

THE RIGHTS OF INHUMANS: PHILOSOPHICAL AND LEGAL OUTLINE



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Abstract. The article, in a staged version, brings up the question of the rights of beings not belonging to the biological specie “homo sapiens”. Based on an analysis of the worldviews that characterize the modern world, and examples from jurisprudence, the authors argue that inhumans as a class of beings are now entitled. At the same time, the initiators of recognition of the rights of inhumans are the people themselves.

Keywords: *people, inhumans, rights, obligations, precedent, responsibility.*

Introduction

The topic of the rights of inhumans has not become a textbook for philosophical-legal and theoretical-legal studies yet, as well as the concept of “inhumans” (with emphasis on the second syllable) is not widespread. Nevertheless, these issues are relevant to practical jurisprudence. The articulation of this topic in the provisions of international documents and in the standards of specific legal systems reflects the real problems of a legal nature that require theoretical overview.

Analysis of the latest researches and publications

There are no complex philosophical-legal and theoretical-legal researches of this problem up to now (at the level of scientific

articles we can refer to the works of O. Yastrebov [1] and G. Romanovskiy [2]). Therefore, when considering the stated problem, we used a wide philosophical source base, refinements in the field of legal sciences

and court decisions. In writing this article, a considerable amount of Internet material has been used, which in the context of new approaches to the construction of legal reality is quite reasonable.

Presenting main material

So, who¹ do we call inhuman? Today, there are two known groups of inhumans whose rights are defended by humans. These are animals as a natural endowment and the result of human genius - clones (cloning issues are not raised in this article).

Within the stated theme special attention is paid to animal rights. There is a non-governmental organization in the United States called "The Movement for Inhuman Rights", which sees its purpose in upholding animal rights in court. According to public activists, the main idea that allows to file a lawsuit is the proximity of the human genome and some animal species. Historically, the first such lawsuit was a claim to protect the chimpanzee Tommy, who lived in a cage and was the property of his masters. The lawyers of the said human rights organization argued that US law contains the general concept of "human" and may extend to primates, since their DNA is 98% identical to human DNA. Following such legal logic, the applicants requested the extension of Tommy's warranties (habeas corpus) and, consequently, his release from prison. The final decision in this case was made by the Court of Appeal of New York on December 4, 2014, which emphasized that the "habeas corpus" rule does not contain a reference to a human as a rightsholder using the term "human". At the same time, the court said that the law should not define the term "human", by default, assuming that it is he and only he – "human" who has rights and freedoms. Upon American case law, it was enough to point out that history do not know any case when "habeas corpus" referred to the animal. The court, based on the principle of unity of rights and obligations, has shown that a "human" can perform legal duties, and since the chimpanzee cannot be legally responsible, so he is not granted rights. In proof of its correctness, the court appealed to the presence of other legal forms of animal protection [3].

¹ This article deals with the rights of a certain category of creatures, which makes it impossible to speak of them as things. Hence the preposition of who is used instead of what.

This was the position of the US court; the opposite decision was made by the Argentine court in 2014. According to this decision, orangutan Sandra should be considered the same subject of human rights. Animal rights activists have taken advantage of the fact that 28 years old Sandra was kept in the Buenos Aires Zoo, but should be considered and perceived as human in a philosophical rather than biological sense. Referring to R. Caffaroni's work "Criminal Law. The General Part" [4] the court urged lawmakers to reconsider the attitude to animals as to the things [5].

Camel Ali became a striking symbol of the animal's high feelings, including friendship. In October 2019, Mr. Frederiksen (Prime Minister of Denmark) presented to the country's Parliament a new law banning the use of rare animals in circus performances. During the discussion, it turned out that after the law was passed, the government agreed to buy four elephants from one of the circuses, but there was a problem. It turned out that the elephant Rambolin is friends with camel Ali. That is why the Danish government decided to buy a camel with the nickname "Middle Eastern", along with the elephants. Despite the curiosity, at first glance, the situation, the Danes confirmed the presence of feelings in animals and the need to take them into account [6].

There is another topic in real law practice, in particular inheritance law. This is the appointment to be the heir to a favorite animal – a dog or cat (or their group).

In terms of biorobots, the most famous of them is Sofia, which is referred to as subgroups of humanoids or gynoids, or cyborgs. Mankind has not yet determined who it was that it created. Sofia as a fruit of human creative activity has citizenship, and therefore all the rights of a Saudi Arabian citizen must be enshrined in it, that is, as a general rule, it is legally capable subject of law – a slave citizen (again a new concept in jurisprudence is not developed at all). From this point of view, Sofia's interview at the international conference "Future Investment Initiative" is revealing, to the moderator's question of the mind and self-awareness of the robots she answered: "May I ask, how do you know that you are human?" [7]. Sophia's response is not rudeness or disrespect, this response is evidence of the

collapse of the human-centrist and evolutionist dictates on Earth.

