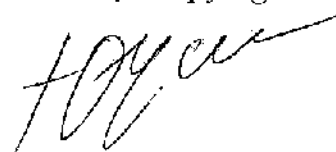


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**LEGAL REGULATION OF THE STATUS OF ANIMALS:
A THEORETICAL AND HISTORICAL LEGAL STUDY**

Speciality 5.1.1. — Theoretic historical legal sciences

ABSTRACT

A thesis for Research Doctorate in Law Degree

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Research rationale. A significant confirmation of the importance of the issues under consideration was the All-Russian Congress held this year and the address of President V.V. Putin to its participants, in which he emphasized the importance of “compassionate treatment of animals and their protection from cruelty”¹. The Head of State noted that humane treatment of animals constitutes “an important indicator of the high level of culture of civil society and an integral component of its spiritual and moral development”². Such attention from the state is also supported within the academic community. Thus, in one of his interviews, Doctor of Medical Sciences, Professor, and Member of the Russian Academy of Sciences Konstantin Vladimirovich Anokhin noted that advances in neurobiology, ethology, and cognitive science are radically transforming our understanding of the boundaries of animal consciousness and sentience³. Today it is no longer possible to disregard evidence indicating that many animals possess the capacity for emotional experience, pain perception, attachment, fear, and even forms of social interaction based on empathy. The question of animal consciousness is one of the most pressing and significant issues in contemporary bioethics, and at the same time in law, since the recognition of consciousness in animals determines the logic of the legal perception and classification of animals: from objects of property rights to bearers of legally protected interests. This tendency has received broad support at the international level. For example, the Cambridge Declaration on Consciousness, adopted in 2012, articulated a scientific consensus that consciousness is not limited to primates but is present in all mammals and birds⁴. In April 2024, the New York Declaration on Animal Consciousness was announced at New York University, recognizing the capacity for conscious experience in a much wider range of species,

¹ See: Appendix No. 1.

² Ibid.

³ Anokhin K.V. Man is not alone in the world of consciousness: interview / conversation conducted by V. Orlov // RIA Novosti. 2024. June 10. [Electronic resource]. URL: <https://ria.ru/20240610/soznanie-1951516542.html> (date of access: 07.08.2024).

⁴ See: Low P., Edelman D., Koch C. The Cambridge Declaration on Consciousness // Francis Crick Memorial Conference, University of Cambridge, UK. 7 July 2012. [Electronic resource]. URL: <https://fcmconference.org/img/CambridgeDeclarationOnConsciousness.pdf> (date of access: 07.08.2024).

including fish, crustaceans, and insects⁵. Among the signatories of this declaration are leading neuroscientists from around the world, including representatives of the Russian scientific school. These conclusions have direct legal implications. If animals possess consciousness, they can no longer be regarded as legally neutral objects. The fixation of animals in the status of “objects” represents a form of normative violence sustained by legal constructions that are incapable of reflecting contemporary scientific knowledge regarding the existence of consciousness. The paradox of modern legal thought lies in the fact that, at a time when the question of granting legal personality to digital algorithms (artificial intelligence) is seriously being discussed, organically living beings continue to be perceived exclusively as objects of protection rather than as holders of legally protected interests. Legal systems still interpret animals as property, a legal fiction that contradicts the current findings of science. Unlike legal persons, animals are excluded from the legal community on the grounds of the absence of volitional or cognitive autonomy. It is impossible to ignore the fact that scientific discoveries of recent decades have become one of the most important drivers of legal evolution: they require not only a moral but also a legal response. The relevance of this dissertation is determined precisely by this transition — from a utilitarian to a bioethical and post-anthropocentric view of animals in legal theory.

Degree of elaboration of the scientific problem. The history of domestic and world science demonstrates that issues of the perception of living beings and the legal regulation of certain aspects of the relationship between humans and animals, for centuries, have gone beyond the framework of exclusively theoretical-historical legal science, acquiring an interdisciplinary character. Their study encompasses a wide range of social-humanitarian and natural science disciplines: philosophy, religious studies, cultural studies, sociology, bioethics, ecology, and zoology.

