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Articles

Studia Iuridica Lublinensia vol. XXX, 3, 2021
DOI: 10.17951/sil.2021.30.3.29-45

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Implementation of the Provisions of the European Convention for the Protection of Pet Animals into Ukrainian Legislation: Some Theoretical and Applied Aspects

Implementacja norm Europejskiej konwencji o ochronie zwierząt domowych do ustawodawstwa Ukrainy. Wybrane aspekty teoretyczne i praktyczne

ABSTRACT

European integration processes in Ukraine have led to the approximation of national legislation to European standards, including pet handling. The first and currently the only ratified European convention in Ukraine on protection and ensuring animal welfare is the European Convention for the Protection of Pet Animals. The article describes the major doctrinal, legislative and practical aspects of implementing this Convention into Ukrainian law. The legal regulation of the humane treatment of domestic animals in Ukraine is based on the Law of Ukraine on the protection of animals from cruel treatment, its provisions being of a general nature, and detailed solutions are found in other

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Data: 20/11/2026 13:53:03

laws and regulations. Detailed rules for dealing with pets are determined by municipalities and they are implemented in the relevant administrative and territorial units. The concept of "animal rights", despite its proclamation in the preamble to the Law of Ukraine on the protection of animals from cruel treatment, has no formal legal representation and reflection in Ukrainian legislation. Nevertheless, Ukrainian legal academic doctrine, legislative process and law enforcement practice are currently embodying the concept of animal welfare. The development and implementation of a coherent legal mechanism for pet handling is the major contributing factor in achieving pet welfare, therefore Ukraine needs a clear strategy to improve its legal regulation.

Keywords: pets; ensuring animal welfare; protection of animals from cruel treatment; animal rights; European Convention for the Protection of Pet Animals; Ukraine

INTRODUCTION

The issue of ensuring humane animal handling and animal welfare is of particular importance with regard to pets that are in constant close contact with humans and are directly dependent on them. For Ukraine, this issue has current significance for a number of reasons: a large number of pets; an increase in the number of stray animals and lack of necessary organisational and financial support for their upkeep and prevention; an increase in animal cruelty offences; lack of a systematic unified approach to laws and regulations governing pet handling; lack of the established social culture of humane animal handling, etc. In Ukrainian legal doctrine, research into this issue today is fragmentary and narrowly focused, since humanistic approaches to animal handling in Ukraine's legal theory, lawmaking and legal practice were initiated only at the beginning of the 21st century. In the meantime, the priority of the legal policy of the state in recent years has been to become a member of the EU (European Union) and to adapt national legislation to the requirements of EU law. The European Convention for the Protection of Pet Animals[1] is the only European convention in the field of animal protection and welfare ratified by Ukraine.

The purpose of this article is to outline the main aspects of the implementation of the European Convention for the Protection of Pet Animals in Ukraine from theoretical, legislative and law-enforcement perspectives. The study used the method of systemic analysis to identify and systematise the laws and regulations governing pet handling, the comparative law method to analyse the compliance of national legislation with the provisions of the Convention, the formal legal method to present and interpret the content of basic concepts, principles, requirements for animal protection, as well as the modeling and forecasting method to develop recommendations for improving the legal regulation of pet handling.

[1] European Convention for the Protection of Pet Animals signed in Strasbourg on 13 November 1987, ETS no. 125.

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Data: 20/11/2026 13:53:03

RESEARCH AND RESULTS

1. Ukraine's legislation on pet protection

Ukraine's adoption of laws and regulations aimed at ensuring pet protection is undoubtedly the result of the influence of international and European communities. Considerable significance among these legal acts is attached to the Law of Ukraine on the protection of animals from cruel treatment,[2] adopted by the Verkhovna Rada of Ukraine in 2006.[3] According to legal scholars, the adopted law for the first time in Ukraine created "a comprehensive legal basis for the activities of state and local authorities, law enforcement agencies and non-governmental organizations regarding the protection of animals from cruelty".[4] Despite the fact that at the time of its adoption Ukraine had not yet signed or ratified the European Convention for the Protection of Pet Animals and other Conventions related to animal protection, it for the first time "albeit implicitly implemented the recognized in Europe principle of the value of life and the right of a living being to live without suffering".[5] Article 9 of the Law of Ukraine on the protection of animals from cruel treatment contains approaches to regulation, basic requirements, prohibitions and responsibilities in relation to pet handling. Directions regulating pet handling are also contained in the other Articles of the Law, which define approaches to veterinary care, animal transportation, humane slaughter, establishment of animal shelters, etc. Nevertheless, the adopted Law is only of a general nature and establishes basic provisions for animal handling. Certain requirements for pet handling are also defined by the Law of Ukraine on Veterinary Medicine.[6] Penalties for cruelty to pets are stated in the Criminal Code of Ukraine[7] and the Code of Ukraine on Administrative Offences.[8]

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[2] Law of Ukraine of 21 February 2006 on the protection of animals from cruel treatment (Official Bulletin of Ukraine 2006, no. 11, item 692, as amended).

