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ZAPORIZHZHYA NATIONAL UNIVERSITY

TETYANA KOLOMOYETS

t_deputy@ukr.net

ORCID ID: <https://orcid.org/0000-0003-1101-8073>

OLEKSII MAKARENKO

almak17@ukr.net

ORCID ID: <https://orcid.org/0000-0003-0042-165X>

Corruption Risks in the Field of Public-Legal Protection of Animals: Case of Ukraine

*Ryzyko korupcji w zakresie wykonywania uprawnień na rzecz
publicznej ochrony zwierząt – doświadczenia ukraińskie*

Introduction

Animals are an integral part of human life. Their vulnerability is objective and therefore they need protection. It acquires a public character in so far as the magnitude of the harmful effects on animals and the consequences of harm to them affects all. Accordingly, state intervention is necessary. Moreover, the more highly developed a nation, the greater its legal protection is created to protect the animals that live in its ecosystem. At the same time, it is real and effective. People in such a society are consciously seeking to preserve the biological diversity of

animals, because natural balance depends on it and there is no other way of maintaining it. Man is not subject to the laws of nature. Loss of the species or kind of any animal is irreversible. Man is called to prevent injustice against animals, to exclude their suffering. Such kind of people lives in open societies. Ukrainian society is transitive, it is still trying to open its institutions for sustainable progress. Our citizens are sensitive and good, the cultural level of most of them allows the animals to feel comfortably. However, the big problem is that the rest of our society does not respect the rights of animals, and public administration is not effective in exercising its own jurisdictional activity in the field of legal protection of animals. Often, due to frivolity and/or due to the misappropriation of the benefits, officials allow inhumane treatment of animals, their death, etc.¹.

The main aim of this work is to reveal the corruption risks in the field of public-legal protection of animals, based on the relevant experience of Ukraine. The hypothesis of the research is that realization of the corruption risks in the field of public-legal protection of animals in Ukraine is high and this makes such protection ephemeral.

The purpose of this work has resulted in the comprehensive use of methodological tools of dialectical and formal logic, formal-dogmatic, hermeneutical, systemic, sociological and other methodological approaches.

The information base of the study includes the works of domestic scientists. Among them are: N.S. Bondarenko who investigated the administrative and legal protection of the animal world; I.A. Gorodetska who explored legislative and scientific approaches to the concepts of “protection of the animal world”, “the use of the animal world”, “reproduction of the animal world”; signs of public relations in the field of protection, use and reproduction of the animal world as an object of legal regulation; L.R. Danyliuk who studied legal regime of hunting natural resources under the legislation of Ukraine; S.F. Denisov who examined criminal-law protection of animal life; T.V. Yermolayeva who analyzed the Red Book of Ukraine as an Effective Mechanism for the Conservation of Biodiversity; O.A. Kaminska and I.M. Gaidai who verified animal life as an object of legal protection; V.I. Knysh who considered the concept of legal protection of objects of the animal world; L.D. Nechyporuk who examined the ecological and legal regulation of rational use of objects of fauna, protection of these objects in accordance with national and

¹ *In the Carpathians killed lynx listed in the Red Book*, <https://www.segodnya.ua/regions/lvov/v-karpatah-lesniki-ubili-ryx> [access: 14.11.2017]; *In Transcarpathia, reserve workers killed a female deer and bear*, <https://www.segodnya.ua/regions/lvov/na-zakarpate-rabotniki-zapovednika-ubili> [access: 7.11.2017]; *In the estuary there was a mass death of the pelengas*, https://gazeta.ua/articles/regions/_u-limani-stalasya-masova-zagibel-pelengasa/794548 [access: 25.09.2017]; *Zoo defenders blocked the Black Sea port to save the dying sheep*, <http://dumskaya.net/news/odesskie-volontery-i-neravnodushnye-brokeriy-zabl-091511> [access: 24.10.2018].

international legislation; V.P. Novitsky who reviewed the problems of political and legal provision of hunting economy of Ukraine; Y.S. Petlyuk who explored animal life as an object of ecological-legal regulation; H.I. Chopko who researched into ecological and legal measures to preserve the species and populations of wild animals. Among the scientists from Poland one can find: J. Boć, E. Samborska-Boć, G. Rejman who explored animal legal protection, humanitarian protection of animals, penal provisions in the animal protection laws and on animal experiments, etc.; A. Elżanowski, L. Jastrzębski, B. Kurzępa, M. Mozgawa, R. Paczusi and other scholars whose scientific works in the field of environmental law include animal protection in Poland. To date, however, the aspect of the corruption risks in the field of public-legal protection of animals remains not fully resolved. This is determined by the political, practical and theoretical relevance of our research.