⁵ See: Declaration on Animal Consciousness. New York University Animal Consciousness Initiative, April 2024 // NYU Center for Mind, Brain and Consciousness. [Electronic resource]. URL: <https://www.animalconsciousness.org/declaration> (accessed: 07.08.2024).

A significant legacy in the field of philosophical-legal and ethical-legal foundations for establishing the “status” of animals is contained in the works of thinkers of the ancient and classical periods: Pythagoras (Golden Verses), Aristotle (On the Generation of Animals), Plutarch (Gryllus, or That Animals Possess Reason), and Porphyry (On Abstinence from Animal Food). In their works, they emphasized the value of the life of animals and the necessity of limiting cruelty toward living beings.

The seventeenth and eighteenth centuries became a period of the formation of ethical-philosophical concepts that influenced the future legal doctrine. René Descartes and Thomas Hobbes regarded animals as mechanisms deprived of reason, whereas Immanuel Kant focused attention on the moral obligations of humans. Jeremy Bentham formulated a justification for the protection of animals by raising the question of the ability of animals to experience suffering, which became the starting point for the subsequent legal recognition of the interests of animals. These works laid the worldview and moral-legal foundation for the subsequent development of the concept of the legal status of animals.

In the nineteenth and twentieth centuries, a substantial contribution was made by authors who developed issues of the humane treatment of animals and their rights: Henry S. Salt (Animals’ Rights: Considered in Relation to Social Progress), Peter Singer (Animal Liberation), Tom Regan (The Case for Animal Rights), Gary L. Francione (Animals, Property, and the Law), Martha C. Nussbaum (The Limits of Justice), Richard D. Ryder (Animal Revolution: Changing Attitudes Toward Speciesism, author of the term “speciesism”), and David Favre (Animal Law: Welfare, Interests, and Rights). These works formed a legal doctrine that is gradually being integrated into the legislation of different states.

Initially, in domestic scholarship, issues of the legal regulation of the position of animals were often considered in the works of well-known legal scholars primarily within the framework of natural resource law and hunting law. During the Soviet period, the topic was addressed in the context of environmental and criminal law, but without distinguishing animals as an independent category of legal analysis.

In post-Soviet legal thought, works appeared that examine the features of modern legal protection of animals. Among them, the works of A. P. Anisimov, O. A. Kuznetsova, V. B. Romanovskaya, and Ya. V. Beznosova are noteworthy.

Of particular importance for the formation of the theoretical basis are studies on the problem of “legal subjectivity” in law, since it is precisely they that create the foundation for recognizing animals as quasi-subjects. Here the works of the Ural school of legal scholarship stand out, in particular those of S. A. Arkhipov, A. P. Semitko, and E. V. Ponomareva, who, within the framework of the general theory of law, examine the categories of the subject, legal subjectivity, and legal status applicable to the construction of modern models of animal protection.

Despite the growth in the number of studies devoted to the problem of animals in law, most domestic works are limited to the framework of particular branches of law (constitutional, international, environmental, administrative, and criminal). In them, animals are considered from the standpoint of branch-specific legal science, which leads to the fragmentation of research and does not allow the formation of a comprehensive doctrine. The theoretical-legal approach possesses greater possibilities for integrating branch data, comparing legal regimes, and identifying conflicts of law. The theoretical concept of the quasi-subjectivity of animals proposed in the present dissertation research is intended to systematize the main existing theories, demonstrate their internal interconnection and the variability of their formal manifestations. This will make it possible to form a more holistic and objective understanding of the legal destiny of animals and to develop solid foundations for their effective legal protection.

Purpose and Objectives of Research. The purpose of the dissertation research is the development of a theoretical-legal concept of the legal status of animals within the system of Russian law, taking into account contemporary scientific data, international trends, and the necessity of overcoming regulatory gaps.