[3] For more information on the features and scope of this Law, see N. Kobetska, *The Use of Animals for Entertainment Purposes: The Requirements of Ukrainian Legislation and the Practice of Their Implementation*, [in:] *Legal Protection of Animals*, eds. E. Kruk, G. Lubeńczuk, H. Spasowska-Czarny, Lublin 2020, pp. 227–229.

[4] T.R. Korotkiy, N.I. Zubchenko, *Obespechenie blagopoluchiya zhivotnyh i ih zashchita ot zhestokogo obrashcheniya: ot eticheskih norm k mezhdunarodno-pravovomu regulirovaniyu*, "Mezhdunarodnoye pravo i mezhdunarodnyye organizatsii / International Law and International Organizations" 2014, vol. 3, p. 374.

[5] T. Meteleva, *Zashchita zhivotnyh kak moralnaya problema i ee pravovye aspekty v svete evropejskogo opyta*, "Ukrainian Journal of International Law" 2013, p. 66.

[6] Law of Ukraine of 25 June 1992 on Veterinary Medicine (Bulletin of the Verkhovna Rada of Ukraine 1992, no. 36, item 531).

[7] Criminal Code of Ukraine of 5 April 2001 (Official Bulletin of Ukraine 2001, no. 21, item 920, as amended).

[8] Code of Ukraine on Administrative Offenses of 7 December 1984 (Bulletin of the Verkhovna Rada of Ukrainian SSR 1984, no. 51, item 1122, as amended).

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 13:53:03

The amendments to these Codes, introduced in 2017, significantly augmented the responsibility for abusing animals, including stray animals.

Contributory to the development of the Law of Ukraine on the protection of animals from cruel treatment are the following regulations of the Government and ministries that have been adopted and are in force: Regulations on animal transportation,[9] Regulations on animal shelters,[10] Veterinary and sanitary requirements for keeping animals in shelters,[11] and others. Detailed regulations on keeping pets are adopted by local governments and operate within a city or a territorial community[12] (a unit of administrative division in Ukraine).

The process of improving and amending the Law of Ukraine on the protection of animals from cruel treatment continues to this day. Significant amendments were made to it in 2017, and in July 2020, the Verkhovna Rada of Ukraine registered a bill amending certain laws on responsible handling of domestic and wild animals kept in captivity, which also provides for amendments to the above Law, first and foremost, regarding the identification and registration of animals.

2. The categories of "animal welfare", "the protection of animals from cruelty", "animal rights"

The European Convention for the Protection of Pet Animals establishes the major role of the concept of animal welfare in the legal regulation of animal handling. Along with the concept of "animal welfare", it is necessary to clarify the concepts of "the protection of animals from cruelty", "animal rights" and their representation in Ukrainian legislation.

The World Organisation for Animal Health (OIE) defines the term "animal welfare" indicating that "an animal is coping with the conditions in which it lives. An animal is in a good state of welfare if (as indicated by scientific evidence) it is healthy, comfortable, well nourished, safe, able to express innate behavior, and if it is not suffering from unpleasant states such as pain, fear, and distress".[13]

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[9] Resolution of the Cabinet of Ministers of Ukraine of 16 November 2011 no. 1402 on adopting the regulations on animal transportation (Official Bulletin of Ukraine 2012, no. 8, item 294, as amended).

[10] Order of the State Committee of Veterinary Medicine of Ukraine of 15 October 2010 no. 439 on adopting the regulations on animal shelters (Official Bulletin of Ukraine 2010, no. 85, item 3013).

[11] Order of the State Committee of Veterinary Medicine of Ukraine of 15 October 2010 no. 438 on adopting the veterinary and sanitary requirements for keeping animals in shelters (Official Bulletin of Ukraine 2010, no. 85, item 3012).

[12] At present, such regulations are adopted in most Ukrainian cities. Some of them are analysed further in this study.

[13] www.oie.int/doc/ged/d5517.pdf [access: 1.02.2021].

