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CLASSIFICATION OF ANIMALS AS SOURCES OF INCREASED DANGER: GROUNDS AND CONSEQUENCES

Abstract. The present article is devoted to the theoretical and law enforcement aspects of recognizing animals as sources of increased danger. The article discusses the ambiguous interpretation of the concept of “source of increased danger” and the problems of classifying wild and domestic animals as sources of increased danger. The analysis of foreign and national legislation, as well as judicial practice of the Republic of Kazakhstan on the topic of scientific research is carried out. As a result, the problems and discrepancies of national legislation are highlighted and specific proposals are made to improve the norms of modern Kazakh law. The paper also focuses on the need to unify the legal approach and formalize the criteria for the legal assessment of an animal as a dangerous object. The expediency of introducing liability insurance for owners and systems of state control over the maintenance of such animals is substantiated. The article may be of interest to lawyers in the field of civil and other branches of law, animal rights activists and persons directly related to animals potentially falling under the concept of a source of increased danger.

Keywords: source of increased danger; wild animal; domestic animal; public safety; harm; object; action; responsibility.

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ЖАНУАРЛАРДЫҢ ЖОҒАРЫ ҚАУІПТІЛІК КӨЗІ РЕТІНДЕ ЖІКТЕЛУІ: НЕГІЗДЕРІ МЕН САЛДАРЫ

Аннотация. Мақала жануарларды жоғары қауіптілік көзі ретінде танудың теориялық және құқық қолдану аспектілеріне арналған. Мақалада «жоғары қауіптілік көзі» ұғымын және жабайы әрі үй жануарларын жоғары қауіптілік көзі ретінде жіктеу мәселесін екіұшты түсіндіру қарастырылады. Ғылыми-зерттеу жұмысы тақырыбы бойынша шетелдік және ұлттық заңнамаларға, сондай-ақ Қазақстан Республикасының сот практикасына талдау жүргізілді. Нәтижесінде ұлттық заңнаманың мәселелері мен әртүрлі оқылымдары жарияланып, қазіргі қазақстандық құқық нормаларын жетілдіру жөнінде нақты ұсыныстар берілді. Сондай-ақ, жұмыста құқықтық тәсілді біріздендіру және жануарды қауіпті объект ретінде құқықтық бағалау критерийлерін ресімдеу қажеттілігіне авторлар назар аударады. Мұндай жануарларды ұстауға мемлекеттік бақылау жүйесі мен иелерінің жауаптылығын сақтандырудың қажеттілігі дәлелденген. Мақала азаматтық және басқа да құқық салаларындағы заңгерлерді, жануарларды қорғаушыларды және қауіптілігі жоғары көздер ұғымына жататын жануарларға тікелей қатысы бар адамдарды қызықтыруы мүмкін.

Түйінді сөздер: жоғары қауіптілік көзі; жабайы жануар; үй жануары; қоғамдық қауіпсіздік; зиян; объект; әрекет; жауаптылық.

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КЛАССИФИКАЦИЯ ЖИВОТНЫХ КАК ИСТОЧНИКОВ ПОВЫШЕННОЙ ОПАСНОСТИ: ОСНОВАНИЯ И ПОСЛЕДСТВИЯ

Аннотация. Статья посвящена теоретическим и правоприменительным аспектам признания животных как источников повышенной опасности. В статье рассматриваются неоднозначное толкование понятия



«источника повышенной опасности» и проблемы классификации диких и домашних животных как источников повышенной опасности. Проведен анализ зарубежного и национального законодательств, а также судебной практики Республики Казахстан по теме научно-исследовательской работы. В результате освещены проблемы и разночтения национального законодательства и даны конкретные предложения по совершенствованию норм современного казахстанского права. Также в работе акцентируется внимание на необходимости унификации правового подхода и формализации критериев правовой оценки животного как опасного объекта. Обоснована целесообразность введения страхования ответственности владельцев и систем государственного контроля за содержанием таких животных. Статья может представлять интерес для юристов в сфере гражданского и других отраслей права, зоозащитников и лиц, непосредственно имеющих отношение к животным потенциально подпадающих под понятие источника повышенной опасности.

Ключевые слова: источник повышенной опасности; дикое животное; домашнее животное; общественная безопасность; вред; объект; действие; ответственность.

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Introduction. The legal category of “source of increased danger” plays a key role in the system of civil liability, acting as the foundation for the application of a no-fault liability regime. In the context of growing urbanization, technological progress and changing patterns of human interaction with the environment, the importance of effective risk management associated with potentially dangerous objects, including animals, is growing.

The problem becomes particularly relevant in the context of the ambiguity of the legal status of animals as sources of increased danger. Despite Kazakhstan's general civil regulation in this area (Article 931 of the Civil Code of the Republic of Kazakhstan), there is no regulatory definition of the category “animal as a source of increased danger”, as well as an exhaustive list of objects falling under this definition.