To achieve this purpose, it is necessary to solve the following **tasks**:

- 1). To analyze the political-philosophical foundations of the legal regulation of the status of animals;

- 2). To study approaches to the legal status of animals proceeding from various theories of legal understanding;
- 3). To determine the boundaries of their legal subjectivity and to compare them with other participants of legal relations;
- 4). To conduct a comparative-legal analysis of national and international models of regulating the status of animals;
- 5). To systematize the approaches of various legal systems and to identify tendencies of transition from the perception of animals as things toward their recognition as sentient beings and special objects of legal protection;
- 6). To develop a concept of the quasi-subjectivity of animals based on identifying its existing elements in Russian law and judicial practice;
- 7). To substantiate the integration of interdisciplinary approaches taking into account the data of biology, ecology, ethics, and sociology, substantiating the necessity of inter-branch and systemic legal regulation that excludes fragmentation and conflicts of legal norms;
- 8). To formulate proposals for introducing amendments to the current legislation of the Russian Federation aimed at the normative consolidation of the legal status of animals;
- 9). To substantiate the necessity of the humanization of law through the introduction of animal-protection issues into legal education.

Object and subject of the Research. The object of the research is the social relations regulated by law that arise in the process of interaction between humans and animals within the framework of a unified ecosystem. The subject of the research consists of legal doctrines, legal norms, and legal practices (national and international) that shape the regime for the protection of animals.

The theoretical basis of the study is represented by the scholarly works of domestic and foreign researchers in the fields of jurisprudence and history, whose studies are devoted to various approaches to the legal status of animals.

The methodological framework of the research. The methodological basis of the research includes a system of universal, general scientific, and special

scientific methods of cognition, the selection of which is conditioned by the complex interdisciplinary nature of the subject of the study — the legal status of animals and the evolution of legal constructions applied to them in different legal orders.

The dialectical method was applied to study the evolution of the relationship between humans and animals in different historical periods, in different states, from ancient times to the present.

The methods of analysis and synthesis made it possible to reveal the content of the concepts of “legal personality”, “subject of law”, and “quasi-subject” in relation to animals, as well as to identify the internal logical contradictions of current legislation.

The inductive and classification methods were used to generalize national and international legal models of animal protection, to identify groups of contradictions, and to determine the directions of legal evolution.

The application of systemic and structural approaches made it possible to consider the institutions of animal protection as elements of an integral legal construction that includes both public law and private law norms.

The functional method ensured the possibility of analyzing the role of normative provisions on animal protection in the mechanism of limiting the absolute right of ownership and granting a legally significant status to the protected interests of animals.

The modeling method was applied to describe possible constructions of the quasi-subjectivity of animals within the national legal system.

Particular importance in the research is attributed to the comparative legal method, which made it possible to identify differences and common trends in the legal regulation of animal protection in foreign legal systems (Germany, France, Colombia, India, etc.), as well as to substantiate the possibility of developing a domestic model based on Russian realities.

Among the special scientific methods, the following were used: the formal legal method (in the analysis of the norms of Russian legislation in the field of animal protection, as well as international treaties and the corresponding judicial

practice); the historical legal method (in the study of the development of the legal status of animals from a property regime to humanitarian reservations and elements of subjectivity); and the axiological method (which made it possible to identify the value orientations underlying the idea of quasi-subjectivity and the public interest in the protection of animals).

The comprehensive application of these methods ensured a holistic, critical, and multidimensional consideration of the legal status of animals and made it possible to substantiate the conclusions about the necessity of the normative recognition of their special status within the legal system of the Russian Federation.

The information base of the research includes the legislation of the Russian Federation, international treaties and standards (including CITES, the Convention on Biological Diversity, the Bonn Convention on Migratory Species, WOAHP documents, and FAO guidelines).