Socio-legal conditions of corruption risks and definition of the concept of public-legal protection of animals

Environmental studies have shown that if you break the natural equilibrium in any ecosystem, it can cause unplanned consequences, which are often dangerous to humans and many other living organisms². Anthropogenic impact is one of the essential factors that leads to the disturbance of the ecological balance.

Anthropogenic influence on the living environment during the development of human civilization intensified, its scale and forms of manifestation changed. There are grounds to argue that in our days there is a synergistic anthropogenic impact on the environmentally interconnected components of the biosphere³, in particular, the animal and plant worlds. These worlds form the essence of nature and allow to outline at least two subject areas of anthropogenic influence. Tourism, hunting and farming are the main forms of destruction of living conditions and reproduction of animals living in a natural environment. The vulnerability of this category of animals also increases due to the breeding of domestic animals for economic or business purposes. Own livestock breeding, as well as breeding and keeping domestic animals for satisfaction of communication and aesthetic interests of a person creates additional anthropogenic pressure in the field of wildlife. Simultaneously, L.D. Nechyporuk rightly stressed that the animal world is one of the main components of the natural environment, the national wealth

² N.I. Voichen, Yu.M. Andreychuk, B.S. Zhdanyuk, *Analysis of anthropogenic loading on the natural environment of the Rivne region. Man and the environment*, "Problems of Neoecology" 2016, No. 1–2, pp. 77–82.

³ S.M. Stoyko, I.B. Koinova, *Modern types of anthropogenic influence on the living environment*, "Ukrainian Geographic Journal" 2012, No. 1, pp. 50–57.

of Ukraine, a source of spiritual and aesthetic education of people, the object of scientific research. It is a self-sufficient value that ensures the functioning of all ecosystems, in particular it supports cycling and purification of natural waters, soil conservation and climate stability. At the same time, the animal world is also an important basis for industrial and medicinal raw materials, food products and other tangibles⁴.

The existing conditions of interaction of man with other living beings of the environment indicate the vulnerability of animals to humans and the need for their legal protection, which will guarantee the preservation of ecological balance. Under the legal protection of animal life, it is appropriate to understand the system of legal norms aimed at regulating the activities of state and non-state actors related to the conservation, rational use and reproduction of objects of the animal world (use of the fauna⁵), as well the imposition of sanctions on persons who do not comply with these norms and do not encourage the livelihoods of fauna. The legal protection of the animal world is carried out in several directions, namely: preservation of the genetic fund of animal communities; protection of the environment where animals live; organization of rational use of the objects of the animal world, regulation of the number of animals and their reproduction⁶. In this context, the concept of animal welfare covers relations related to the protection and rational use of domestic animals, especially as regards their protection as carriers of the gene pool, for example, by creating tribal enterprises and genetic banks of aboriginal rocks⁷.

The indicated objective relationships of social relations in the field of animal welfare led to the creation of a system of institutions. The public-power nature of these institutions is manifested in their creation of the norms of law for the normal course of environmental relations and the use of coercion for the implementation of such norms. Historically, in Ukraine and a number of other countries, animals are recognized as objects of legal relations. Although in some states there are processes of recognition of animals by actors of law, acting through their representatives – people. For example, the Uttarakhand (Republic of India) court found that animals were legal entities and prohibited the use of spikes or other acute implements on animal farms, arguing that if the temperature exceeds 37°C or drops below 5°C, animals cannot be used in a har-

⁴ L.D. Nechyporuk, *Ecological and legal regulation of rational use of objects in the animal world*, author's dissertation abstract (12.00.06), Kyiv 2009, p. 3.

⁵ *Ibidem*, p. 13.

⁶ V.I. Knish, *Concerning the concept of legal protection of objects in the animal world*, "The Forum of Law" 2010, No. 1, pp. 153–158.

