

Legal Criticism Of The Conceptualization Of The Legal Good Protected Against The Crime Of Animal Abuse In Peru

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Animal abuse is understood as non-accidental and socially unacceptable human behavior that causes pain, suffering or distress and/or death to an animal. This article aims to determine the conceptualization of the legal good protected against the crime of animal abuse when they are improperly exploited or treated with extreme cruelty; in the face of the impact on biodiversity and the ecosystem, typified in the Peruvian criminal system within property crimes, which leads to the interest of the owner being protected and not the life of the animal, producing legal-criminal conflicts in the sense that a difficulty is created to punish the crime. The method used is a topic review, exploratory in scope, with a thematic analysis design. From the results it has been corroborated that the annual number of animal abuse in the world amounts to 115 million, only to use them for cosmetic and scientific purposes; Japan, the United Kingdom, China, Canada and the United States are the countries that together carry out this practice in a percentage greater than 55% of the 115 million. It is concluded that Peruvian Law No. 30407 classifies animal abuse as a crime, in article 206-A of the Penal Code, producing doctrinal discussions referring to the protected

legal good, causing insufficient guarantees to protect the animal life that society and society. Actually, it demands it.

Keywords: legal good, classification, crime of animal abuse, property crimes.

Resumen

El maltrato animal se entiende como el comportamiento humano no accidental y socialmente inaceptable que causa dolor, sufrimiento o angustia y/o la muerte de un animal. Este artículo tiene como objetivo determinar la conceptualización del bien jurídico tutelado frente al delito de maltrato animal al ser explotados indebidamente o ser tratados con extrema crueldad; frente a la afectación de la biodiversidad y el ecosistema, tipificado en el ordenamiento penal peruano dentro de los delitos patrimoniales, lo que conduce a que sea protegido el interés del propietario y no la vida del animal, produciendo conflictos jurídicos-penales en el sentido que se crea una dificultad para sancionar el delito. El método empleado es de revisión de tema, de alcance exploratorio, con diseño de análisis temático. De los resultados se ha corroborado que la cifra anual de maltrato de animal en el mundo asciende a 115 millones, solo para utilizarlos con propósitos cosméticos y científicos; siendo Japón, Reino Unido, China, Canadá y Estados Unidos los países que en forma conjunta llegan a realizar esta práctica en un porcentaje superior al 55% de los 115 millones. Se concluye que, la Ley peruana N° 30407 tipifica el maltrato animal como delito, en el artículo 206-A del Código Penal, produciendo discusiones doctrinarias referidas al bien jurídico tutelado, originando garantías insuficientes, para proteger la vida animal que la sociedad y la realidad, lo exige.

Palabras Clave: bien jurídico, tipificación, delito de maltrato animal, delitos patrimoniales.

Introduction

Animal abuse is defined as any type of human action or omission directly or indirectly produces physical or psychological pain, harm, or suffering to a wild or domestic animal (Alleyne and Parfitt, 2019). Furthermore, it can be defined as non-accidental and socially unacceptable human behavior causes pain, suffering or distress and/or death to an animal (Fitzgerald et al., 2021). Recently, the crime of animal abuse has been progressively increasing, producing a global concern that has led governments to immediately address this problem with due urgency.

Likewise, theories have emerged that seek to extend the use of law to favor animals, as is the case of the theory of extensionalism, which is the most used to extend the use of ethical theories adapting them to the concepts of animals, in which different currents of thought are brought together to apply the use of both ethics and morality to protect non-humans (animals), using critical theories, contractualism, deontology, neo-Aristotelianism, utilitarianism, and others (Pezzetta (2018).

In this regard, the theory of animal protection, which uses positive law, has its basis in all legislative regulation of the State in order to protect them, which allows visualizing both internationally and nationally the paradigm concerning animal rights, without them becoming mixed with the fundamental rights of people; based on the fact that they are recognized as

subjects of law, the constitutional conception, the interpretation, the moral obligation of the law and based on basic rights that constitute its main pillars (Maruri, and Montero, 2023).

It should be specified that all animal mistreatment can occur in different ways, the most common being when they are not provided with adequate or insufficient food; the use of instruments that cause pain to stimulate them to perform a certain activity or as a form of punishment; subjecting them to excessive work in which they are not allowed to rest or when they are forced to perform an activity without having an adequate state of health; using some type of non-therapeutic drug to stimulate them (Flynn et al., 2023); giving priority to obtaining some lucrative gain over well-being; subjecting them to unauthorized fights, using them improperly in illegal activities; subjecting them to excessive and unnecessary punishments and corrections; carrying out acts of psychological and physical violence, including torture, mutilation of body parts, or intentional death, among others (Ferro, 2020).

In this context, it should also be noted that animal abuse can occur in four dimensions: physical abuse, sexual abuse (Castanheira, 2019), emotional abuse (threats or threatening behavior) and neglect by not providing essential elements such as food, water, shelter, companionship, among others (Alleyne and Parfitt, 2019).

Therefore, among most common causes of animal abuse originate from human action, given by having little or no education regarding animal awareness and the respect they should have; for cultural reasons, in which many regions have traditions that are accompanied by any act of animal abuse, such as bullfighting (Morales et al., 2023); for business purposes, where priority is given to profit that can be obtained over animal welfare, due to the sale of skins; for perversity, in which due to morbid and perverse feelings, videos are uploaded on networks containing images or videos where cruel and degrading acts are carried out against animals; as a form of correction or punishment, which are used for the training of animals in order to get them to assume a certain behavior, in which unnecessary punishments or blows that cause damage or harm are resorted to (Jordá and Janosch, 2022).

Studies have shown that every year thousands of animals suffer any form of mistreatment, being improperly exploited or treated with extreme cruelty; this has affected biodiversity and the ecosystem, exposing them to the serious risk of producing crucial environmental imbalances, causing havoc by producing a precipitous and massive extinction of the diversity of animals, causing the disappearance of different species (Cortez, 2021).

