

Оскільки в Україні закон про адміністративну процедуру поки що відсутній, то ці положення можна порівняти лише з відповідними положеннями проекту Закону «Про адміністративну процедуру», що в грудні цього року був поданий на розгляд до Верховної Ради [4].

У цьому проекті дійсно передбачено обов'язок владного суб'єкта мотивувати адміністративний акт, хоча окремих вимог та застережень, які стосувалися б адміністративного розсуду та дискреційних повноважень не вміщено.

Крім того, у проекті встановлено, що мотивувальна частина акту не складається, якщо:

1) адміністративний орган задовольнив заяву і адміністративний акт не стосується прав та законних інтересів інших осіб;

2) адміністративний орган приймає велику кількість адміністративних актів однакового виду або в певній стандартизованій формі;

3) у порядку здійснення інспекційних повноважень адміністративним органом не виявлено порушень законодавства;

4) в інших випадках, передбачених законом.

Висновки. Отже, варто зазначити, що в рамках боротьби з корупцією та приборканням дискреції владних суб'єктів важливе місце посідає нормативне врегулювання та впорядкування адміністративної процедури. Положення законодавства про адміністративну процедуру є одним із засобів встановлення правових меж для адміністративного розсуду, а також забезпечення можливості приватної особи правильно розуміти акт. Тому вітчизняний Закон «Про адміністративну процедуру» повинен містити положення про рамки здійснення дискреції владними суб'єктами, а також встановлювати вимоги обґрунтування та мотивування адміністративного акту, прийнятого на основі дискреційного повноваження.

Останнє слово щодо напрацювання відповідних практик та розвитку судового контролю має бути за судами, однак робота судових органів може розпочатися тільки тоді, коли парламентом держави буде прийнято закон про адміністративну процедуру.

СПИСОК ВИКОРИСТАНИХ ДЖЕРЕЛ:

1. Шмідт-Ассманн Е. Загальне адміністративне право як ідея врегулювання: основні засади та завдання систематики адміністративного права / пер. з нім. Г. Рижкова та ін.; відп. ред. О. Сироїд; 2-е вид., перероблене та доповнене. Київ: «К.І.С.», 2009. 552 с.
2. Сборник законов об административных процедурах. 2-е издание. Москва: Инфортропик Медиа, 2016. 444 с.
3. Кодекс адміністративного судочинства України від 06 липня 2005 р. № 2747-IV. URL: <http://zakon2.rada.gov.ua/laws/show/2747-15/page>.
4. Проект Закону України «Про адміністративну процедуру» від 07 лютого 2019 р. № 2679-VIII. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65307.

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LINKS BETWEEN DOMESTIC VIOLENCE AND ANIMAL ABUSE: INTERNATIONAL EXPERIENCE

ЗВ'ЯЗОК ДОМАШНЬОГО НАСИЛЬСТВА ТА ЖОРСТОКОГО ПОВЕДІННЯ З ТВАРИНАМИ: МІЖНАРОДНИЙ ДОСВІД

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The article is devoted to the problem of the relationship between domestic violence and animal abuse. Particular attention is paid to the analysis of psychological interactions and peculiarities of the interaction between the aggressor, victim and animal. The analysis focuses on studies by international scholars on the failure of parents to take responsibility for child upbringing, child abuse and their links to animal abuse. Also, the consequences of domestic violence not only for the first-generation family, but also the consequences of prolonged domestic violence, which are already passed on to the next generation as an established pattern of behaviour, are analysed in detail. By analysing the identified offences, special attention is paid to animal abuse as an important indicator of not only the existence of domestic violence, but also the tendencies of the offender.

In the article, the author defines the essence of the term "animal abuse", namely, it is mistreatment of animals, including homeless animals, which can include torture, physical suffering, injuries, death, and inoculation of animals, committed with malicious or negligent motives, the abandonment of domestic and farm animals to their fate, including violations of animal retention rules.

The article presents the results of studies by British scholars on the existence of a link between domestic violence and ill-treatment of animals. Separately analysed a series of historical events preceding the identification of the relationship. In 1822, the United Kingdom adopted the Martin Act, which first provided for the welfare of animals, and forbade cruel and inappropriate handling of animals. Organisations similar to the British Royal Society for the Prevention of Ill-Conservation with Animals were created in 1865 in the United States, and in 1869 in Canada. Efforts have been made to protect the rights of children, which have only developed as a result of the work on humane treatment of animals.