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 13:53:03

The concept of "animal welfare" is common in European countries nowadays. In Ukraine, "animal welfare" is legally defined as "the conditions in which an animal lives, including systematic care, proper feeding, appropriate facilities, disease prevention, humane handling, humane slaughter".[14] It should be noted that this definition is not contained in the Law of Ukraine on the protection of animals from cruel treatment but in the Law of Ukraine on feed safety and hygiene[15] and is based on the requirements for the conditions of keeping animals, which from a formal legal point of view can be defined and monitored. In 2020, the bill on veterinary medicine and animal welfare, which was to become a new version of the Law of Ukraine on veterinary medicine, was discussed and considered for adoption.[16] On 4 February 2021, it was adopted by the Verkhovna Rada of Ukraine. In the final version, its name was left as the Law of Ukraine on veterinary medicine. The Law includes an independent chapter VI "Animal Welfare". Although in the approved version, in most articles of this chapter, the term "domestic animals" is replaced by the term "farm animals",[17] some of the requirements for ensuring animal welfare applies to pets as well. It also interprets the notion of "animal welfare" differently as "the state of meeting the physiological and ethological needs of animals by creating appropriate conditions for their breeding, keeping and transportation, including systematic care, proper feeding, watering and humane animal handling, including slaughter, that eliminates fear, pain and suffering and ensures the freedom of expression of animals' typical behaviours". The Law of Ukraine on the protection of animals from cruel treatment, adopted on the basis of a traditional Soviet-era approach to "the protection of animals from cruelty", does not define this concept, but it regulates a much wider range of relations as regards animal protection and handling. In fact, it aims to determine the basic principles of animal welfare, including pets.

Ukrainian research papers propose the following differentiation between the above-mentioned concepts:

> The word "protection" implies action, and "welfare" is a result of this action. Following from the above, the relationship between the concepts of "animal welfare" and "the protection of animals from cruelty" can be defined as a correlation between action that generates a result. In this case, an anthropocentric approach to animal handling becomes a nature-centric approach.[18]

[14] Article 1 of the Law of Ukraine of 21 December 2017 on feed safety and hygiene (Official Bulletin of Ukraine 2018, no. 9, item 332, as amended).

[15] *Ibidem*.

[16] Proekt Zakonu pro veterynarnu medytsynu ta blahopoluchchya tvaryn, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68554 [access: 1.02.2021].

[17] According to the legal definition, domestic animals include pets and farm animals.

[18] N.I. Zubchenko, *Mizhnarodno-pravove spivrobitnytstvo derzhav u sferi zabezpechennia dobrobutu tvaryn ta yikh zakhystu vid zhorstokoho povodzhennia*, Odesa 2016, p. 62.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 13:53:03

As regards the concept of "animal rights", it has no formal legal representation in Ukrainian legislation, despite the fact that the preamble to the Law of Ukraine on the protection of animals from cruel treatment declares that it is "aimed at […] the protection of their natural rights". The concept of "animal rights" is analyzed in some studies by Ukrainian legal scholars from a philosophical, legal, ethical standpoint,[19] in others – criticized and questioned.[20] It is worth agreeing with the conclusion that "the ethical and philosophical principles of the concept of animal rights are far ahead of the legislative practice concerning the legal regulation of the standards of animal welfare and protection".[21]

3. The definition of a "pet"

To understand the mechanism for the legal regulation of pet protection, it is important to discuss which animals belong to pets. Pursuant to Article 1 (1) of the European Convention for the Protection of Pet Animals, "by pet animal is meant any animal kept or intended to be kept by man in particular in his household for private enjoyment and companionship". Although the preamble to the Convention states that "the keeping of specimens of wild fauna as pet animals should not been encouraged", the definition refers to "any animal". Therefore, it is fair to state that "there should be no doubt that a wild animal kept as a pet animal is protected under the Convention".[22] The Explanatory Report to the European Convention for the Protection of Pet Animals proposes the following explanation:

> It was admitted that the inclusion of wild animals in the Convention might be considered as a recognition of the possibility of using these animals as pet animals. On the other hand, it was realised that to leave out wild animals would create a legal lacuna and that these animals would not be protected at all. It was concluded that certain articles in the convention (Article 2, paragraph 2; Article 4, sub-paragraph 3 and Article 14) provided sufficient guarantees in respect of the keeping of wild animals taken from their natural environment.[23]

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[19] V. Turska, *Zmist ta kharakterystyka poniattia «prava tvaryn»*, "European Political and Law Discourse" 2015, vol. 2(1); V.A. Vorona, *Etyko-pravovi aspekty zakonodavchoho zabezpechennia zakhystu tvaryn*, "Young Scientist" 2016, vol. 3(30).

[20] V.V. Shekhovtsov, *Filosofsko-istorychni aspekty transformatsii suspilnoi svidomosti shchodo tvarynnoho svitu yak obiekta ekolohichnoho prava*, "Aktualni problemy derzhavy i prava / Current Problems of State and Law" 2019, vol. 83; I.V. Kremenovska, O.A. Sviatohor, *Pravova interpretatsiia problemy zakhystu "prav" tvaryn (na prykladi sobak)*, 2015, www.lsej.org.ua/2_2015/75.pdf [access: 1.02.2021].

[21] V.A. Vorona, *op. cit.*, p. 576.

[22] G. Lubeńczuk, *Administrative Restrictions with Respect to Keeping Pet Animals in the Light of Polish Law and the Convention for the Protection of Pet Animals*, [in:] *Legal Protection…*, s 199.

[23] *Explanatory Report to the European Convention for the Protection of Pet Animals Strasbourg*, 13.11.1987, https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800ca43a [access: 1.02.2021].