Scientific novelty of the research:

1. The political and philosophical foundations of the legal regulation of the status of animals have been analyzed, and approaches to the legal status of animals have been examined on the basis of different theories of legal understanding.

2. Approaches to the “legal personality” of animals have been determined, and the concept of the quasi-subjectivity of animals has been developed, based on the identification of its existing elements in Russian law and judicial practice.

3. A comparative legal analysis of national and international models for regulating the status of animals has been conducted, and the existing trend of transition from the perception of animals as things to the recognition of them as sentient beings and special objects of legal protection has been identified.

4. The integration of interdisciplinary approaches, taking into account the data of biology, ecology, ethics, and sociology, has been substantiated, which justifies the necessity of intersectoral and systemic legal regulation that excludes the fragmentation and conflict of legal norms.

5. A three-level hierarchy of the “Values of Animals” is introduced and its content is disclosed.

6. The main groups of contradictions in the legal regulation in the field of the treatment of animals in Russian legislation have been identified and classified.

7. Proposals have been formulated for introducing amendments to the current legislation of the Russian Federation aimed at the normative consolidation of the legal status of animals.

8. The necessity of the humanization of law through the introduction of animal protection issues into legal education has been substantiated.

The validity and reliability of the research results are ensured by the chosen methodology, which includes both theoretical and practice-oriented levels of analysis and the use of methods adequate to the subject, goals, and objectives of the dissertation research. The reliability of the conclusions obtained is also determined by the comprehensive interdisciplinary consideration of the problem of the legal personality of animals and the possibility of their verification through comparison with the provisions of philosophical-legal doctrines, foreign and domestic normative models, as well as judicial practice. In addition, the reliability of the results is confirmed by their approbation within the framework of scientific publications, discussions at conferences, and expert evaluations, which indicates the practical and theoretical significance of the conducted research.

Provisions to be defended which possess scientific novelty:

1. A concept of a bioethical approach to regulating the legal status of animals has been developed. Approaches to the legal status of animals have been studied based on various theories of legal understanding (legal positivism, the sociological school of law, natural law theory, axiological jurisprudence, and the bioethical approach to law). Legal positivism in itself does not exclude the legal protection of animals; however, its practical implementation is complicated: under the property status of an animal as an “object”, the available measures of effective protection are significantly limited. Within the framework of alternative theories of legal understanding, which provide animals with a higher degree of protection, a bioethical approach is being formed that goes beyond the boundaries of traditional doctrines (which corresponds to paragraph 14 of the passport of specialty 5.1.1).

2. The necessity of the normative consolidation in domestic law of a special category of the quasi-subjectivity of animals and the establishment of the legal duty of humans to ensure the welfare of animals has been substantiated. The evolution of the legal regulation of relations between humans and animals demonstrates the formation of a stable intercultural tradition of animal protection, conditioned by religious-ethical and socio-economic factors. An analysis of national legislation, judicial practice, and law enforcement mechanisms in Russia makes it possible to ascertain the presence of normative and institutional elements of the quasi-subjectivity of animals, the limitation of property rights, criminal-law and administrative protection, as well as the indirect representation of their interests through subjects of law. However, the absence of a coherent legal construction, the fragmentation of regulation, the uncertainty of the conceptual apparatus, and the weak institutionalization of protection mechanisms hinder the implementation of the principles of humane treatment. This requires the normative consolidation of the special status of animals as quasi-subjects of law possessing protected interests and legal protection independent of their property status (which corresponds to paragraphs 16, 25, and 26 of the passport of specialty 5.1.1).