⁷ L.D. Nechyporuk, *op. cit.*, p. 16.

ness⁸. On the territory of the Carpathians of modern Ukraine in ancient times, animals were recognized as subjects, in particular, there were courtships over bears, that is, bear was the subject of a legal relationship⁹. In any case, civilized states create a complex system of rules for handling animals in order to prevent their unjustified suffering, mistreatment of them and similar violations of the law and order of the society open to progress. Ukraine has criminal liability for the ill-treatment of animals (Art. 299 of the Criminal Code of Ukraine of 5 April 2001, No. 2341-III). Criminal punishment applies to actions involving vertebrate animals, including homeless animals, which have been committed intentionally and resulted in the death of an animal, as well as the instigating or promoting fights between animals, committed from hooligan or mercenary motives, public appeals to commit acts that have signs of ill-treatment of animals, as well as the dissemination of materials calling for such actions. Administrative responsibility is stipulated for violation of the rules of using the objects of the animal world and for a number of other acts that violate the procedure for relations with the use of animals (defined in the Code of Ukraine on Administrative Offenses dated December 7, 1984, No. 8073-X).

The subjects of public administration and the scope of their responsibility for the public-legal protection of animals as the basis of corruption risks

The social significance described above of the need to comply with ecological balance as a result of anthropogenic impact on animals will make the state's participation in the person of its authorized bodies in legal regulation, protection and protection of nature more relevant. In particular, only state resources may be sufficient to streamline public relations that arise during this influence and optimize it at a level that preserves natural living conditions and reproduction of animals. The prevention of offenses against animals, the establishment of the circumstances of the illicit handling of animals and the proper management of animal protection fall within the remit of the following public administration bodies in Ukraine:

The Ministry of Ecology and Natural Resources provides normative and legal regulation in the field of rational use, reproduction and protection of wildlife

⁸ *Animals like humans: in the Indian state, they equaled their rights*, <https://life.pravda.com.ua/society/2018/07/6/232017/> [access: 6.07.2018].

⁹ O.A. Ustimenko, *About possibility of perception of an animal as a subject of civil rights: Some general theoretical aspects*, "The Forum of Law" 2014, No. 1, pp. 497–501.

objects; issues permits for the special use of objects of the animal world, the abandonment of wild animals and others.

The State Service of Ukraine for Food Safety and Consumer Protection carries out state veterinary and sanitary control, state supervision (control) of compliance with sanitary legislation, health and welfare of animals, safety and separate indicators of quality of food products, inedible products of animal origin, reproductive material, tribal affairs in livestock breeding, pathological material, veterinary preparations, substances, feed additives, premixes, fodder and other objects, the use of veterinary-sanitary measures, preventive and anti-epidemic measures to protect the territory of Ukraine from spreading of human, animal and plant diseases from other states or quarantine zones.

The State Forestry Agency of Ukraine exercises state control over observance of legislation in the field of hunting, provides protection of the state hunting fund and measures to regulate the number of hunting and predatory. In accordance with Art. 89–91 of the Forest Code of Ukraine dated January 21, 1994, No. 3852-XII, specified in the “Regulation on State Forest Protection”, approved by the decision of the Cabinet of Ministers of Ukraine dated September 16, 2009, No. 976, the state agency of forest protection was created within this agency and its territorial bodies. It has the status of a law enforcement agency.

The State Agency Fish Industry of Ukraine carries out state supervision (control) in the field of protection, use and reproduction of water bioresources, in particular through its law enforcement unit, which is called fish protection. This unit, in accordance with the norms of the Laws of Ukraine “On Environmental Protection” of 25 June 1991, No. 1264-XII and “On the Fauna” of 3 March 1993, No. 3041-XII, applies a system of measures aimed at preservation, reproduction and rational use, protection and improvement of the living conditions of living aquatic resources.

Consequently, the powers of public administration entities in the field of public-legal protection of animals represent a substantive basis for corruption risks. The competence of the described bodies of public administration is defined in the relevant regulations on them, which were approved by the Cabinet of Ministers of Ukraine during 2014–2015. All of these bodies have jurisdictional powers, namely: they have the right to file documents on the commission of an administrative offense and to bring it to justice. At the same time, forest protection and fish protection authorities have the right to use coercion, including the use of firearms or other weapons in accordance with the rules established by law. Simultaneously, these bodies have limited staff and often work together with the police. After all, the most complete coercion with regard to violators of the legal status of animals and all procedural elements of its application are manifested in the law enforcement function of the National Police of Ukraine (Law of

Ukraine “On National Police” of 7 July 2015, No. 580-VIII, Criminal Procedure Code of Ukraine of 13 April 2012, No. 4651-VI). It is the basic body and the most powerful law enforcement agency in Ukraine. National Police provides pre-trial proceedings in cases of violation of legal relations with animals.