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 13:53:03

In Ukraine, the legislative definition of a "pet" is formulated in Article 1 of the Law of Ukraine on the protection of animals from cruel treatment: "pets are dogs, cats and other animals that have traditionally been kept and bred by humans for a long historical period, as well as animals of species or breeds artificially bred by humans to meet aesthetic needs and communication needs, which usually do not have viable wild populations that consist of specimen with similar morphological features and exist for a long time in their natural habitat". It is narrower in meaning than the one presented in the Convention. The recently adopted new edition of the Law of Ukraine on veterinary medicine further details this concept: "pets are dogs (Canis lupus familiaris), cats (Felis silvestris catus), ferrets (Mustela putorius furo), invertebrates (excluding bees, bumblebees, mollusks (Mollusca) and crustaceans [Crustacea], ornamental aquatic animals), amphibians, reptiles, birds (excluding chickens, turkeys, guinea fowls, ducks, geese, quails, pigeons, pheasants, partridges and ostriches [Ratitae] kept for food production), rodents and rabbits (except rodents and rabbits intended for food production) that are kept for personal non-commercial purposes, including to meet aesthetic needs and communication needs". Nevertheless, keeping wild animals at home is practiced and, in fact, possible. In this case, the question is about the legal mechanism for keeping wild animals not in domestic conditions, but in captivity. The requirements for keeping wild animals are defined by the Procedure for keeping and breeding wild animals in captivity or semi-free conditions, adopted by the Ministry of Environmental Protection of Ukraine.[24] Pursuant to point 3.3 of the Procedure, "keeping wild animals in captivity is permitted for the purpose of […] use by individuals for aesthetic purposes". It should be noted that if the regulations on keeping pets are adopted by local governments and operate within administrative and territorial units, the requirements for keeping wild animals are more detailed and stricter and operate throughout Ukraine. Therefore, the legal mechanism for handling wild animals that are removed from their natural habitat and kept in domestic conditions is clearly defined in Ukrainian legislation and represented by independent laws and regulations.

4. Keeping wild animals as pets in Ukraine

Pursuant to point 3.1. of the Procedure, "keeping wild animals in captivity is allowed if: the created conditions correspond to their biological, species-specific and individual characteristics; the requirements established by the Law of Ukraine on the protection of animals from cruel treatment are complied with; documents confirming the legality of acquiring wild animals are available".[25] Keeping wild

[24] Order of the Ministry of Environmental Protection of Ukraine of 30 September 2010 no. 429 on adopting the regulations on keeping and breeding wild animals in captivity or semi-free conditions (Official Bulletin of Ukraine 2011, no. 2, item 128, as amended).

[25] *Ibidem*.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 13:53:03

animals in captivity is not allowed without creating the conditions specified by the Procedure regarding the number of animals, places where they are kept and their location, feeding, access to drinking water, temperature, lighting, ventilation, etc.[26]

Wild animals must be kept in enclosures, cages, etc., the minimum surface area of which per one animal is stated in the Appendix to the Procedure. As regards the upkeep of two and more wild animals, calculation of the minimum surface area is performed according to the special formula included in the Procedure. In the meantime, places where wild animals are kept should be as similar as possible to their natural habitats and as adapted as possible to their natural needs. Air temperature, the condition of water for aquatic wild animals, the level of lighting, the regime of ventilation have to correspond to those in their natural habitats. Feeding and watering of wild animals are regulated by the feed ration, but with free access to containers for feed and water and round-the-clock access to fresh drinking water. Veterinary care for wild animals should be provided under the guidance of qualified professionals in such a way as to avoid discomfort, stress and injury.

In other countries, the following trends are observed in the regulation of keeping wild animals as pets:

> In the United States, the laws of individual states differ significantly: from an almost complete ban on keeping certain species of animals as pets to the possibility of keeping most species without a special licence. Keeping rare and endangered animals in private ownership is mostly prohibited. Legislation in many states describes the regulations on keeping animals at home in great detail: food requirements, minimum walking time, minimum surface area of a cage or enclosure per one animal, etc. In some states, the law establishes a correlation between the number of animals and the owner's income. In Slovakia, keeping small exotic animals is allowed, but special veterinary permits are required to keep large exotic or poisonous animals. Keeping a number of species in many cities in private homes is prohibited.[27]

Despite sufficient legislation on keeping wild animals in captivity, in practice there are frequent cases of improper enclosure[28] or domestic conditions[29] in which animals are kept, keeping wild animals illegally.[30]

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[26] For more information on the protection and reproduction of wild animals in Ukraine, in particular game animals, see L. Danyliuk, *Measures for the Protection and Restoration of Game Animals and Their Natural Habitat in Ukrainian Legislation*, [in:] *Legal Protection…*, pp. 211–226.