Key words: domestic violence, animal abuse, child abuse, international experience, latency of domestic violence, latency of animal abuse, prevention.

Статтю присвячено проблемі взаємозв'язку домашнього насильства та жорстокого поведіння з тваринами. Особливу увагу приділено аналізу психологічних зв'язків та особливостей взаємодії агресора, потерпілої особи та тварини. Аналіз зосереджується на дослідженнях зарубіжних учених щодо невиконання батьками обов'язків стосовно виховання дитини, жорстокого поведіння з дітьми та їхніх зв'язків із жорстоким поведінням із тваринами. Також детально проаналізовано не лише наслідки домашнього насильства для родини в першому поколінні, а й наслідки тривалого домашнього насильства, що передаються вже наступному поколінню як усталена модель поведінки. Під час аналізу цих правопорушень спеціальна увага приділяється жорстокому поведінню з тваринами як важливого індикатору не тільки існування домашнього насильства, а й свідчення щодо маргінальних нахилів правопорушника.

У статті автор наводить визначення терміна «жорстоке поводження з тваринами», який він розуміє як знущання над тваринами, у тому числі безпритульними, що спричинило мучення, завдало їм фізичного страждання, тілесні ушкодження, каліцтво або призвело до загибелі, нацьковування тварин одна на одну та на інших тварин, вчинене з хуліганських чи корисливих мотивів, залишення домашніх і сільськогосподарських тварин напризволяще, а також порушення правил утримання тварин.

У статті наводяться результати досліджень британських учених про існування зв'язку між домашнім насильством та жорстоким поводженням із тваринами. Особливо аналізується низка історичних подій, що передували виявленню цього взаємозв'язку. Зазначено, що в 1822 р. у Великій Британії було прийнято Закон Мартіна, який уперше передбачав благополуччя тварин та забороняв жорстоке й неправильне поводження з тваринами. Організації, схожі на Британське королівське товариство з попередження жорстокого поводження з тваринами, були створені в 1865 р. в США та в 1869 р. в Канаді. Зусилля, спрямовані на захист прав дітей, отримали розвиток лише як результат роботи руху щодо гуманного поводження з тваринами.

Ключові слова: насильство в родині, злочини над тваринами, насильство над дітьми, зарубіжний досвід, латентність насильства в родині, латентність правопорушень над тваринами, превенція.

Formulation of the problem. It is widely acknowledged that the phenomenon of domestic violence is an offence, it is recognised internationally as discrimination of fundamental human rights and freedoms. Most countries of the world, including Ukraine, for the commission of domestic violence provide legal liability (criminal, administrative, civil law).

Analysis of publications in which there is a solution of this problem. A large number of works by domestic and foreign scholars, such as A. Baidy, K. Levchenko, U. Novakovska, A. Dominichak, E. Bienkowska, L. Sukmanowska and others, are devoted to the study of prevention and counteraction to domestic violence. Separate scholars have considered the relationship between domestic violence and animal abuse, such as F. Arkow, B. Blonsk, J. Zorz, M. Zinley, and others. However, given the high latency of domestic violence, the existence of a large variety of stereotypes and myths, differences in the understanding of the place of man and animal in society, the difference in the effectiveness of the response of police officers from different countries to cases of domestic violence, and animal abuse, there are a number of aspects that require further research. The indicated themes determine the relevance of the chosen subject.

Basic content. In order to understand what kind of attitude towards animals can testify to domestic violence, we will consider the notion of animal abuse. Namely, it is abusing animals, including homeless animals, which causes torture, inflicts physical suffering, injuries, injury or death. This results in the inoculation of animals one by one and on other animals, committed with hooligan or similar motives, the abandonment of domestic and farm animals to their fate, including violations of animal retention rules [1].