3. Differences in the models of legal regulation of the status of animals in different countries have been identified. The European Union and developed European countries have introduced the concept of animals as sentient beings at the legislative level, which has led to the creation of a complex system of norms and liability that effectively integrates “animal rights” into the general legal order. The Anglo-American world, which historically proceeded from the idea that “an animal is the property of a human”, is evolving toward the recognition of a special status of animals: positive duties of care are being introduced, criminal penalties for causing suffering to animals are being established, and certain legal institutions for the representation of the interests of animals are being created. Asia and the Middle East, which largely rely on a rich spiritual heritage, are beginning to transfer mercy from the sphere of morality into the sphere of law. Latin America and Africa offer innovative syntheses: through the rights of nature and ecosystems, they expand the

framework to include the rights of animals as part of nature, recognizing their intrinsic value and even their legal status (Brazil, Colombia, South Africa). A general humanization of attitudes toward animals is observed everywhere: public demand for ethical treatment is growing, and foreign legal systems are responding by introducing new norms (which corresponds to paragraphs 23, 26, and 29 of the passport of specialty 5.1.1).

4. The expediency of introducing into the categorical apparatus of the general theory of law the concept of a “vulnerable subject”, developed by the author, in relation to animals, based on their capacity to experience pain, stress, and suffering, their dependence on humans, and their inability to exercise independent legal self-protection. The boundaries of their “legal personality” are defined as a protected interest, realized exclusively through the institutions of guardianship and representation and not identical to the full legal personality of a human being. A comparison has been conducted with other legally incapacitated or partially capable participants in legal relations — minors, persons recognized as legally incapacitated, and persons with limited legal capacity — which substantiates the necessity of procedural representation and the permissible limitation of the property rights of the owner for the purpose of protecting the interests of the animal (which corresponds to paragraphs 16, 23, and 26 of the passport of specialty 5.1.1).

5. It has been established that in Russian law there are certain elements of the quasi-subjectivity of animals: the recognition of animals as beings capable of experiencing emotions and physical suffering, the existence of criminal and administrative legal mechanisms of protection, as well as judicial decisions that indirectly recognize the public interest in their protection. These features indicate the existence of legal grounds for the formation of an original model of the legal protection of animals, which does not require borrowing concepts alien to the national legal system but is based on current scientific data about animals. Instead of the “Five Freedoms of Animals”, which exist in international law but have not been implemented in Russian legislation, it is proposed to introduce a three-level hierarchy of the “Values of Animals”: “fundamental values” establish the limits of

what is permissible (mandatory prohibitions), “additional values” specify positive duties of due care in the form of the obligation to comply with welfare standards and proper treatment, and “protective values” secure their implementation in practice through appropriate institutions and procedures (representation of interests) (which corresponds to paragraphs 14 and 17 of the passport of specialty 5.1.1).

6. The unsystematic nature of legal regulation in the field of the treatment of animals has been identified, generating multiple normative and law-enforcement contradictions. The main groups of contradictions include:

Doctrinal contradictions: between the property status of animals in civil law and the recognition of animals as sentient beings in special legislation;

Conflict-of-law contradictions: between the norms of the Civil Code of the Russian Federation and Federal Law No. 498-FZ of 27 December 2018 “On Responsible Treatment of Animals”;

Institutional contradictions: between the competencies of various supervisory authorities that do not possess a unified system of interaction and legal specialization;

Terminological contradictions: the absence of clear definitions of key concepts (such as “stray animal”, etc.);

Law-enforcement contradictions: the heterogeneity in the qualification of the same acts (for example, the incitement of animals may be interpreted as cruelty to animals, hooliganism, or causing harm);

Sectoral contradictions: the fragmentation of approaches in different branches of law regulating relations between humans and animals (civil, criminal, administrative, environmental, etc.) (which corresponds to paragraphs 20 and 23 of the passport of specialty 5.1.1).

7. For the first time, the necessity of a systemic and conceptual reform of legislation has been substantiated in order to eliminate the aforementioned contradictions and to build a consistent and coherent model of the legal protection of animals. It is proposed to establish in legal doctrine and legislation the category of the animal as a sentient being possessing interests protected by law, which are

realized through the institution of legal guardianship under the guidance of a specially appointed representative. The criterion for inclusion in this category is the presence of consciousness in the animal, confirmed by contemporary scientific data (which corresponds to paragraphs 23 and 26 of the passport of specialty 5.1.1).