In this sense, it has been corroborated annual number of animal mistreatment in world amounts to 115 million, only to use them for cosmetic and scientific purposes; being Japan, United Kingdom, China, Canada and United States the countries that jointly carry out this practice in a percentage higher than 55% of the 115 million. In Europe alone, around 12,000,000 animals are mistreated every year, a figure that when analyzed makes it possible to indicate that 137 animals suffer any form of mistreatment every 10 minutes (Ecoo Sfera, 2022).

In Latin America there is also a high level of animal mistreatment, because the studies that have been carried out indicate that 7 out of 10 animals are victims of mistreatment or any form of violence; when broken down statistically, it is evident that 57% commit the mistreatment

intentionally, and 47% due to neglect of care. Likewise, Latin American country with the highest incidence of animal abuse is Mexico, which ranks third when compared worldwide (Díaz, 2022). The other country with a high number of animal mistreatment cases is Colombia, where 239 people were charged in 2022 (SWI swissinfo.ch, 2022).

In the case of Peru, animal abuse also occurs as a result of indiscriminate exploitation, trafficking and illegal hunting, which generate consequent environmental damage due to such practices (Aquino, 2020); likewise, cases of animal abuse occur almost daily, being most common use of animals in illegal fights, in abandonment, and in commission of cruel acts for the presentation of scenes in circuses. A study by Office of Animal Defense states that 83% of Peruvians have witnessed animal abuse in 2021, indicating the enormous gravity of animal abuse in country, which is highly worrisome (CEFICPERU.ORG., 2023).

Therefore, the Peruvian State, facing such reality, enacted Law No. 30407 where the crime of animal abuse was typified, being located in Article 206-A of the Penal Code, producing doctrinal discussions referring to the protected legal right because it was located within the patrimonial crimes, and this leads to the protection of owner's interest and not animal's life, This creates legal-criminal conflicts in the sense that it is difficult to punish the crime when it is the owner of the animal who mistreats it, because it positions the owner as both passive and active subject, and generates the problem operators of justice prosecute person who attempts against his own patrimony, being incoherent; In the same way, an even more serious consequence is created related to animals without owners who are excluded from criminal protection, because in those cases animal abuse does not produce an affectation to the legal good, and with this, the crime is not configured; a fact does not generate sufficient, necessary and indispensable guarantees to protect animal life that society and the reality of this time demands, since there is no harmony with the due protection that the State must guarantee to animals to avoid any form of abuse or damage to them (Figuerola,2023).

Protecting animals through criminal law is eminently necessary because animals cannot be substitutable in world, since their network is in direct interconnection with nature and human beings; each animal species has a unique role that makes possible the maintenance of an adequate balance in ecosystem, which upon its extinction inevitably causes negative consequences both in food chain and in the ecosystem. Thus, by establishing the crime of animal abuse, not only the animal is being protected, but also the environment is being safeguarded, and human beings are being encouraged to show empathy and compassion for the different living beings that exist (García-Solé, 2010).

Thus, in general terms, the crime of animal protection is extremely important, since protecting animal life ensures food for future generations, which means that its protection is indispensable for indirectly protecting food security from meat products, and also that animals as a sentient being that coexists on the planet with humans should be treated with dignity, respect and ethics, leading to the suppression of indiscriminate, abusive and excessive exploitation of animals. This indicates that it is not only a question of compassion, but of the effect it produces within society, which includes the conservation of biodiversity and the prevention of mistreatment itself, which are the basis for building a just and sustainable society (Granados, 2023).

Methodology

This research is of a basic type, a topic review, which, according to Hadi et al. (2023), is the one whose purpose is to obtain and carry out the collection of information that allows elaboration of the foundation of knowledge is added to all previously existing knowledge. Furthermore, it has an exploratory scope, akin to a scoping review (Codina, 2020), as its objective is to generate knowledge pertaining to a particular issue, encompassing the delineation of novel elements and the clarification of concepts, thus paving the way for the formulation of new research (Ruiz and Valenzuela, 2022). Similarly, a qualitative approach was deemed appropriate (Maldonado et al., 2021), with a thematic analysis design (Braun and Clarke, 2018) aimed at elucidating the phenomenon (Contreras et al., 2019).

Results

A. Global increase in animal abuse

Animal abuse has had a considerable increase during the last decades, particularly during this period, with a daily increase in numbers, in which the predominant cause of suffering, death and even stressful situations to animals (Figuerola, 2023). It is a problem that has reached global levels and that has no precedents, which must be considered in the making of different decisions because apart from the direct affectation of the mistreatment of animals, there is also a serious risk of producing an extinction that leads to the ecosystem and the environment, which will generate extremely serious consequences and that indirectly risks human life in the medium and long term; due to this, in the following, the different figures that allow visualizing it will be presented.

1. Statistics and relevant data

Globally, it has been possible to specify that worldwide the number of animal abuse for cosmetic and scientific purposes reaches up to 115 million; in Europe alone there is a figure of abuse of about 12,000,000 animals, which indicates every 10 minutes there is any type of abuse of 137 animals; it should also be noted that the United Kingdom, Canada, Japan and United States are the countries with the highest number of animal abuse (Ecoo Sfera, 2022). For its part, the United Nations has issued a report in 2021, indicating that there have been around 180,000 confiscations in 149 countries and territories for the crime of animal trafficking, in which some 6,000 species of animals have been recovered, including reptiles, fish, birds, among others, and of which people of 150 different nationalities have been identified as alleged perpetrators (United Nations, 2020). In addition to this, it has been warned that of all known animal breeds, 8% are already extinct and 22% are in danger of becoming extinct in the near future (Pérez, 2021).

In Spain, the Public Prosecutor's Office has revealed for the year 2019 about 1,090 proceedings of a judicial nature have been initiated due to the mistreatment of domestic animals, and only 293 convictions have been obtained. Similarly, the nature protection service of the Guardia Civil has indicated that, during 2020 there was an increase in animal abuse in consideration with the previous year, due to the fact that the figure amounts to 10,459 complaints only for the mistreatment of pets, and there is a total of 8,427 that are related to animal health (Perez, 2021). These figures reveal animal mistreatment is indeed on rise, because its commission is steadily increasing, seriously endangering the existence of animals.