[27] Resolution of the Lviv City Council of 8 November 2018 no. 4157 on adopting the program of assistance to injured wild and exotic animals and birds in the city of Lviv for 2019–2023, https://www8.city-adm.lviv.ua/inteam/uhvaly.nsf/(SearchForWeb)/3579266D21FFDD4FC225834B00336AC9?OpenDocument [access: 1.02.2021].

[28] *Poryatunok vedmedya*, http://epl.org.ua/law-posts/poriatunok-vedmedia [access: 1.02.2021].

[29] *Dykyy zvir u domashnikh umovakh*, 16.10.2020, https://gk-press.if.ua/dykyj-zvir-u-domashnih-umovah [access: 1.02.2021].

[30] *Na lvivshchyni simya zavela velykykh ekzotychnykh kishok: yak susidy reahuyut na khyzhakiv – syuzhet*, 15.07.2020, https://www.5.ua/regiony/na-lvivshchyni-simia-zavela-velykykh-ekzotychnykh-kishok-iak-susidy-reahuiut-na-khyzhakiv-siuzhet-219500.html [access: 1.02.2021].

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 13:53:03

5. Regulations on keeping pets in Ukraine

As already mentioned, regulations on keeping pets are adopted by local governments and operate within administrative territorial units. Their main purpose is to establish clear requirements for keeping and handling pets. Nevertheless, the analysis of these regulations demonstrates inconsistency and lack of unity in the problems they cover.

For instance, the regulations on keeping and handling pets in the city of Lviv[31] include the following: general requirements for keeping and handling pets; additional requirements for keeping dogs at home; features of property rights and other real rights to animals; registration of pets. The regulations on keeping dogs and cats in the city of Kyiv,[32] in addition to some general directions for keeping and registering dogs and cats, are designed to regulate: dogs and cats located outside their place of permanent keeping; preventive and anti-epizootic measures; transportation of dogs and cats; terms of agreements, whose subjects are dogs and cats; burial or disposal of dogs and cats' corpses. The regulations on keeping animals in the city of Odesa,[33] except for some general requirements for keeping animals, additionally include provisions on: general requirements for walking animals; responsibilities of owners of farm animals and poultry; procedure for catching stray animals. Furthermore, the regulations of some administrative and territorial units[34] include requirements for keeping livestock.

It should be noted that these regulations are characterized by lack of a unified approach to the procedure for keeping, handling and registering pets and even to interpreting the notion of "pets". This in turn leads to the fact that they either apply to all animals kept by owners, including farm animals,[35] or apply only to individual pets (usually dogs and cats).[36] Some regulations contain mostly general require-

[31] Resolution of the Lviv City Council of 23 January 2020 no. 6225 on adopting the regulations on keeping and handling pets in the city of Lviv, https://www8.city-adm.lviv.ua/inteam/uhvaly.nsf/(SearchForWeb)/4556C8DB2857D3B8C22584FD00395C8D?OpenDocument [access: 1.02.2021].

[32] Resolution of the Kyiv City Council of 25 October 2007 no. 1079/3912 on the settlement of issues regarding keeping and handling dogs and cats in the city of Kyiv, http://kmr.ligazakon.ua/SITE2/l_docki2.nsf/alldocWWW/E52B0EC0DB10C56EC225746400688AD3?OpenDocument [access: 1.02.2021].

[33] Resolution of the Odesa City Council of 5 April 2008 no. 2476-V on adopting the regulations on keeping animals in the city of Odesa, https://omr.gov.ua/ru/acts/council/14018 [access: 1.02.2021].

[34] Resolution of the Ivanychi Village Council of 30August 2019 no. 38/7 on adopting the regulations on keeping pets, https://ivaselrada.gov.ua/pravila-utrimannya-domashnih-tvarin-10-08-57-05-09-2019 [access: 1.02.2021].

[35] Resolution of the Odesa City Council of 5 April 2008 no. 2476-V; Resolution of the Ivanychi Village Council of 30August 2019 no. 38/7.

[36] Resolution of the Lviv City Council of 23 January 2020 no. 6225; Resolution of the Kyiv City Council of 25 October 2007 no. 1079/3912.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 13:53:03

ments for keeping pets, others[37] – include requirements regarding the size of enclosures and kennels for dogs, recommendations for materials for their manufacture.

Again, as practice shows, in Ukraine, improper[38] and cruel handling of pets[39] is a fairly common fact, so the issue of their protection is becoming increasingly important.

6. Protection of animals from cruelty – major issues and international experience

Research into deficiencies in the system of measures aimed at protecting pets from cruelty justifies the need to update legislation in this area. They are important subjects of scholarly debate, also the are advocated for by animal rights activists and discussed by the public.

The issue of the legal regulation of the protection of animals from cruelty is crucial in many respects. First and foremost, it is important because everything in nature is directly related. Secondly, humane handling of animals is one of the decisive factors influencing the healthy worldview of present and future societies, because any violence is always negative, regardless of its object. Thirdly, every animal is a living being that needs protection as well as a human.[40]

At present, most scholars agree on the imperfection of Ukrainian legislation concerning the protection of pets from cruelty, the inadequacy and ineffectiveness of its sanctions, the need to study the experience of civilized countries and borrow best European practices to prevent cruelty to pets.