Corruption risks in the implementation of public authority in the field of legal protection of animals

Altogether, the above-mentioned problems of human adverse effects on the living conditions of wild animals, the breeding and use of domestic animals and the powers of the public administration bodies on the protection of all animals, which include the possibilities of coercion and weapons, become a favorable environment for the spread of corruption, that is, abuse of trust power in order to obtain personal gain¹⁰. Today in our country, one of the priority areas in the field of prevention of corruption is the timely detection of corruption risks that arise in the activities of civil servants, as well as the elimination of the conditions and causes of these risks¹¹. The aggregate of legal, organizational and other factors that give rise to, encourage individuals to commit corruption offenses while performing their functions of the state or local government are termed “corruption risks”.

Corruption risks in the work of public administration in the field of protection of animals are probability factors (legal, social, organizational) and causes that induce officials of these bodies to commit corruption offenses or offenses related to corruption, which negatively affect the achievement of the objectives and tasks defined in the legislation in the field of animal protection. The following are the main types of corruption risks in the field of public and animal protection. Personal corruption risks are manifested in insecurity; the emergence of a conflict of interest (non-compliance with restrictions on the work of close persons); lack of control of the management and availability of discretion and failure restrictions on the use of official position, receiving gifts, disclosure or use other means to take advantage of the information that has become known in connection with official authority. Normative legal risks are caused by the absence, contradictory or unclear provisions in the legislation regarding the exercise of powers. Also, we distinguish between law enforcement/organizational, personnel (related to recruitment, attestation, dismissal), financial and economic, administrative and

¹⁰ *The Anti-Corruption Plain Language Guide: Report*, Berlin 2009, p. 14.

¹¹ S.O. Shatrava, *Administrative and legal principles of corruption prevention in the bodies of the National Police of Ukraine*, dissertation for obtaining LLD degree (12.00.07), Kharkiv 2017, p. 103.

control-supervisory risks¹². All these risks appear in the process of professional activity of civil servants or influence its legality. Hierarchical factors determine the inertia of corruption, which can be extended from the higher level of management to the lower level and *vice versa*, or can also be manifested in the actions of employees of a separate structural unit or official. For example, the emergence of corruption risk is directly related to internal organizational and managerial activities in the public administration body, in accordance with its functions and tasks for the protection of animals.

Conclusions

As mentioned above, the public-legal protection of animals in Ukraine is affected by corruption. The prevention of offenses against animals, the establishment of the circumstances of the illicit handling of animals and the proper management of animal protection is entrusted in our state to four public administration bodies and one basic law enforcement agency. However, the corruption intentions of the employees of these bodies often lead to the death and/or torture of animals. Among the most common corruption risks in the field of study are obsolete legislation and gaps in it, which allows civil servants to evade their duties, to demand bribes for the speedy performance of their work, for example, issuance of certificates for the export of animals abroad, the issuance of permits for hunting or the import of animals from abroad, the timely adoption of adequate measures to save animals, eliminate the dangers to their health, etc. In addition to the corruption risks of regulatory and organizational content, their large volume is due to the ill-fated nature and intentions of the official himself who seeks to profit and despises his duty. This type of corruption risk is the most complicated, because it requires changing the qualities of the person in the soul at the level of understanding of a number of deep shades, intricacies and differences between the concepts of good and evil, both during the formation of his personality and during his professional development.

¹² *Ibidem*, pp. 195–196.