2. Impact on environment and biodiversity

The environment must be understood as that set of biological, physical and chemical elements in which living beings interact. Where all factors are of utmost importance to adequately maintain the existence of life, and in which its damage, always brings unpleasant consequences for the existence of all life and within it, human life. It should be noted environment conditions the existence of any form of life, and when it does not exist, the necessary conditions simply cease to exist (de Romero et al., 2020).

The different manifestations of mistreatment committed towards animals, not only harm them, but also affect the environment, because each animal species has a natural role it fulfills within any ecosystem (Rodríguez, 2019); this generates that the behavior of aggression towards animals produces the loss of biodiversity, leading to the lack of maintenance of planet so that it meets the indispensable conditions for a healthy life; in short, animal mistreatment puts survival at risk.

In this context it should be noted that the United Nations has warned there are 22% of animal breeds that are in danger of extinction, according to this international institution, today 8% of different known breeds are already extinct (Figuroa, 2023). According to the United Nations report, animal trafficking currently threatens biodiversity and nature; likewise, it has led to the spread of zoonotic diseases, and currently 75% of infectious diseases (including SARSCoV-2) have been spread as a result (United Nations, 2020).

The destruction or mistreatment of animals has accelerated with unprecedented numbers, with approximately one million animals and plants already identified as being in danger of extinction; The IUCN red list of animals that currently exist could lead to extinction of 40% of amphibians, 31% of sharks and rays, 27% of crustaceans, 25% of mammals and 14% of birds; in addition, this will lead to a reduction of 47% of natural ecosystems, and nature already shows a 72% deterioration (McGrath, 2019). This produces serious damage to the planet's biodiversity, which leads to an accelerated maintenance of ecosystem instability, generating extinction of important species within trophic chains; natural wealth is also lost, leading to the disappearance of resources that are of enormous importance to humanity; Fresh water is reduced, affecting the hydrological cycle; the appearance of different pests is increased, leading to the migration of native species, producing greater ecological imbalance; and also with this, more CO₂ is concentrated in the atmosphere, which generates climate change and leads to global overheating.

To the extent that biodiversity is affected, there are consequences that could be irreparable in the balance of the planet, leading to the disappearance of vital resources for human beings; it should be noted that it is precisely the living beings, including animals, who are responsible for contributing to climate regulation, soil maintenance, mobilization of various nutrients produced in the different cycles through the energy flow; This leads to environmental and ecological chaos, which leads to greater incidents of disasters, decrease of water, alteration of cycles and impoverishment of soils (Arias and Mantilla, 2020). It should then be remembered that it is biological diversity provides people with those resources that are indispensable for subsistence, such as the variety of food; and that to the extent that biodiversity is lost, hunger will increase, diseases will increase, which will affect health of human beings and lead to the deterioration of their wellbeing.

B. Animal abuse in different regions

1. Asia, North America and Europe

In Asia, elephants are mistreated by being taken to places of confinement where the calves are separated from their mothers, they are kept in malnourished conditions, have little or no veterinary care, are punished by being beaten, live in unhygienic conditions, and are forced to perform highly stressful activities for their species; an NGO indicated at least 63% of the elephants in the region live in these conditions (LaVerdad, 2020). In addition, different animals have been used for scientific experiments. The beauty industry also subjects many species of animals to tests in which the animal is subjected to unnecessary suffering and death.

For its part, animal abuse is a serious social problem in Europe today, because apart from being ethically unacceptable, studies have shown there is a significant relationship between animal abuse and family or gender violence; in addition to above, the Nature Protection Service of Guardia Civil has calculated that the number of animal abuse amounts to 16,625. In fact, it was found that 97% of Canadian and American universities, veterinarians identify at least one type of serious animal mistreatment during their careers (Fernandez and Maria, 2022). Regarding the relationship between gender violence and animal abuse, there is serious evidence that indicates a correlation between them, and that in cases where an animal is assaulted, there is also the existence of aggression against family members to intimidate them; in fact, it was found that 20% of all animal abuse due to intentional cruelty exists behind intra-family violence, which makes animal violence an early indicator of abuse against women or children. Even in the USA, it has been estimated that close to two million women have been murdered or abused by their partner during only one year, and that 50% have a pet, where 71% of pets have been abused or killed by the same aggressor; in addition to the above data, it is evident that veterinarians can indirectly contribute to cases of abuse of women when there is animal abuse. In addition, the most affected animals are dogs followed by cats, in which it was found that 98.1% of the total domestic animals suffer mistreatment are dogs, 76.9% are cats, 28.8% are lagomorphs, 15.4% are rodents and turtles, respectively, 13.5% are birds, and 5.8% are others considered exotic (Fernandez and Maria, 2022).

2. Latinoamérica

In most Latin American countries, animals have a legal status considers them as mere objects of law or a thing, susceptible of property to be economically exploited; where there is less protection for animals; although in the region there have been several modifications to protect animals due to the demands made by population, to have more consideration towards animals, observing that the social perception of animals is progressively changing. This has generated some important paradigm shifts with respect to animals, where they have been catalogued as non-human animals that are living beings and possess sensibility or are sentient (Etica animal, n.d.).

It is prudent to point out that, given the existing culture in most Latin American countries, animals are not treated accordingly; authorities often neglect cases because they consider them of little importance, and progress has been timid and slow; in addition, being a region with more natural resources (including animals), there is less awareness regarding the care that should be taken of them (Ortega et al., 2021).

a. Specific statistics

There is scarce information indicates figures on animal abuse; and despite this, it could be established that the few studies related to it, indicate 7 out of 10 animals are victims of mistreatment or some violent act that causes injury or death; It was found that 57% of people who mistreat animals do so intentionally; and with regard to neglect, the figure rises to 47%; Mexico is the country with the highest rate of animal mistreatment and ranks third in world (Díaz, 2022). In addition to the above, it is prudent to indicate that, although there is a World Organization for Animal Health of which many Latin American countries are part, there has not been an official publication containing the statistical figure of animal abuse in Latin America, or anywhere else; despite being the world authority on animal health in charge of carrying out the information on animal health worldwide.

b. Outstanding case of Mexico and Colombia

In Mexico there are high cases of cruelty or mistreatment committed against animals, where unnecessary deaths of animals occur, which in many cases are tortured and in which not only adults are involved but practice has become widespread because adolescents and children also participate in it; the figures indicate out of 10 dogs 07 of them suffer some type of animal abuse, and that globally it has become the third country in world that incurs in animal abuse. It should be noted that, in the first three months of 2023, the Environmental Prosecutor's Office and Territorial Planning (PAOT), indicated that only in Mexico City has a high level of animal abuse because it recorded 885 complaints of which only 85 had ended; in that territorial entity specifically in Iztapalapa occupies the first place with these complaints by having a total of 146, followed by Gustavo A. Madero with 106, Álvaro Obregón with 82, Uauhtémoc with 73 and Coyoacán with 64, all corresponding to the same quarter.