The article examines the theoretical and applied aspects of the legal regulation of animals as sources of increased danger in Kazakh legislation, analyzes doctrinal approaches and judicial practice, and suggests possible ways to improve legislation based on foreign experience.

Materials and methods. The research uses:

- Norms of the Civil Code of the Republic of Kazakhstan;
- Regulatory rulings of the Supreme Court of the Republic of Kazakhstan;
- comparative legal analysis of the legislation of foreign countries (Germany, USA, Japan, etc.);
- positions of Kazakhstani and Soviet scientists

(O.S. Ioffe, M.M. Agarkov, B.S. Antimonov, A.M. Erdelevsky, etc.);

- judicial practice (including the case considered by the Oktyabrsky District Court No. 3 the city of Karaganda);

- Administrative sources, including the order of the Minister of Ecology dated 03/24/2022 on the list of animals requiring special responsibility.

The following methods were used to present the general picture: comparative-legal, dogmatic, historical-legal, doctrinal.

Results, discussion. The concept of a source of increased danger occupies an important place in the system of civil law. It is used in cases where a certain activity or object is inherently capable of causing harm to third parties, even if all precautions are taken. This design is the basis of the institution of innocent responsibility and is aimed at protecting people affected by dangerous objects. One of the categories causing controversy among scientists and practitioners is animals, especially wild and some breeds of domestic animals.

In the modern legislation of the Republic of Kazakhstan, there is no clear and fixed wording referring animals to sources of increased danger. This creates difficulties in resolving disputes related to damage to the health or property of third parties by animals. Article 931 of the Civil Code of the Republic of Kazakhstan provides for the liability of owners for damage caused by a source of increased danger, but it does not contain a list of such sources. This leads to a situation where courts are forced to rely on



judicial precedents and expert assessments to establish the legal status of an animal¹.

The positions of scientists on this issue vary. Proponents of the “activity approach” (Ioffe, Agarkov, Antimonov) believe that it is not the object itself that creates danger, but the activity of using it. From their point of view, an animal can be considered a source of increased danger only when it is used in specific activities: protecting the territory, accompanying, participating in performances, etc [1]; [2]. The opposite “object approach” (Krasavchikov, Rozhkova, Abramov) asserts that individual material objects, including animals, are inherently dangerous, regardless of whether they are actively influenced by humans. For example, wild animals, predators, and large dogs can pose a threat even when at rest [3]; [4].

Judicial practice in Kazakhstan is increasingly inclined towards a mixed (hybrid) approach, which takes into account both the properties of the animal (aggressiveness, strength, unpredictability) and the actions of the owner (precautions taken, conditions of detention, degree of control). For example, in a case reviewed by the Oktyabrsky district court in Karaganda, the owner of a shepherd dog was found responsible for the harm caused by the dog, regardless of fault, since the court classified the animal as a source of increased danger [5].

Of particular concern are the dog breeds included in the list approved by the Order of the Minister of Ecology of the Republic of Kazakhstan dated March 24, 2022. This list includes fighting, protective and large breeds, as well as wolf and dog hybrids. There was also a ban on keeping dangerous species of animals in residential premises – snakes, spiders, primates, predatory mammals. However, none of these lists explicitly states that animals are recognized as sources of increased danger in the legal sense². This regulatory omission makes it difficult to apply Article 931 of the Civil Code of the Republic of Kazakhstan in specific disputes.

The biological and behavioral characteristics of animals play a key role in qualification. Threats can come from physical strength, claws, fangs, poisons, movement speed, as well as aggressive behavior caused by instincts or training. Pets are usually more controllable, but there are also individuals among them who, due to their genetic characteristics and improper upbringing, become dangerous. Some fighting dog breeds are capable of causing fatal injuries to humans. Such cases require special responsibility from the owners [6].

Wild animals, on the other hand, by their very nature act on the basis of instincts and are extremely difficult to control. Even experienced trainers cannot guarantee absolute safety. Thus, they can be classified as sources of increased danger with a high degree of justification. For example, a lion, tiger, or bear, even one raised in captivity, has innate hunting instincts and can suddenly attack. Such a threat makes it necessary to legally consolidate their status.

International experience shows that many countries impose strict liability regimes for owners of potentially dangerous animals. In Germany, for example, the principle of objective (strict) responsibility applies. In the UK, legislation is based on the Animals Act 1971, which provides for special measures for domestic and wild animals. Similar approaches are reflected in the US doctrine: according to the Restatement (Third) of Torts: Liability for Physical and Emotional Harm, owners of wild animals are strictly responsible for the harm caused by these animals, regardless of the presence of guilt [7]. It is emphasized that even with all precautions taken, the risk associated with wild animals remains elevated. In Japan, South Africa, and Australia, legislation requires the owner to exercise increased caution and ensure harm prevention measures.