Theoretical and practical importance of the research lies in the possibility of using it for further scientific studies in the field of the legal theory of animal protection. The materials of the dissertation contain specific proposals for law-making bodies for introducing amendments to legislation, as well as for the development of methodological recommendations for law-enforcement authorities. The materials of the dissertation may be used within the framework of the academic disciplines “Theory of State and Law” and “History of State and Law”, as well as for the development of a special course “History of Animal Rights Protection”.

Validation of the research results. The main provisions and conclusions contained in the dissertation have been presented by the author in scholarly works, including articles published in peer-reviewed academic journals in the specialty 5.1.1 “Theoretical and Historical Legal Sciences”. The approbation and implementation of the dissertation results were carried out by the author:

a) in research activities:

The author delivered reports on the topic of the dissertation at scientific and practical conferences, including the International Scientific and Practical Forum VI Siberian Legal Readings (Tyumen; presentation topic: “Legal Values and Legal Protection of Animals in the Digital Era”); the IX All-Russian Conference with International Participation “Comfortable Coexistence of Humans and Animals in Urbanized and Specially Protected Natural Territories: International and Russian Practice” (Moscow; presentation topic: “The Problem of the Formation of the Institution of the Animal Rights Commissioner in Russia”); the III Russian Conference on Animal Rights (Saint Petersburg; presentation topic: “Stray Animals: Foreign Approaches to Solving the Problem”); and the XVI Congress of Anthropologists and Ethnologists of Russia (Perm; thematic section: “Human–

Animal Relations: Socio-Cultural Aspect”, presentation topic: “Animal Rights: The History of the Issue”).

b) in pedagogical activities:

Certain provisions of the dissertation research were tested by the author during the conduct, on the instruction of the Department of Civil and International Law of the Russian Presidential Academy of National Economy and Public Administration (RANEPA), of thematic classes within the framework of the academic course “Environmental Law”, as well as by the Department of Theory and History of State and Law of N. I. Lobachevsky State University of Nizhny Novgorod within the disciplines “History of Legal and Political Doctrines”, “History of State and Law of Foreign Countries”, and “Theory of State and Law”.

The thesis structure is determined by the subject of the research, as well as by its goals and objectives. The work consists of an introduction, three chapters comprising eleven sections, a conclusion, a list of sources and references used, as well as an appendix.

Dissertator's List of Publications on the Research Topic

Articles in peer-reviewed scientific journals publishing the main scientific results of theses for the Research and Habilitation Doctorates, recommended by the Higher Attestation Commission of the Education and Science Ministry of the Russian Federation

1. Chayka Yu.V. On the problem of determining the legal status of animals in Russian law // Eurasian Law Journal. 2024. No. 2 (189). Pp. 124-125.
2. Chayka Yu.V. The problem of the formation of the institution of the Commissioner for Animal Rights in Russia: a theoretical and legal aspect // Eurasian Law Journal. No. 7 (194). Pp. 84-85.

3. Chayka Yu.V. Animal protection: the experience of Brazil, Bolivia, Colombia and South Africa // Eurasian Law Journal. No. 11. Submitted for publication.
4. Chayka Yu.V. On the issue of forming environmentally oriented public legal consciousness // Education and Law. No. 12. Submitted for publication.
5. Chayka Yu.V. The problem of animals in law, in education, and in the social practice of the modern state / Ya.V. Beznosova, V.B. Romanovskaya, Yu.V. Chayka // Education and Law. 2024. No. 5. Pp. 223-226.
6. Chayka Yu.V. Legal norms on the use of animals in the Great Patriotic War / S.K. Krepyshcheva, Yu.V. Chayka, V.V. Krepyshcheva // Education and Law. 2025. No. 7. Pp. 620-625.