In addition, it should be noted that in Mexico only 28 federal states have legislation that criminalizes animal abuse as a crime (Granados, 2023). It is not surprising more than 70% of dogs in Mexico City are on the street, and in case of cats, more than 60% (MUCO, 2021).

It is surprising more than 70% of dogs in Mexico City are on the street, and in case of cats, more than 60% (MUCO, 2021). Similarly, the organization AnimaNaturalis International has indicated that despite the existence of the federal government and its 32 state governments in Mexico, which have laws that regulate animal abuse, it is the first Latin American country that has the highest rate of animal abuse; noting between 2019 and 2020, there was an extremely low rate of animal abuse cases, which was 0.01%, although 4,759 complaints were received by the authorities. 759 complaints were received in the administrative entities only 67 had been referred to the prosecutor's office which is less than 0.02%; and that only 155 of the aggressors were arrested because only 18 sentences were issued in two years (AnimaNaturalis International, 2023).

In the case of Colombia, the Affinity Foundation has revealed that only in terms of dogs and cats more than 288,000 have been abandoned in Colombia during the year 2022, which indicates that the occurrence of abandonment is 33 animals per minute on average (AnimaNaturalis International, 2023). In another sense, research indicates that there are huge shortcomings in Colombia to enforce legislation that protects animals, such as the lack of adequate training of animal protection officers, the National Police does not have qualified personnel to handle animal abuse and adequately process complaints, Governmental entities

are neglecting the issue of animal abandonment and there are no entities in charge of receiving cases of mistreated animals, as is the case in city of Villavicencio (Acosta et al. , 2021).

On the other hand, the Colombian Attorney General has indicated that in Colombia there is a chain of animal protection links where the last of them is occupied by the prosecutor's office, who acts only after death of the animal either by intentional mistreatment, guilt or serious psychological/physical injuries against an animal; and that prior to this, a set of actions and activities must be carried out at the local, regional or national level, aimed at preventing this type of activities and in which the welfare of the animal is guaranteed. In addition, regarding the complaints handled, he indicated that they have been able to obtain 132 sentences for animal abuse, and that he considers that, in Colombia, progress is being made in protection of animals, since they made 19 charges in 2016, 40 in 2017, 45 in 2018, 55 in 2019, 80 in 2020, 175 in 2021, and that they already have 30 in this year 2023, from which he specified that most of the complaints of animal abuse are given by dogs and cats (Semana, 2023).

c. Situation in Peru

In Peru there is also a high rate of animal abuse, due to indiscriminate exploitation, trafficking, illegal hunting, and consequent environmental damage (Aquino, 2020); likewise, animal abuse occurs almost daily, being the most common use of animals in illegal fights, leaving them abandoned, and abundant cruel acts. The Animal Defense Office stated that 83% of Peruvians have witnessed animal abuse in 2021, indicating the enormous gravity of animal abuse in the country, which is highly worrying (CEFICPERU.ORG., 2023).

This indicates that there is a serious problem of animal abuse in Peru, affecting both farm and domestic animals, which do not even have the necessary care to adequately protect their health. Animals are physically and psychologically abused and subjected to unhealthy conditions, kept in captivity (cages) that not only affect the lives of the animals, but also expose the lives and safety of people. And a study carried out revealed that there is a high incidence of animal abuse, which takes the form of beatings, beatings, kicks and multiple forms of physical abuse, in which it was concluded that the population is unaware of the law on animal abuse and that the authorities do not enforce it (CEFICPERU.ORG., 2023).

C. International Legal Framework

a. Conventions and treaties on animal welfare

Within the international legal framework, the Universal Declaration of Animal Rights was approved on October 15, 1978 by United Nations Educational, Scientific and Cultural Organization (UNESCO) and later adopted by the United Nations (UN). This declaration was the germ that originated the creation of multiple internal legislations of various countries, who accepted declaration, where several concepts were incorporated that turned out to be novel in which the relationship that can occur between human beings and animals is involved. The fundamental aspects contained in the declaration are the express recognition of the right to life and existence of the different animals, as established in article 1. In the same way, different animal rights are consecrated, such as the right to enjoy the respect and protection of man, according to article 2; it is also required that people avoid cruel or bad treatment, or that they

inflict suffering on animals, and even that for any circumstance it is necessary that the animal dies, that its suffering be avoided, as established in article 3.

Another aspect recognized is of wild animals, whose natural environment must be respected, and in case of domestic animals, they must also be guaranteed to develop respecting their environment. Likewise, basic criteria have been established for the treatment of animals, stipulating abandoning a domestic animal constitutes degrading and cruel treatment (Art. 6). The prohibition of exploiting animals for recreational purposes is prohibited, as it is incompatible with animal dignity (art. 10); likewise, it is established unnecessary death of an animal is biocide, and if death occurs in a large number of animals, it constitutes genocide (arts. 11 and 12). In addition to this normative instrument, it is worth mentioning that the European Convention on the Protection of Companion Animals (Strasbourg, 1987) was derived from it, which ratified the decision to prohibit the causing of pain, suffering or abandonment of companion animals; therefore, people who have decided to have an animal must take responsibility for their health and welfare (art. 3 and 4).

b. Comparison of legislation in different countries

In the constitutional sphere, it should be noted that, although they do not expressly accept expression animal protection as a constitutional principle, they do so in the opposite sense, verifying animals as objects must be protected for profit, which they are:

In India, the Constitution of 1950, section VI, inherent to fundamental duties, specifically in the 51st numeral, it was established that it is a human duty to show compassion for animals (living creatures). Likewise, in Switzerland, the Constitution, specifically in numeral 119a, recognizes dignity of animals, and genetic diversity of animals must be protected. For its part, in 2002, Germany's Constitution, in Article 20 a, states that all natural foundations of life, as well as animals, must be protected by means of legislation. In the case of Brazil, in its Constitution, chapter VI, article 225, paragraph 1, VII, it is established that, in order to ensure right to a balanced environment, the fauna and flora must be protected, as well as to prevent practices that may endanger the extinction or cause cruelty to animals.