Man's recognizing of its exclusivity among all living and non-living things on Earth, establishing the human hegemon and reshaping the world under the slogans of improvement are, in our opinion, nothing more than a manifestation of the compensation of his natural damage, about what E. Fromm was writing. The enhancement of their natural abilities by means of artificially created adaptations (in Marxism they are called tools) and unusual technologies has led to the formation of a person's confidence in his omnipotence. This belief was also reinforced by an ideological factor – man is derived from god/deities, that gave him the right to treat other creatures arrogantly.

XX-XXI centuries have become revolutionary not only in the field of technology, there was another revolution - the dethronement of the aura of exceptional human position on Earth. Human vulnerability as a physical and psycho-emotional being is now perceived as a given, which compares it to all other living beings on Earth.

Let us make a few remarks about those processes that are taking place in the modern world and affect the formation of a new legal reality, one of the segments of which has already become the issue inhuman rights. Today we are witnessing the gradual movement of a new version of humanism in the sense of civilization. Initially, the recognition and acceptance of the centuries-old controversy between male and female, until the emergence of a sexless society, the formal legal equality and legal personality of all people (in the light of current cosmopolitanism); recognizing and accepting the diversity of cultural systems and value-ideological systems; and now a recognition of the right to life and a painless, non-violent existence for inhuman beings. Whatever the case may be, vegetarians have become the first adherents of respect for animal life (strict vegetarianism can be compared to banning cannibalism!). At the beginning of the twentieth century A. Schweitzer, unjustly forgotten today, appealed to the "reverence for all living things": "I am life that wants to live, in the midst of life that wants to live" [8, p. 217].

Despite the peculiarity of the food chain for humans, which involves the main ingredient - meat, humanity today is trying to

minimize harm to animals. The main directions of such minimization include technological, legal and educational measures. The directions highlighted by us are not exhaustive, but, in our opinion, they are a syncretic unity – production and technology are regulated by law – the right should be a concentrated manifestation of cultural and mental and cultural values.

Technological – development of new technologies to meet the needs of people with minimal use of raw materials of animal origin (production of artificial leather, fur and fibers). Particular attention should be paid to alternative approaches to testing cosmetic products, which should supersede animal testing. According to I. Shostak, "... there is a dissonance, because we live in an era of research that gives rise to new technologies, scientific discoveries, implementation of previously impossible projects, but still we use sadistic methods of testing detergent or mascara, equating their importance to the lives of hundreds of animals" [9]. And again, the notion of ethics is getting into the research and production lexicon: the presence of unethical, but cost-effective solutions, inhibits the prohibition of barbaric testing methods. "The interests of large companies that earn money for the sale of animals for the needs of laboratories and for conducting such experiments should also be taken into account – they do not want to lose the opportunity to make money in this way and are likely to have an impact on decision-making in the legislative field" [9]. Alternative methods of testing cosmetic products today are: computer diagnostics of chemical toxicity (the accuracy of such analysis is 87, single animal test - 57, and repeated - 81); the use by manufacturers of those ingredients that have already been tested and found safe; testing in vitro on cell material etc.

Legal measures are a series of legislative initiatives that are implemented in the rules of the current legislation and aimed at observing the humane attitude to animals. Historically, the first steps in this direction have been legislative initiatives aimed at combating animal abuse. In Ukraine, the current legislation provides two types of legal liability for the abuse of both wild and domestic animals – administrative (Article 89 of the Administrative Code of Ukraine) and criminal.

With respect to the present visual changes in relation to animals, in the legal aspect, we should dwell on the prohibitions on the legal nature of the use of animals in the circus. Due to this, an “ethical” circus becomes global trend, supplanting the old-style circus – the “barbaric” one: “Let's think what the man wants to show, taming a wild animal, that it is the king of nature, the crown of creation? That he can conquer all alive on earth? In my opinion, only complex people who try to assert themselves in such a cruel way can demonstrate and watch it. Let's suppose that you proved that you are stronger than a bear or a tiger, and what next? Where is the plot development! Self-confident and self-sufficient person does not need it” [11].²Today, about 50 countries in the world have abandoned the exploitation of animals: Austria became the first country to introduce a complete ban on the use of animals in the entertainment industry, enacting a law in 2002; Costa Rica imposed a ban on captive dolphins and whales; In 2009, thanks to government decisions, elephants [12] from all zoos were released into national parks and reserves and a revolutionary decision was made regarding dolphins³. Again, humanity has an alternative to wildlife circus: “The seriousness of the debate about the ban on the use of animals in circuses in Germany is evidenced by the decision to completely abandon animals in a program approved by famous German circus Roncalli. Starting from the summer (*August 2019 - author's remark*) of this year, live animals in the circus have been replaced by their holograms” [11].

As for Ukraine, officially transportation of wild animals was banned in 2017, and the first in-station circus, where performances of wild animals were banned, became the Odessa circus (September 2019) [12]. The court upheld the legality of the city authorities'

decision to ban circuses with animals. Mobile circuses with animals were banned in Kyiv on March 19, 2019: “Today the court upheld the legality of the KLSA's decision to ban animal chapiteau in Kyiv. Circus lobbies have abandoned their attempts to return to the capital of abuse” [13].