“The traditional approach to the problem of domestic violence by lawyers, law enforcement officers in general and the police in particular focuses exclusively on people’s relationships, which is an undeniable mistake”, says P. Arkow [2, p. 49]. However, the modern doctrine of domestic violence prevention uses a multidisciplinary approach to address this problem, and also recognises that there is a high presence of psychological relationships in which pets are involved. The latter are often called actual “family members” who are fully involved in her life. Deep attachment to pupils, especially among women and children, in domestic violence situations, often allows aggressors to use cruelty to or threats to animals as a way of establishing (strengthening) control over victims [2, p. 49].

There is significant common ground with animal abuse and domestic violence. Offenders who commit violent crimes against human beings often begin to realise their first manifestations of such a violent model of animal behaviour. Cruelty to animals, apart from violence against a living creature, may also be a form of psychological blackmail of a child or a partner [3, p. 345].

Researchers L. Merz-Perez and K. Hiede in their 2004 work entitled “Animal cruelty: path way to violence against people” pointed out that if there is serious animal abuse in the family, this is the first sign of the fact that there is domestic violence [4].

The literature indicates that the emergence of increased attention to the relationship between domestic violence and animal abuse occurred accidentally in the 80 years of the 20th century. In 1983, an analysis of case offences was

conducted in the United States and Canada. In New Jersey, the following was found in the investigation of mistreatment of animals. In 53 families where the ill-treatment of children or the failure of parents to perform their duties, 60% of these families had cases of animal abuse that caused injury or death of the animal. Most often harmed by one of the aggressive (parent or adoptive) parents who deliberately committed violence against the child (or children), as well as domestic animals, to intimidate or control the minor [3, p. 347].

The likelihood of animal abuse increased when children were subjected to physical violence (88%) than when they became victims of psychological or sexual violence. Although parents committed most of the animal abuse, it was noticed that the children, too, pushed, kicked, or teased these animals [3, p. 347].

A study of 23 British family cases known to the Royal Society for the Prevention of Sexual Abuse was found that 82% of the children were registered with the local services for the ill-treatment of children or due to the failure of their parents to perform their duties [3, p. 347].

Cases of violent behaviour to animals are the first manifestations of human deviant behaviour in society in general. In a person, due to certain circumstances or factors, the intention is formed to meet their psychological needs, to cause harm to others. As an injured party, an aggressor chooses the most vulnerable victim with the least probability of exposing his unlawful deeds. After the first attempt, the aggressor will try to repeat the experience, as well as avoid punishment. The offender’s actions are changing and improving, the person can engage collaborators, shoot and show videos on the web, and so on. Such marginal inclinations can be formed under the influence of various factors, namely:

- its own sad experience of the violence experienced in itself in the past. In the event that the victim has not been given the proper assistance of a psychologist as a protective mechanism, he can begin to do what he has done before. So, to say a person chooses to be an “aggressor”, not a victim;
- the imperfection of the legal system creates a sense of impunity and permissiveness, which leads to an increase in crime;
- copying behaviour model, people around, relatives, family. In 2/3 of the cases, children copy the model of their parents’ behaviour, and take as a basis the behaviour that they saw in childhood, etc.

For the reason of the marginal behaviour of individuals, in general, and domestic violence in particular, it is possible to include a number of factors and reasons, and to carry out their analysis. However, we will look at the animal abuse through the prism of identifying and preventing domestic violence, rape juveniles, parents’ failure to fulfil their parental responsibilities, child abuse, and the proper enforcement of legislation in the area of animal protection.

In order to confirm the link between animal abuse and domestic violence, we will consider the results of studies of international scientists on this issue.

Understanding domestic violence, cruelty to animals in the sense that it exists today and the establishment of links with animal abuse preceded a series of historical events. In 1822, the United Kingdom adopted the Martin Act,

which foresaw the welfare of animals and forbade the cruel and inappropriate handling of animals [5]. Understanding the need to ban hard-hitting animals was also recognised after the creation of the British Royal Society for the Prevention of Cruelty to Trafficking in Animals in 1824 [3, p. 347]. The headquarters were located in the city of London. In 1935, the Pisa Act was adopted, which clarified that ill-treatment was spreading to dogs and other domestic animals, bird and neck battles were banned, and attention was paid to improving slaughter standards [5].