As indicated, the constitutions reviewed do not recognize animals as sentient or sentient beings, nor do they expressly recognize animal rights. However, in the specific case of the states of Oaxaca and Mexico, they have made significant progress at the Constitutional level, since their constitutions do recognize animals as sentient beings and subjects of moral consideration, producing as a consequence the legal obligation that every person must respect the integrity and life of animals, according to article 12 of the Political Constitution of the State of Oaxaca and article 18 of the Political Constitution of State of Mexico.

At a legal level, it can be indicated that, in European countries, Spain created Law N° 32/2007 referring to exploitation, transport, experimentation and slaughter of production animals, in the same way that guarantees that animals have a dignified life, thus prohibiting their exploitation for purposes of projects, scientific experimentation, education or teaching, according to Article 2, paragraphs a and b. As for the slaughtering that takes place in slaughterhouses, a record must be kept by public administration, with the requirement these spaces must have necessary infrastructure and equipment to avoid undue suffering or pain to animals, in accordance with Art. 6. It should be noted, that although the Spanish Penal Code

had a reform in 2015, it maintained the criminal penalty for the fact of abandoning domestic animals, as typified in art. 631.2 of the Penal Code, continuing with an attenuated criminal type the fact of mistreatment of animals as provided in art. 337 of the Code in question. In the same way, it happened with the sexual exploitation of animals, establishing that a special disqualification can be imposed in order to prevent the person from exercising a profession, trade or profession related to acts of animal mistreatment as well as to the keeping of animals.

Switzerland, on the other hand, has in its constitutional level as well as in special laws with norms aimed at the protection of animals. Such is the case of the Animal Welfare Ordinance of 1981 and the Animal Welfare Law of 1978; both laws contain prohibitions against any type of animal mistreatment and establish different penalties and fines. The Animal Welfare Act establishes that human beings must maintain a behavior that is useful to protect animals and to achieve their welfare according to article 1.1, likewise, it indicates the need to satisfy the needs of animals in the best way according to art. 2.1; leaving then prohibited any form of infliction of suffering, pain or harm against animals according to art. 3.3. As for the Animal Welfare Ordinance, it establishes a regulation aimed at feeding, breeding, care among others, which must be given to animals within the human obligations to procure (chapter 1, arts. 1 to 6).

In Germany, the Animal Protection Law or *Tierschutzgesetz* of 1933, imposes on every animal owner the unavoidable obligation to ensure that the animals are guaranteed a life with dignity and that any kind of suffering of the animals is avoided according to Art. 903, in addition, the right of the owner to be compensated when his animal suffers any suffering or mistreatment when he has left the responsibility of caring for his animals to another person is recognized, in order to compensate the damages and thus achieve a recovery for the acts suffered by the animal according to the provisions of art. 252.2.

On the other hand, in Latin American countries such as Puerto Rico, there is Law No. 154 or Law for the Welfare and Protection of Animals (2008), which establishes different prohibitions and penalties regarding the abandonment of animals, establishing a penalty ranging from 6 months to 3 years imprisonment; And in the case that as a result of the abandonment, the animal suffers some type of serious injury or even death, the penal sanction is increased from 3 to 8 years of imprisonment, as reflected in article 1, paragraphs b and c. It should also be noted that the seriousness of animal abuse produces different considerations in the Puerto Rican legislation, such as when the abuse is carried out in the presence of minors, it is considered as second-degree abuse, punishable as imprisonment between 8 to 15 years as provided in article 6 literal c; the same punishment is produced when torture is carried out or the death of the animal is intentionally caused, as established in article 7 literal b. In addition, according to article 8 letter a, any activity in which animal fighting takes place, whether for sport, training or for profit, is prohibited, with the exception of cockfighting.

Similarly, in Brazil, Law N° 14.064, Sansao Law, was approved in 2020, where a modification of article 32 of the environmental crimes law, Law N° 9.605 of 1998, was introduced; in which the conducts that are sanctioned were expanded and in which the penalties referring to animal mistreatment were aggravated, in the same way, crimes related to mistreatment, abuse and mutilation of both domestic and wild animals were typified (art. 1 and 32). The penalty imposed is between 1 to 3 years of imprisonment and a fine; but when the death of the animal

occurs, the penalty will be increased from one third to one sixth of the corresponding sanction. The special focus of the law is that it provides special protection to cats and dogs, in the sense that when the prohibited conduct is directed towards these animals, the penalty is increased from 2 to 5 years of imprisonment, a fine must also be imposed and the person committing the crime must be prohibited from having custody of the animals that have been violated (according to section 1-A of art. 32 of Law 9.605).

Likewise, in Colombia, Article 1 of Law No. 1774 of 2006 considers animals as sentient beings, forcing the modification of the different criteria governing the protection of animals to ensure their welfare, establishing penalties for those who commit acts that cause suffering, mistreatment or pain to animals. It should be noted that this law introduces a modification of article 655 of the Colombian Civil Code, in which the animal ceases to be a thing and also ceases to be a livestock and becomes a sentient being, which means that they must have special protection to ensure that they avoid any kind of pain or suffering, which may be caused indirectly or directly by any person, so that such acts are considered punishable. The regulation is based on the principle of compassion, solidarity, ethics, prevention of suffering, elimination of captivity, justice, as well as the prevention of any violence and cruel treatment of animals, so that animal owners are obliged to prevent animals from suffering due to thirst or discomfort, as well as suffering from diseases that are the result of any type of negligence or subjection to situations that may cause stress or fear to the animals.