Positive international experience in eliminating the determinants of animal cruelty is based on the following basic principles: a) introducing uniform minimum standards of humane animal handling; b) criminalizing both active and passive forms of cruelty to animals; c) developing an extensive system to prevent the emergence of stray animals; d) state support for municipal shelters; e) cultural and educational work among citizens to increase pet owners' level of responsibility.[41]

In the meantime, the following information can be found in the studies devoted to analyzing the foreign practice of preventing cruelty to animals: "The current

[37] Resolution of the Lviv City Council of 23 January 2020 no. 6225.

[38] *U stebnyku v harazhi utrymuvaly velyku kilkist kotiv u klitkakh*, 2.09.2020, http://tvoemisto.tv/news/u_stebnyku_v_garazhi_utrymuvaly_velyku_kilkist_kotiv_u_klitkah_video_112860.html [access: 1.02.2021].

[39] *Volontery rozpovily pro vypadky zhorstokoho povodzhennya z tvarynamy u Zhytomyri ta dolyu khaski, nad yakoyu znushchalasya vlasnytsya*, 10.12.2020, www.zhitomir.info/news_196830.html [access: 1.02.2021].

[40] O.V. Lozo, *Aktualni pytannia pravovoho rehuliuvannia zakhystu tvaryn vid zhorstokoho povodzhennia*, 2020, http://lsej.org.ua/7_2020/59.pdf [access: 1.02.2021].

[41] O.O. Shumilo, *Mizhnarodnyi i zarubizhnyi dosvid zapobihannia zhorstokomu povodzhenniu z tvarynamy*, "Law Review of Kyiv University of Law" 2016, vol. 2, p. 361.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 13:53:03

criminal codes of Europe's leading countries cover animal cruelty much more widely than in Ukraine, and sanctions for violations are much harsher. In France, for instance, both direct abuse of animals and improper (regardless of the form of guilt) care for pets by their owners is punishable by a fine of 15 thousand to 30 thousand euros or imprisonment for a term of six months to two years. The Criminal Code of Austria provides for a penalty of up to one year in prison or a fine of 360 base salaries for cruelty or unnecessary suffering inflicted on animals, as well as for an abandoned animal that is unable to live in the wild or for the intent to use one animal as a bait for an other resulting in suffering".[42]

In Ukraine, penalties for animal cruelty have been significantly augmented following changes in legislation in 2017. Pursuant to Article 299 of the Criminal Code of Ukraine, the maximum punishment for cruelty to animals is "imprisonment for a period of five to eight years", and the minimum punishment – a fine from 17,000 to 51,000 hryvnias. Earlier, such crimes were not punishable by imprisonment at all, and the maximum fine was 3,400 hryvnias.

7. Measures to reduce the number of stray animals in Ukraine

Pursuant to Article 1 (5) of the European Convention for the Protection of Pet Animals, "by a stray animal is meant a pet animal which either has no home or is outside the bounds of its owner's or keeper's household and is not under the control or direct supervision of any owner or keeper". Nevertheless, in our opinion, as regards pets that have owners but are in public places without their supervision and control, it is more appropriate to consider them unattended, rather than stray or neglected.

Among the reasons for a constant increase in stray animals are owners' irresponsible attitude to pets, lack of a functional tracking system, an insufficient number of shelters for abandoned animals, inadequate regulation of the number of such animals, unsatisfactory funding for measures to combat animal homelessness. In the meantime, the need for sufficient financial resources to effectively solve these problems is especially stressed in the studies devoted to the subject of the prevention of animal homelessness.[43] In addition to these issues, scholars also emphasize such problems regarding the treatment of stray animals in Ukraine as the euthanasia of healthy animals and uncontrolled reproduction of the owned animals.[44]

The unofficial counting of stray dogs in Ukraine was launched as part of the public initiative Animal ID. However, it does not cover all homeless dogs. Currently,

[42] Resolution of the Lviv City Council of 8 November 2018 no. 4157.

[43] L. Staniszewska, *Legal Protection of Homeless Animals and Prevention of Homelessness of Animals as a Mandatory Own Task for the Commune Self-Government*, [in:] *Legal Protection*…, p. 247.

[44] *Bezprytulni tvaryny: vbyty nemozhlyvo prykhystyty?*, 13.08.2018, http://epl.org.ua/eco-analytics/bezprytulni-tvaryny-vbyty-nemozhlyvo-pryhystyty/#modal-popup-document [access: 1.02.2021].

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 13:53:03

the interactive map presents data from 34 cities of Ukraine, according to which the number of stray dogs in these cities amounts to about 50,000.[45] According to other data, there are about 500,000 of them in Ukraine.[46]

Pursuant to Article 12 of the European Convention for the Protection of Pet Animals, in order to reduce the number of stray animals, the Parties undertake to consider introducing a record of animal registration numbers together with their owners' names and addresses.