Organisations similar to the British Royal Society for the Prevention of Ill-Conservation with Animals were created in 1865 in the United States, and in 1869 in Canada. Efforts have been made to protect the rights of children, yet have only developed as a result of the work on humane treatment of animals. After the New York Society for the Prevention of Child Abuse, the case was based on the fact that the child was hungry, beaten up, imprisoned and equated to the “victim animal” [3, p. 347]. This shock came namely in 1874, especially when the caregivers of the young Mary Helen Wilson cruelly treated her, and the community intervened. After unsuccessful attempts to take the child out of a hostile environment, to represent the interests of the child agreed to Elbrides T. Gerry – a New York Society of Law Advocate for the Prevention of Cruelty to Animals. Which, after the child protection services and officials refused to help the child, decided, referring to the norms of the law on animal abuse, equated the child with the victim and defeated him. As a result, Guerra emerged as a leader in the new aid movement for children, and founded in 1875 an organisation called New York City Against Child Abuse. This was the world’s first human rights organisation for children [6, p. 48].

Rights of the child were acquired only after the publication of Henry Kempe in 1962, an article entitled «Bitten Child Syndrome» [3, p. 347]. Dr. S. Henry Kempe was a pioneer in the medical and social aspects of child abuse, he analysed the forms of violence against children existing at that time. Discussing the significance of the work “Childbirth Syndrome” in the prospect of legal proceedings, Judge Justin Visse Polier, pointed out that the pre-community in talking about violence against children and failure to fulfil their duties by parents moved from the interpretation of “father-sovereign” to “father-monster”, but the position was not always in line with intervention. The judge condemned this, and demanded a revision of the quality of education, as well as considering the main purpose of legal proceedings to assist children who are abusively treated or whose parents are not performing their duties [7, p. 5].

In the 1970s, researchers continued to study the connection between violence against women, ill-treatment of children and animals. The scientist Tapia analysed the antisocial behaviour of children, found cases when children mocked animals. In the subsequent analysis of the above, after nine years, he established that the designated children should be a product of the upbringing of the violent to the surrounding environment (family). Other studies indicate that brutal handling of animals by children is an indicator (a marker) that a minor is suffering from domestic violence, or it is the first marginal inclining that he will continue in the future. Thus, Hutton found that families had cruelly behaved animals, 83% of cases found or suspected parents neglect their parental responsibilities or abuse of children [6, p. 51].

Despite the above, during this period a woman was still not recognised as a victim of domestic violence, due to a sanctioned society, composed of centuries of tradition, political, legal and religious traditions, but that all family members are the owner’s property (head) of the family who had all the power to discipline and punish his wife and children [3, p. 359]. However, in the second half of the 20th century, the public recognised the problem of domestic violence against women, and the feminist movement began to develop.

Despite the fact that the connection between animal abuse and domestic violence was detected a long time ago, it has not been studied consistently. The Canadian scholars Liza and Marie Zilney, in 2005, reviewed reports from two organizations, namely, the Family and Children’s Services and Humane Society Services, located in Wellington, Canada. The researchers analysed the information that came to these organisations within 12 months and set the following. In 20% of the total number of families, namely 1 485 families registered with the Family and Children Service, were domesticated animals. In the analysis of animal abuse, namely 247 cases, 10 cases of domestic violence were reported, which was reported to the Family and Children’s Service [6, p. 48].

The connection between animal abuse and domestic violence against women was investigated by scientists who indicate the following. In the study of women in shelters for victims of domestic violence, they discovered that they talked about the violence of their partner not only over them but also over animals. Victims delayed “escape” to the shelter from an aggressive partner as they feared the welfare of their animal. A study was conducted in the United States in 1998 that found that shelter for domestic violence victims in Utah had 71% of trafficked women having domestic animals and their partner threatened or injured an animal. In 2000, while continuing research on this topic in South Carolina, it was found that 46,5% of women victims of abandonment reported animal abuse from the side of aggressors [8, p. 42].

In 2004, Australia conducted a study for which 2 control women were selected. The first group consisted of 104 shelters for victims of domestic violence, the other 102 women who were members of the local community. The main criterion for respondents was that they should have at least one pet. 40% of the respondents from the first group noted that their partners aggressors threatened or beat domestic animals. In turn, 6% of respondents from the second group indicated that their partners are cruel to the animals. 17,5% of women from the first group stated that their partners still killed the animal, in turn, no other member of the second group had stated about it [8, p. 42].