The Report of the Irish Law Reform Commission Civil Liability for Animals (1982) concludes that it is necessary to legislate a

¹ О некоторых вопросах применения судами Республики законодательства по возмещению вреда, причиненного здоровью: нормативное постановление Верховного Суда Республики Казахстан от 9 июля 1999 г. № 9 [Electronic resource] – Access mode: https://adilet.zan.kz/rus/docs/P99000009S_ (Access date: 22.04.2025); О применении законодательства о компенсации морального вреда в судебном порядке: нормативное постановление Верховного суда Казахстана от 27 нояб. 2015 г. № 7 [Electronic resource] – Access mode: <https://adilet.zan.kz/rus/docs/P150000007S> (Access date: 22.04.2025).

² Об утверждении перечня домашних животных, требующих особой ответственности владельца, и перечня животных, запрещенных к содержанию в жилых помещениях: приказ Министра экологии, геологии и природных ресурсов Казахстана от 24 марта 2022 г. № 85 [Electronic resource] – Access mode: <https://adilet.zan.kz/rus/docs/V2200027220> (Access date: 23.04.2025).



special liability regime for animals with a high level of potential danger³. The document emphasizes the importance of unifying judicial practice and ensuring the protection of victims' rights in cases where the harm-doer is an animal whose behavior is difficult to predict.

Against the background of international experience, there is a legal vacuum in Kazakhstan. Although the judicial authorities have already recognized animals as sources of increased danger, there are no norms in the legislation that clearly establish this status. This leads to discrepancies in judicial practice and does not guarantee uniformity in decision-making.

It should also be noted that the lack of a precise definition of the term "source of increased danger" in the Civil Code of the Republic of Kazakhstan leads to legal uncertainty, especially in disputes where harm has been caused to animals. Regulatory rulings of the Supreme Court, in particular Resolution No. 7 of November 27, 2015, allow any objects and actions that create a high risk if they cannot be fully controlled to be classified as sources of increased danger. Thus, animals, especially wild, hybrid, or fighting dog breeds, potentially fall into this category.

The legal doctrine supports the inclusion of animals in the category of sources of increased danger. The works of B.S. Antimonov, A.M. Erdelevsky, O.A. Krasavchikov emphasize that any activity or object that, by its nature, can cause significant harm if control is lost should fall under a special liability regime.

The legal recognition of animals as sources of increased danger has significant consequences. First, it establishes a no-fault liability regime: the owner is liable for damages regardless of whether precautions have been taken. Secondly, it obliges the owners of such animals to stricter conditions of detention, including fencing, the use of muzzles, and civil liability insurance. Thirdly, it simplifies the process of proving in court for the victims, reducing the burden on the injured party.

From the point of view of legal regulation, it is necessary to develop a regulatory document

establishing criteria for classifying animals as high-risk. The following basic characteristics can be used:

- biological characteristics (weight, size, strength);
- behavioral features (aggression, unpredictability);
- species (wild/domestic);
- tendency to injury;
- difficulty of control and maintenance.

Ideally, a mandatory list of dangerous animals and a list of potentially dangerous animals kept on the basis of permits should be fixed. Such rules will increase legal certainty, reduce the number of legal disputes, and prevent harm in advance [8].

To conclude, it should be considered that the legal classification of animals as sources of increased danger is not the only issue of legal classification; it is also a crucial tool for maintaining a balance between the rights of animal owners and public safety. The legislation of the Republic of Kazakhstan should adapt to changing conditions, including an increase in the number of animals kept in private homes and apartments, and develop a clearer and more transparent legal policy in this area.

Conclusion. Based on the above, the following conclusions and suggestions can be made:

1. The Civil Code of the Republic of Kazakhstan should include a provision relating to wild animals, large domestic farm animals such as breeding bulls, fighting and guard dogs, etc., to the category of increased danger. It seems that the legalization of some animals as dangerous will simplify the compensation of damages and increase the level of knowledge and responsibility of owners. This should reduce the harm they cause to the lives, health and property of residents.

2. The order of the Minister of Ecology, Geology and Natural Resources of the Republic of Kazakhstan dated March 24, 2022 on approval of the list of pets requiring special responsibility of the animal owner and the list of animals prohibited from keeping in residential premises does not indicate that these animals pose a threat.

³ The Law Reform Commission // Report on Civil Liability for Animals. – Ireland, 1982 [Electronic resource] – Access mode: https://www.lawreform.ie/_fileupload/Reports/rCivilLiabilityForAnimals.htm (Access date: 26.04.2025).



3. Incorporate animals as sources of increased danger in order to establish the concept of faunal law.

Kazakhstan's legislative framework requires a balanced legal approach that considers both animal welfare and public safety. Legislative change will be necessary for this, but so will greater public knowledge and instruction on

the proper care and ownership of animals. The ethical treatment of animals and their rights must not be compromised in the name of public safety. It will be essential to take these factors into account when Kazakhstan develops its legal system in order to establish a more just and efficient regulatory environment.

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