In Ukraine, the registration of pet animals is an important debatable issue. The already mentioned draft law of 2020 on amendments to some legislative acts of Ukraine on the responsible handling of domestic and wild animals kept in captivity,[47] proposes to define in the Law of Ukraine on the protection of animals from cruel treatment a general procedure for identifying and registering domestic and wild animals kept in captivity or semi-free conditions and impose on their owners the obligation to identify and register such animals. Nevertheless, despite the need to unify the proposals submitted by this draft law at the national level, some of them are quite contradictory and need to be refined. First and foremost, it is advisable to decide whether it is reasonable to include both domestic and wild animals in the unified state register. Legislation on them is different, including different conditions of keeping. Secondly, it is necessary to specify who has to develop and approve the procedure for identifying and registering domestic animals and wild animals kept in captivity or semi-free conditions. Thirdly, it is necessary to clearly define which body will be responsible for maintaining the unified state register of animals, as well as which entities will have access to it.

In the meantime, despite deficiencies in legislation along with theoretical and practical difficulties in the process of identifying and registering pets, attempts to introduce them are still being made in some cities. For instance, the city of Kyiv has developed and launched (in a test mode) the system called "The Pet Register",[48] designed to identify and keep a record of pets and stray animals. A campaign for free chipping of domestic dogs has started in the city of Lviv.[49]

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[45] Proekt monitoringa chislennosti bezdomnykh zhivotnykh v gorodakh, https://animal-id.net/ru/counting-animals [access: 1.02.2021].

[46] *Bezdohlyadni tvaryny: yak na Zakhodi pratsyuyut prytulky*, http://urbanua.org/dosvid/zakordonni-pryklady/247 [access: 1.02.2021].

[47] Proekt Zakonu pro vnesennya zmin do deyakykh zakonodavchykh aktiv Ukrayiny shchodo vidpovidalnoho povodzhennya z domashnimy ta dykymy tvarynamy, yaki utrymuyutsya u nevoli, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69376 [access: 1.02.2021].

[48] *Pro proekt*, https://pets.kyivcity.gov.ua/about-page [access: 1.02.2021].

[49] V. Roy, *Lvivyany mayut zmohu bezkoshtovno prochipuvaty svoyikh domashnikh sobak u LKP «Lev»*, 7.02.2020, https://portal.lviv.ua/news/2020/02/07/lviv-iany-maiut-zmohu-bezkoshtovno-prochipuvaty-svoikh-domashnikh-sobak-u-lkp-lev [access: 1.02.2021].

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 13:53:03

As regards the experience of EU countries in these matters, it is rather ambiguous. For instance, all dogs and cats in France are subject to mandatory identification and registration, while in Germany and Poland their identification and registration are voluntary, and in the Netherlands only dogs and cats are required to be identified and registered at the request of their owners.[50]

Another problem in Ukraine that needs to be addressed is the functioning of shelters for stray animals, namely an insufficient number of them, overcrowding and, consequently, inadequate conditions for keeping animals, lack of funding, and so on.

> Ukraine has almost no municipal and private shelters. Because of this, after neutering, animals are returned to the place of catching. Some of the existing shelters are overcrowded, and animals are locked there in a small space, imprisoned, etc., they lack contact with people, which often leads to mental disturbance of animals. Existing shelters also often have financing problems. Because of that, necessary step is the establishment of municipal animal shelters and adoption centres, which will deal with animal rehoming. In case if animal breeding will be carried out by special breeding nurseries or licensed individuals, animal adoption from shelters will become more popular and more affordable in comparison with the purchase of pedigree animals.[51]

In the meantime, a general system of measures to reduce the number of stray animals, in addition to procedures for identifying and registering pets and shelters for stray animals, should, as in developed countries, include regulation of the procedure for breeding pets, taxation for keeping them, adoption of stray animals, their sterilisation, humane use of euthanasia for stray animals.

CONCLUSION

The European vector of Ukraine's state policy has led to a change in approaches to animal handling and the need to establish a legal mechanism for animal protection (including pets) and ensure proper living conditions for them. The first European convention for the protection of pet animals ratified by Ukraine was the European Convention for the Protection of Pet Animals. At present, Ukraine's legal science, legislative process and law enforcement practice are gradually embodying the concept of "animal welfare" and moving away from the anthropocentric principle of "the protection of animals from cruelty".[52]

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[50] *The welfare of dogs and cats involved in commercial practices: A review of the legislation across EU countries*, https://s3-eu-west-1.amazonaws.com/assets.dogandcatwelfare.eu/live/media/filer_public/f3/c4/f3c44506-728a-4b38-a05e-bc4909214db6/all.pdf [access: 1.02.2021].

