issues, clarifying the legal terminology, organizing an awareness-raising campaign to support a humane attitude to stray animals and a number of other measures. Another question is using euthanasia for stray animals. At the moment, the Constitutional Court speaks in favor of expanding the grounds for euthanasia at the level of regional laws. This legal position must lead to the



emergence of new legislative wordings that will put in order this procedure and take into account the distinctive features of the region. The following arguments can be given for and against euthanasia of animals without owners. The arguments for the expansion of this measure will include humaneness (relief of animals experiencing severe pain due to diseases and injuries from the suffering), reduction of the financial burden on regional budgets and decrease of the population of stray animals which will reduce the spread of diseases and attacks on humans. The arguments against euthanasia of stray animals: ethical objections (all living beings have the same right to life and humans have no right to kill other living beings); the possibility of healing (if euthanasia is prohibited, the animal can recover and continue to live) and the risk of abuse (shelters can kill animals rather than treat them). Our position in this discussion is that it is necessary to thoroughly search for a balance of interests of citizens, society and the state regarding the grounds and the procedure for euthanasia of stray animals and to consider the specific economic features and the public opinion of residents of the regions.

The reduction of the number of stray animals will improve the sanitary situation in cities, minimize the risk of bites and diseases transmitted by them and decrease the number of offenses related to cruelty to animals and the number of car accidents involving stray animals as well as moral stress for children who daily observe the suffering of stray cats and dogs. The expansion of powers of constituent entities of the Russian Federation in the field of treating animals without owners makes it necessary for legal scholars to develop a special model regional law that includes the entire list of possible measures stipulated by the federal laws for treating animals without owners. In this case, representative authorities of the regions will be able to choose those measures that they consider necessary. In addition to this, the Plenum of the Supreme Court of the Russian Federation must adopt a resolution regarding the issues of compensation for non-pecuniary damage caused to citizens by bites of animals without owners as well as the practice of application of other federal and regional laws on euthanasia, maintenance in shelters, vaccination of animals, etc.

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