References

- Animals like humans: in the Indian state, they equaled their rights*, <https://life.pravda.com.ua/society/2018/07/6/232017/> [access: 6.07.2018].
- In the Carpathians killed lynx listed in the Red Book*, <https://www.segodnya.ua/regions/lvov/v-karpatah-lesniki-ubili-rys> [access: 14.11.2017].
- In the estuary there was a mass death of the pelengas*, https://gazeta.ua/articles/regions/_u-limani-stalasya-masova-zagibel-pelengasa/794548 [access: 25.09.2017].
- In Transcarpathia, reserve workers killed a female deer and bear*, <https://www.segodnya.ua/regions/lvov/na-zakarpate-rabotniki-zapovednika-ubili> [access: 7.11.2017].
- Knish V.I., *Concerning the concept of legal protection of objects in the animal world*, "The Forum of Law" 2010, No. 1.
- Nechyporuk L.D., *Ecological and legal regulation of rational use of objects in the animal world*, author's dissertation abstract (12.00.06), Kyiv 2009.
- Shatrava S.O., *Administrative and legal principles of corruption prevention in the bodies of the National Police of Ukraine*, dissertation for obtaining LLD degree (12.00.07), Kharkiv 2007.
- Stoyko S.M., Koinova I.B., *Modern types of anthropogenic influence on the living environment*, "Ukrainian Geographic Journal" 2012, No. 1.
- Ustimenko O.A., *About possibility of perception of an animal as a subject of civil rights: Some general theoretical aspects*, "The Forum of Law" 2014, No. 1.
- The Anti-Corruption Plain Language Guide: Report*, Berlin 2009.
- Voichen N.I., Andreychuk Yu.M., Zhdanyuk B.S., *Analysis of anthropogenic loading on the natural environment of the Rivne region. Man and the environment*, "Problems of Ne-oecology" 2016, No. 1–2.
- Zoo defenders blocked the Black Sea port to save the dying sheep*, <http://dumskaya.net/news/odesskie-volontery-i-neravnodushnye-brokery-zabl-091511/> [access: 24.10.2018].

Abstract: The article deals with the corruption risks in the field of exercising the powers of public-legal protection of animals. It is proved that such risks represent a system of spiritual, cultural, legal, organizational, economic, political and other factors that enable and/or encourage officials of public administration bodies to commit corruption offenses while exercising their authority in the field of animal protection. The essence of these factors is outlined, the specifics of which are determined by the nature of the subject of legal protection, the content and subjects of the implementation of public authority powers, the hierarchical level of their implementation. Wild and domestic (pets and homeless) animals in Ukraine are protected by the structures of the Ministry of Ecology and Natural Resources of Ukraine, the State Service of Ukraine for Food Safety and Consumer Protection, the State Forestry Agency of Ukraine and the State Fisheries Industry Agency of Ukraine, as well as local public authorities and community groups. Corruption risks are specified on examples of these bodies, including those that make use of their discretionary powers or those which are not granted adequate powers. It has been found that these risks are also due to structural deficiencies, a low level of legal culture among officials and their socioeconomic and/or legal insecurity.

Keywords: anthropogenic influence; culture; corruption risks; legal protection; nature; natural resources; public administration; animals

Streszczenie: Artykuł dotyczy ryzyka korupcji, które towarzyszy wykonywaniu uprawnień w zakresie publicznoprawnej ochrony zwierząt. W ocenie autorów ryzyko to generują różnorodne czynniki o charakterze kulturowym, prawnym, organizacyjnym, ekonomicznym, politycznym itp., które umożliwiają urzędnikom popełnianie przestępstw o charakterze korupcyjnym i/albo ich do tego motywują. Autorzy podkreślają, że opisywane przez nich ryzyko korupcji determinowane jest również niską kulturą prawną osób piastujących funkcje publiczne oraz działaniem przez nie w warunkach niepewności społeczno-ekonomicznej i/lub prawnej. Na Ukrainie zwierzęta dzikie i domowe (w tym zwierzęta bezdomne) jako przedmioty ochrony prawnej znajdują się pod ochroną Ministerstwa Ekologii i Zasobów Naturalnych Ukrainy, Państwowej Służby Ukrainy ds. Bezpieczeństwa Produktów Spożywczych i Ochrony Praw Konsumentów, Państwowej Agencji Zasobów Leśnych Ukrainy, Państwowej Agencji Rybołówstwa Ukrainy oraz organów terenowych administracji państwowej i organizacji społecznych. Przedmiotowe zagrożenie zostało przedstawione na przykładzie realizacji kompetencji powierzonych wyżej wymienionym organom, w tym przysługujących im uprawnień dyskrecyjnych.

Słowa kluczowe: wpływ antropologiczny; kultura; ryzyko korupcji; ochrona prawna; środowisko; zasoby naturalne; administracja publiczna; zwierzęta