In the same way, it is convenient to indicate that in Colombia there is an important jurisprudential precedent, regarding the multispecies family, in favor of a canine named Clifor, that by means of the Radicación N° 2020-0047, where the First Criminal Court of the Circuit with Knowledge Functions, in Ibagué on 26/06/2020 sentenced that due to the emotional attachment that in the factual situation exists between the members of the family produces a multispecies family or diverse family, for considering that the animal fulfills an important function within the bosom of the home; Therefore, it is recognized as a sentient being whose right to health and survival must be protected, as well as preserving the family nucleus of a diverse family, ordering the Fondo Rotatorio del Tolima and the Secretary of Health of Tolima to provide Clifor with a medicine called Fernobarbital to continue with his treatment against Idiopathic Epilepsy (First Criminal Circuit Court with Knowledge Functions, 2020).

In Argentina, Law No. 14346 of 1954 was enacted, which according to Article 1 typified the crime of animal abuse as any act of cruelty to animals, which is punishable with a prison sentence of 15 days to one (01) year. In addition, it is considered mistreatment of domestic animals or animals under captivity when they are not fed sufficiently, or when they are subjected to excessive work without allowing them to have an adequate rest, or when they are subjected to work when their physical condition is not suitable, as well as stimulation with any narcotic or psychotropic substance (drugs) with the exception of those used for therapeutic purposes. While cruelty refers to the performance of unauthorized vivisection or performed by a person who does not have the due specialization to perform it, to perform any type of mutilation except those that have sanitary purposes; as well as to submit them to a surgical intervention in which anesthesia is not used, the performance of activities where injuries are made to animals such as bullfights, among others.

It is important to bring up the sentence issued by the Criminal Cassation Chamber of Argentina issued in 2014, where due to the rejection of habeas corpus in the first instance, Sandra (orangutan) is recognized as a subject of rights and the ownership that arises from them, due to the legal interpretation made by the judges (Criminal Cassation Chamber of Argentina, 2014), ordering her transfer to a sanctuary where she can live in semi-freedom and be able to share with species of her species, and it should be noted that the sentence indicates that the orangutan is a non-human subject holder of fundamental rights, which implies the recognition of her right to life, to be free and not to suffer any harm; This criterion sets a legal-historical precedent in Argentina, despite the fact that the civil code considers animals as things.

Subsequently, the Contentious, Administrative and Tax Court of the city of Buenos Aires, ruled in favor of an amparo action proposed by the Association of Officials and Lawyers for Animal Rights against the Government of the city of Buenos Aires and against the Zoo of the city of Buenos Aires.

against the Buenos Aires Zoo, for illegitimately and arbitrarily depriving the orangutan of its liberty, ignoring its right to not be considered as a thing susceptible to ownership, in order to be relocated in a sanctuary that is in accordance with its species, where its adequate welfare and development can be guaranteed; In addition, the association argued that depriving the orangutan of its liberty was considered an act of cruelty; in response, the defense of the government and the Zoo argued that only basic rights that do not imply a direct obligation to the orangutan should be recognized. Faced with this situation, the court sentenced indicating that not only had she been deprived of her freedom, but additionally the orangutan's right to privacy had been affected, because the experts indicated that Sandra was in a total depression because she was kept in a corner where she could be seen by anyone and this affects her privacy (Contentious, Administrative and Tax Court of the city of Buenos Aires, 2015). Then in 2019, it was determined that the orangutan should be transferred to the Center for Great Apes located in Florida, United States. Prior to the completion of studies that made possible the verification of its health status and that the transfer would not affect it, it was determined that it could make the trip because it was in excellent health (Clarín, 2019).

In addition, in Bolivia, Law No. 700, Law for the Defense of Animals Against Acts of Cruelty and Mistreatment, was enacted in 2015, and was duly regulated by D.S. No. 4341 dated 16 December 2015. ° 4341 dated 16/09/2020, with the firm purpose of carrying out a protection of all domestic animals from any kind of violent acts, cruelty, mistreatment and biocide that may be carried out by a legal or natural person as settled in Article 1 and 2, in addition, it is obliged to ensure that they have adequate food, that they are cared for, and that they enjoy an environment that is suitable to produce an adequate physical development of the animal and where they can have a proper rest according to literal f of Article 5.

c. Challenges in the harmonization of laws

Harmonizing the different laws exist to protect animals is a complex task that requires unifying different legal procedures that have been established to provide a common framework for international cooperation and compatibility of the different legal systems, both at the international, national and regional levels (Blanco, 2022).

The greatest challenge is to generate a sufficiently broad social awareness to recognize animals as living beings that feel, in which the culture is unified with respect to responsible and respectful treatment, and in which society actively participates in the prevention of any form of mistreatment (Cordini, 2020); however, it should be noted cultural differences of the different regions often generate many difficulties with respect to animal mistreatment, since what is considered legal and acceptable in one region may be inappropriate and unacceptable in another. In addition, it is complicated to generate an adequate balance, due to the political, social, cultural and legal factors involved (González, 2019).

This implies doing hard work to ensure that the different legislations are aligned in a coherent and uniform way, which not only attend to protection of animals and the protection of consumers in an adequate balance allows having a sustainable society, without accepting mistreatment, unnecessary damage and cruelty to animals. Therefore, the rules should have an abundant flexibility that allows them to be adapted to the different cultural, political and social particularities that each jurisdiction may have so that an effective and sustainable implementation is possible; in the same way, it must be a rule that allows its adaptation to the realities, in which the different advances that technology offers are constantly incorporated.

D. Analysis of the Legal Situation in Peru

a. Enactment of Law No. 30407

The law of protection and animal welfare or Law No. 30407 of 2016, aims to ensure both the welfare and protection of all animals, both those in captivity and domestic, and with it to prevent people from performing acts that cause unnecessary pain or suffering in animals, which could cause injury or death; the legal standard where animals are considered as sentient beings under Article 14. It generates obligation of all animal owners to provide them with an adequate environment, sufficient food, medical attention, among others, as established in Article 15.