In the United States, 99% of respondents consider pets to be family members (63,2%) or companions (35,8%) and indicate that most animals are in families with children, and women are caring for the animal. According to the above, and taking into account the dynamics of the relationship between man and animal, 18% to 45% of women entering the shelter for victims of domestic violence, delayed their escape as they experienced domestic pets. The refusal to leave their pets was even more problematic in rural areas, where access to shelters and animal care services is more limited [2, p. 50].

Cruelty to animals is not common in all households where domestic violence is committed. However, in the United States, in 71% of cases where domestic violence has occurred, the victims indicate that their partners killed, injured or threatened to do so with animals, and this was used as a means of demonstrating power. Such cases of animal abuse often serve as a vivid demonstration or a transparent hint of intent of the attacker, with a psychological implication or a message that everything that is done with the animal will be committed to the victim, if he does not comply with the aggressor’s request. Cases of animal abuse are necessarily carried out in the physical presence of women and / or children. According to research on this topic, 87% of ill-treatment was committed in the presence of women, and 75% in the presence of children. The presence of women and children who witness acts, contributes to emotional trauma, the retention of the whole family in hostages and excludes possible protest [2, p. 51].

Conclusions. Hence, the identification of animal abuse makes it possible for law enforcement authorities in a timely manner to identify domestic violence, child abuse, failure by parents to fulfil their duties, and take appropriate measures to stop it, to bring the perpetrators to justice and to eliminate the negative consequences of this phenomenon.

REFERENCES:

1. Про захист тварин від жорстокого поводження : Закон України від 21 лютого 2006 р. № 3447-IV / *Верховна Рада України*. URL: <https://zakon.rada.gov.ua/laws/show/3447-15>.
2. Arkow P. Form of Emotional Blackmail: Animal Abuse as a Factor for Domestic Violence. *Domestic Violence Report*. 2014. Vol. 19. № 4. P. 49–64.
3. Zorza J. Dealing with animal abuse to alleviate family violence. *Family and Intimate partner violence quarterly*. 2010. Vol. 02. № 4. P. 345–358.
4. Merz-Perez L., Heide K. Animal cruelty: path way to violence against people. New York : Altamira Press, 2004. 208 p.
5. Our history. *Royal Society for the Prevention of Cruelty to Animals: official web-site*. URL: <https://www.rspca.org.uk/whatwedo/whoweare/history>.
6. Zilney L., Zinley M. Reunification of child and animal welfare agencies: cross-reporting of abuse in Wellington County, Ontario. *Child welfare*. 2005. Vol. 84 (1). P. 47–66.
7. Child Abuse and Neglect: Issue on Innovation and Implementation : Proceedings of the Second Annual National Conference on Child Abuse and Neglect, April 17–20, 1977 / ed. by M. Lauderdale, R. Anderson, S. Cramer. Austin, 1978. Vol. 1. URL <https://www.ncjrs.gov/pdffiles1/Digitization/127058NCJRS.pdf>.
8. McPhedran S. Animal Abuse, family violence, and child wellbeing: a review. *Journal of Family Violence*. 2009. № 24. P. 41–52.

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ВІЙСЬКОВИЙ ЗБІР: У ПОШУКАХ КОНЦЕПЦІ ПРАВОВОГО РЕГУЛЮВАННЯ

MILITARY FEE: IN SEARCH OF THE CONCEPT OF LEGAL REGULATION

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Надзвичайні податкові важелі часто відіграють ключову роль у гарантуванні належного фінансового базису національної оборони. Військовий збір, який почали сплачувати в нашій державі з 3 серпня 2014 р., також став досить ефективним податковим важелем. За п'ять років до Державного бюджету України надійшло близько 57 млрд. грн. від військового збору. Водночас можемо спостерігати стійку тенденцію до зростання коштів, мобілізованих від окресленого податкового платежу, як в абсолютних, так і у відносних параметрах.