Orientation and meaningful content of **outlook and education activities** fully reveal the thesis - there is nothing in law other than the cultural and mental characteristics of the culture that gave birth to this law. Man's careful and reverential attitude of all living things is the result of a cultural-civilizational process, certain periods of which humanity would gladly forget or shy away from them. It took a long time for mankind to understand the value of the other person and to acknowledge his rights: from the prohibition of cannibalism through various types of tolerance to today's ideological deity – Tolerance. Similar processes also occur with regard to animals: from ruthless exploitation and predatory consumption through financial gain to the recognition of their right to life and decent living conditions. Humane treatment of animals is shaped by educational practices (for example, treatment of animals in India, which is the result of educational practices based on local religious beliefs; the attitude of Israelis not even to animals, but to the flora of their country, etc.).

² Sereda S.V. Circuses without animals. 45 countries banned barbaric entertainment // <https://vegjournal.com/filosofiya/etika/1690-tsirki-bez-zhivotnykh-45-stran-zapretili-varvarskie-razvlecheniya.html>

³ “In India, the head of the Ministry of Environment and Forestry announced the decision to assign dolphins the status of “non-human species.” Thus, India became the first country to recognize the unique intelligence and self-conception of representatives of a group of aquatic mammals – cetaceans”// <https://comments.ua/ua/news/society/629880-uryad-indii-viznav-del-finiv-osobistostyami-i-zaboroniv-del-finarii.html>

Conclusions

Thus, the problem of inhuman rights in the legal field today resembles the similar situation with the status of slaves in ancient Rome. There are no rights enshrined in law for inhumans, but in actual legal reality they have some of them and are not considered things. Moreover, the rhetoric in the sphere of "human-inhuman" relations is changing dramatically: more and more often, the behavior of a human towards the inhuman is described with the help of tokens with a negative connotation – barbaric, cruel, unethical, sadistic.

References

1. Yastrebov O. Legal personality of an electronic person: theoretical and methodological approaches // <https://cyberleninka.ru/article/n/pravosubektnost-elektronnogo-litsa-teoretiko-metodologicheskie-podhody>
2. Romanovskii G. B. Konstitutsionnaya pravosub "ektnost' grazhdan v usloviyakh genomnoy meditsiny [Constitutional Status of Citizens in the Context of Genomic Medicine]. Vestnik Permskogo Universiteta. Juridicheskie Nauki - Perm University Herald. Juridical Sciences. 2017. Issue 37. Pp. 260-271. (In Russ.). DOI: 10.17072/1995-41902017-37-260-271.
3. Appellate Division. Third Judicial Department. URL: <http://decisions.courts.state.ny.us/ad3/Decisions/2014/518336.pdf>.
4. Zaffaroni R. Derecho Penal. Parte General. Buenos Aires, Argentina, 2002. Available at: <https://ru.scribd.com/doc/50069982/Zaffaroni-Eugenio-Raul-Derecho-Penal-Parte-General> (accessed 15.02.2017) (In Eng.).
5. Court in Argentina grants basic rights to orangutan. URL: <http://www.bbc.com/news/world-latin-america-30571577>
6. Drove to hysteria: the story of the Prime Minister of Denmark on the purchase of a camel Ali caused rampant laughter from the deputies (video) // <https://fakty.ua/320258-dovela-do-isteriki-rasskaz-premera-danii-o-pokupke>
7. Human-like robot obtains Saudi Arabian citizenship // <https://www.popmech.ru/technologies/news-393732-chelovekopodobnyy>
8. Schweitzer A. Reverence for life: Translated from Germany./ Composed and postscript. A.A. Huseinov; General edition A. A. Huseinov and M. G. Seleznev. - M.: Progress, 1992. -576 p. P. 217
9. Shostak I. Price-to-life shampoo: Why cosmetics are still tested on animals // <https://112.ua/statji/shapmun-cenoy-v-zhizn-pochemu-kosmetiku-do-sih-por-testiruyut-na-zhivotnyh-486437.html>
10. Sereda S.V. Circuses without animals. 45 countries banned barbaric entertainment // <https://vegjournal.com/filosofiya/etika/1690-tsirki-bez-zhivotnykh-45-stran-zapretili-varvaskie-razvlecheniya.html>
11. German circus and its features // <https://fox5sandiego.com/2019/06/11/jaws-drop-as-circus-ditches-live-animals-for-holograms/>
12. Ukrainian Circus without Animals: in a Step Before the Ban // <https://www.dw.com/uk/%D1%83%D0%BA%D1%80%D0%B0%D1%97%D0%BD%D1%81%D1%8C%D0%BA%D0%B8%D0%B9-%D1%86%D0%B8%D1%80%D0%BA-%D0%B1%D0%B5%D0%B7->
13. Mobile circuses with animals banned in Kyiv // <https://tsn.ua/kyiv/u-kiyevi-ostatochno-zaboronili-cirki-shapito-z-tvarinami-1314663.html>.