Likewise, the State assumed responsibilities regarding the implementation of different policies that seek the protection of the animal, and in which it is guaranteed that people have a life in harmony with the environment, where the Ministry of Agriculture, as well as other ministries participate actively in harmony with their functions, as expressed in articles 7 and 9. The quality of sentient beings granted to vertebrate animals causes the obligation for natural and legal persons to implement different measures that produce animal welfare, as reflected in articles 14, 15, 16, 17 and 21.

Therefore, a set of prohibitions were established to achieve animal protection, such as abandoning animals on public roads, hunting, inducing fights, capturing, mutilating animals and even keeping them, with the exception of those cases where there is an authorization to do so (art. 22, 24, 26 and 27). It should be noted that cockfighting and bullfighting were excluded from the above considerations because these activities are considered part of the cultural activities of the country according to the first complementary provision found in the final part of the Law.

Consequently, any person who fails to comply with the different obligations or who does not abide by the different prohibitions contained in the Law incurs in administrative infractions

that may result in the sanction of a fine, closure of the premises used to carry out the activity, as well as confiscation and suspension of any type of permit obtained.

In the same way, they can incur in crimes that have a penalty of deprivation of freedom for up to 3 years, for those who commit any act of cruelty or who incur in abandonment; in addition, if as a result of any of the above mentioned acts the animal dies, the penalty is aggravated from 3 to 5 years of imprisonment.

It is specified that the investigation was carried out *ex ante* through a documentary review of legal cases related to animal abuse, specifically, the judicial resolution N° 4 dated 6/06/2021, issued by the Superior Court of Justice of Lambayeque, related to Case N° 06261-2020, where citizen Yris Sobeida Gonzáles Rubio was sentenced for the crime against patrimony in its modality of acts of cruelty against domestic animals, foreseen in article 206-A° of the Criminal Code. And the Judgment of the Constitutional Court dated 11/07/2019, related to the Constitutional Grievance Appeal, filed by Mr. Ángelo Cárdenas Serrano on behalf of the company Horse Brown SAC, against the Resolution of page 44 dated 08/29/2013 issued by the Fourth Criminal Court, related to Case No. 07392-2013-PHC/TC.

It is worth mentioning that, in full compliance with the Law, the Fifth Supraprovincial Unipersonal Criminal Court of Chiclayo and Ferreñafe, in Exp. N° 06261-2020 sentenced the citizen Yris Sobeida Gonzáles Rubio, for finding her criminally responsible for the crime against patrimony by committing acts of cruelty to a domestic animal, according to the provisions of article 206-A° of the Criminal Code, for having thrown a stone into the eye of an animal while it was being taken for a walk by its owner, imposing her one year of imprisonment, as well as the respective fine and the consequent declaration of incapacity to keep animals in accordance with the provisions of numeral 13) of article 36 of the Criminal Code.

1. Location of animal mistreatment in the Penal Code

The Penal Code places the crime of animal mistreatment as part of the patrimonial crimes, specifically in article 206-A°.

2. Debate on the protected legal right

The protected legal good has had a long discussion for being one of the fundamental concepts of law, because with it all the values that a society considers important and that allow a healthy coexistence within society can be guaranteed; it refers to a legal protection of those interests of the people who accept the law and regulates it so that it is elevated to the quality of legal good giving it a special status from which a legal consequence is born. Every sanction must be analyzed from the perspective of the legal good contained in the various norms, allowing a reflection on the power to sanction and all the power that the administration has, in the need to provide protection to the legal goods that are considered relevant. The protection of juridical goods produces a double guarantee for citizens, because it limits the legislative power to create new criminal types, and from there the regulation of the different spheres that contain the freedom of citizens; in the same way, a clear limit is established for all operators of justice, based on the principle of offensiveness, which prevents imposing a sanction when a specific juridical good is not injured or endangered, as well as in accordance with the principle of reserve, they must refrain from applying criminal types where a juridical good is not protected.

In summary, it should be noted that the legal right is a fundamental element of the law, because it makes it possible to protect social interests and limits the exercise of the punitive power of the state as well as the creation of new laws.

However, with respect to the legal good protected by the crime of animal abuse, there is a doctrinal debate, since a sector of the doctrine affirms that it should be de-criminalized, since they consider that, due to the principles that configure the *ius puniendi* of the State, there is no legal good that should be protected, losing its *raison d'être* (Robert and José, 2022). On the other hand, another sector of the doctrine maintains an opposite position, considering that currently criminal law is the appropriate instrument to proceed to punish these unlawful conducts, because administrative law fails in this task (Espina, 2021). And although there is uniformity in this sense, there is still an enormous divergence to determine exactly the legal good that must be protected, which is why there are different theories in this area. On the one hand, it has been argued that animal mistreatment does not constitute a crime against the environment, because in these cases the separation of a group (the domesticated ones) is carried out, leaving out the others, causing that cruel treatment, abandonment or mistreatment does not generate repercussions to the balance of the environment. However, it is maintained that this behavior causes damage to the fauna and flora.

In addition, others have indicated that animals produce economic and moral effects, but not on the environment or the ecosystem, since the simple fact of mistreating a single animal does not have repercussions on the fauna as a whole; but when this behavior is observed on a large scale, it affects the fauna, producing enormous damage to the different biospheres and existing reserves (Jaurrieta, 2019). On the other hand, it has been argued that what really seeks to protect is the morality and ethics that should exist between the human-animal relationship, where there should be a special consideration for the dependence that animals have on people (Ingunza, 2021). Likewise, another current of thought affirms that the whole bioethical obligation of the environment must be protected, where the different bioethical obligations of man towards animals, which derive from the relationship between people and nature, must be protected. Likewise, it has come to be indicated that the general interest of society must be protected, in the understanding that the feelings of people are safeguarded when they observe the suffering of an animal, and with this, maintain peace among people, which leads to the indication that the regulatory prohibition of animal abuse is a social function in the framework of citizen security (Prats, 2020; Besio, 2019).