[51] *Bezprytulni tvaryny…*

[52] The Soviet concept of "the protection of animals from cruelty" was considered in the context of the protection of public morality, human feelings and emotions. According to scholars, "cruelty to animals is nothing more than human action, which means that protection against cruelty cannot arise

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 13:53:03

The legal regulation of humane pet handling in Ukraine is based on the Law of Ukraine on the protection of animals from cruel treatment. It is the first document to comprehensively regulate the relations of animal protection, to ensure their well-being and to establish general requirements for keeping, transportation, veterinary care, killing of animals (including pets). The provisions of this Law are of a general conceptual nature and are specified in the provisions of other laws and bylaws. Detailed regulations on pet handling are defined by local governments within administrative and territorial units. Nevertheless, the provisions of local acts do not have a unified approach to the very understanding of pets as well as directly to the procedure for their keeping, registration and requirements for their handling. Consequently, along with the regulation of pet keeping, handling and registration, they also address such issues as: transportation of dogs and cats; terms of agreements, whose subjects are dogs and cats; responsibilities of owners of farm animals and poultry; the procedure for catching stray animals; specifics of keeping livestock, etc.

At present, the specific feature of law-making in Ukraine is a permanent improvement, supplementation, amending of laws and regulations. Unfortunately, this does not always happen systematically and logically. The provisions related to humane pet handling are scattered in dozens of different legal documents; in the process of changes and amendments to the legislation, pets happen to be overlooked (e.g., due to recent changes in the legislation on veterinary medicine). At the same time, the provisions of the Law of Ukraine on the protection of animals from cruel treatment are of a rather general nature. Their specifications in the acts adopted by local authorities are advisory and, as a rule, are not properly communicated to pet owners. It leads to the formation of a low culture of behaviour as regards pet handling. In addition, in the absence of a functional pet registration system, inadequate regulation of the number of stray animals, an insufficient number and overcrowding of shelters for stray animals, lack of funding, the number of stray animals is constantly increasing.

Unfortunately, the government does not have a single strategy to improve the legal regulation of animal welfare. The priority today should be to introduce thorough amendments to the Law of Ukraine on the protection of animals from cruel treatment. There is a need to both change its name (e.g., "on animal welfare" or "on animal protection") and to delineate the main groups of animals (wild animals, farm animals, pets) and specify the requirements for their handling. A necessary step is also to unify procedures for identifying and registering pets and to adopt them at the national level. The development of a coherent, systematic legal mechanism for animal handling is the main contributing factor for achieving animal welfare.

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without its manifestation". See. N.I. Zubchenko, *K voprosu o sootnoshenii ponyatij «blagopoluchie zhivotnyh» i «zashchita zhivotnyh ot zhestokogo obrashcheniya» v mezhdunarodnom prave*, "Actual Problems of Politics" 2014, vol. 52.

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Data: 20/11/2026 13:53:03

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ABSTRAKT

Procesy integracji europejskiej na Ukrainie doprowadziły do dostosowania ustawodawstwa krajowego do standardów europejskich, w tym w zakresie traktowania zwierząt domowych. Pierwszą i obecnie jedyną ratyfikowaną na Ukrainie europejską konwencją w zakresie ochrony i zapewnienia dobrostanu zwierząt jest Europejska konwencja ochrony zwierząt domowych. W niniejszym artykule opisano główne doktrynalne, ustawodawcze i praktyczne aspekty implementacji tej konwencji do prawa ukraińskiego. Podstawą regulacji prawnej humanitarnego traktowania zwierząt domowych na Ukrainie jest ustawa Ukrainy o ochronie zwierząt przed okrutnym traktowaniem, przy czym jej postanowienia mają charakter ramowy, a szczegółowe rozwiązania znajdują się w innych ustawach i rozporządzeniach. Szczegółowe zasady postępowania ze zwierzętami domowymi określają samorządy miejskie i są one realizowane na terenie odpowiednich jednostek administracyjno-terytorialnych. Konstrukcja „prawa zwierząt", pomimo jego proklamacji w preambule ustawy Ukrainy o ochronie zwierząt przed okrutnym traktowaniem, nie ma formalnego zapisu prawnego i odzwierciedlenia w ustawodawstwie ukraińskim. Obecnie ukraińska doktryna naukowa, proces ustawodawczy i praktyka egzekwowania prawa stopniowo jednak wprowadzają koncepcję dobrostanu zwierząt. Podstawą do osiągnięcia dobrostanu zwierząt domowych jest stworzenie i wdrożenie spójnego mechanizmu prawnego ich traktowania, dlatego Ukraina potrzebuje jasnej strategii doskonalenia regulacji prawnej dotyczącej dobrostanu zwierząt domowych.

Słowa kluczowe: zwierzęta domowe; zapewnienie dobrostanu zwierząt; ochrona zwierząt przed okrutnym traktowaniem; prawa zwierząt; Europejska konwencja ochrony zwierząt domowych; Ukraina