До цього часу в нашій державі ні на законодавчому, ні на доктринальному рівні не сформовано ефективну модель правового регулювання військового збору, та й взагалі правовий механізм зазначеного податкового платежу навряд чи можна характеризувати як досконалий.

Сучасна вітчизняна концепція правового регулювання військового збору повинна враховувати, що військовий збір є постійним загальнодержавним цільовим податковим платежем (збором), що справляється з доходу платник, фізичної особи, та спрямовується на фінансування чітко передбачених військових видатків.

Закріплення цільового призначення військового збору доцільно здійснити в Податковому кодексі (далі ПК) України, зважаючи на об'єктивний чинник (зафіксувати спрямування коштів від справляння аналізованого податкового платежу на переозброєння війська). Вдала законодавча конкретизація мети зазначеного податкового платежу тільки сприятиме позитивному сприйняттю збору серед його платників та не викличе в подальшому суттєвого спротиву в ході реформування його податково-правового механізму (наприклад, у разі підвищення ставки до 2%).

Запропоновано невідкладно здійснити корекцію чинного податкового законодавства України, а саме: а) змінити назву ст. 9 ПК України на «Загальнодержавні податки»; б) доповнити Податковий кодекс України ст. 9¹ «Загальнодержавні збори» та включити до переліку податкових платежів зазначеного різновиду військовий збір; в) доповнити Податковий кодекс України ст. 10¹ «Місцеві збори»; г) унести зміни до п. 6.2 ст. 6 ПК України щодо фіксації зборів як ознаки їхнього цільового призначення; д) у п. 16¹ підрозділу 10 розділу XX ПК України закріпити військовий збір як платіж, що має цільовий характер та детально регламентувати його мету й податково-правовий механізм («програма-мінімум») або ввести до структури Податкового кодексу України розділ VII «Військовий збір» (цей номер зараз є «вакантним»), у якому, передбачити законодавче визначення цього податкового платежу («програма-максимум»).

Ключові слова: концепція, правове регулювання, військовий збір, воєнний податок, податкова система України, правовий механізм податкового платежу, Податковий кодекс України.

Extraordinary tax levers often play a key role in ensuring the proper financial basis of national defense. The military fee, payment of which started on August 3, 2014 in our country, also became a very effective tax lever. For five years, the collection to the State Budget of Ukraine was about 57 billion UAH. At the same time, we can observe a steady tendency of growth of funds mobilized from the defined tax payment, both in absolute terms and in relative parameters.

Until now, an effective model of legal regulation of military fee has not been established either on the legislative or on the doctrinal level, and in general the legal mechanism of the said tax payment is unlikely to be characterized as perfect.

The modern concept of the legal regulation of military fee should take into account that it is a permanent national target tax payment (fee), which is coped with the income of the payer – an individual, and is directed to financing clearly allocated military expenditures.

It is expedient to consolidate the purpose of military fee into the Tax Code of Ukraine, taking into account the objective factor (to fix the direction of the funds from the collection of the analyzed tax payment for the rearmament of the troops). A successful legislative specification of the purpose of this tax payment will only contribute to a positive perception of the collection among its payers and will not cause significant resistance in the course of reforming its tax and legal mechanism (in particular, if the rate is increased to 2%).

It is proposed to immediately correct the current tax legislation of Ukraine, namely: a) to change the title of Article 9 of the Tax Code of Ukraine to "National Taxes"; b) to supplement the Tax Code of Ukraine with Article 9¹ "National fees" and include in the list of tax payments the military fee; c) to supplement the Tax Code of Ukraine with Article 10¹ "Local Fees"; d) amend p. 6.2 of Article 6 of the Tax Code of Ukraine in regards to the fixation as a sign of the collection of their intended purpose; e) in p.16 of sub-section 10 of section XX of the Tax Code of Ukraine, to consolidate the military fee as a payment of a targeted nature and to regulate in detail its purpose and the legal mechanism ("minimum program") or to introduce into the structure of the Tax Code of Ukraine Section VII "Military fee" (this number is now "vacant"), in which, in particular, to provide the legal definition of this tax payment ("maximum program").

Key words: concept, legal regulation, military fee, military tax, the tax system of Ukraine, legal mechanism of tax payment, the Tax Code of Ukraine.