In the same order of ideas, but with a specific aspect some argue that human feelings are protected, which are those arising from the affection generated in the relationship of coexistence of humans with animals, framed within love and compassion. Similarly, another sector argues that the protection of the physical or psychological integrity of animals as living beings is sought, by seeking adequate protection of life and its integrity, which implies the implicit recognition of the right to life and integrity, which includes the welfare of animals. Likewise, there are those who argue that the dignity of the animal is being protected, encompassing life, welfare and integrity (Ingunza, 2021).

At this point, it is unquestionable to reiterate that there is no doctrinal uniformity as to the legal good that is protected in the crime of animal abuse; but even so, it is preponderant to indicate that on 06/07/2021 the Fifth Supraprovincial Unipersonal Criminal Court of

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Chiclayo-Ferreñafe, set an important precedent, when issuing its sentence in the case 06261-2020 referring to the crime of abandonment and acts of cruelty, which textually indicated: Whereas "2. 1.2.- The legal good that is preserved according to the spirit of the rule is to protect the life and integrity of the animal considered as a sentient being".

Position that is plausible and is in harmony with the Peruvian legal system, by the existing trend that animals should be treated properly, not having to tolerate mistreatment or cruelty, bearing in mind that Law No. 30407 of 2016 seeks the protection of animals, observing the interest of the Peruvian legislator in safeguarding the integrity and life of all animals, and in which they should be guaranteed a treatment free of all cruelty and that they should not be abandoned.

b. Criticism of the conceptualization of the legal good

The conceptualization of the legal good has been criticized and has been part of debates that have arisen in the history of Criminal Law, within the controversial aspects, the criticisms are: Regarding the critical function of the concept of legal good, it has been argued that the theory of the legal good is in contradiction in the fact that all constitutional as well as legal order is an exclusive matter of the legislator, who is democratically legitimized to make the determination of the goods that must be protected by criminal law and make the different criminal rules according to how society evolves. The legal good has also been criticized, in which the legal good is considered as part of the evaluation made in the criminal legislation, making different questionings where the basis of their proposal is based on functionalism as an extreme expression, as it happens in the functionalist theory of Jakobs and Luhmann, who argue that all criminal law has the singular mission of duly ensuring the validity of the rules, without the need for any other legitimizing reference than to defend the system legally constituted by society, assuming the tendency that criminal law is criminalizing. Similarly, the concept of legal good as an instrument of legislative criticism, in which Roxin indicates that the legal good is an instrument that makes it feasible to criticize the legislative function by means of its examination, who points out that the concept of legal good remains the best instrument that cannot be dispensed with in order to criticize any legislative act.

1. Considerations on property crimes

Property crimes are defined as those in which there is an attack (or endangerment) of the property belonging to a person, which produces a damage against him; it is worth specifying that crimes against property are those where property is affected, indicating that many times concept of movable thing in many cases does not coincide with the concept that civilly has the movable thing. The thing belonging to another, includes all those goods are not its own, but are also excluded those things that have no owner or things that belong to all. Generally, patrimonial crimes are divided into two aspects, specifically those produce damage to patrimony and those that lead to enrichment; their purpose is to protect movable things, and for a seizure to take place, it is indispensable that a person other than owner takes possession of the property, and its penalty is often conditioned to the value of the property. It should be specified then, that patrimonial crimes are aimed at the protection of property, and that many legislations contain them as robbery, theft, extortion, swindling, among others. Based on the idea animals are part of nature, placing them in property crimes generates multiple problems

to guarantee the life of the animal and conserve biodiversity, since daily practice indicates there are cases where the owner may or may even mistreat his animals.

2. Problems in cases where the owner mistreats the animal.

Based on the idea that the scope of protection of the criminal law is the patrimony of the person, it should be indicated that, in the case where the owner produces animal abuse, it could be equated to the fact that a person decides to damage his own vehicle, then by protecting his patrimony, and this having the freedom to choose the destination of his patrimony without it being possible to recriminate him; it could lead to impunity of crime of animal abuse, because the owner has the quality of passive and active subject in the crime, generating the impossibility of applying the criminal regulations.

On the other hand, starting from premise contained in Law No. 30407 of 2016 in which animal is catalogued as a sentient being and that has the purpose of giving protection to animals against any type of mistreatment, suffering or cruelty; however, its location within the patrimonial crimes, produces enormous problems in the case where the owner produces mistreatment or cruel acts to his own animal, it is complex to apply the penalty attributed to the crime. It can even be brought up those cases where the state protects the life of people, and someone decides to attempt against his own life, and since it is the owner of the legal right who affects it, the crime of homicide is not configured, but rather the attempted suicide in which a criminal sanction is not imposed for such fact.

E. Legal-Criminal Dilemmas

1. Active and passive subject as the same person.

The passive subject has been defined as person who directly suffers the criminal action, in other words, the owner of the property that has been damaged by criminal action. Historically, doctrine, jurisprudence and legislation have identified the victim as the person who is the owner of the legal property that has been endangered or injured; in the same way, they can become those other persons who are harmed by crime, since they enjoy the same special protection. It is worth mentioning that for criminal prosecution to take place, criminal law distinguishes the passive subject from active subject of the crime, clearly differentiating them; in which the passive subject is the victim and the active subject is one who performs the action prohibited by the criminal law. And for *ius puniendi* to be exercised, it is an indispensable and unavoidable requirement that there must necessarily be a victim and a perpetrator.

But from this point of view, animal abuse presents an enormous limitation, since only one person is accepted as a victim, and according to the statute of the victim, it would only be possible in the formal context that the victim is the owner of the animal (with the exception of the case where the owner is the aggressor), because of the moral and economic loss of the owner, and in a broader way, society is also a victim because it has a socially accepted interest that all animal abuse must be punished, that the damage must be repaired (Bernuz, 2020). Thus, it is necessary that, given the existing reality, the criterion used by the Fifth Supraprovincial Unipersonal Criminal Court of Chiclayo-Ferreñafe in its judgment related to file 06261-2020, the concept of victim is expanded, giving rise to a new denomination, the animal victim as a non-human person and sentient being. This makes it possible to make a clear separation of the passive subject in animal abuse (on whom the criminal action falls

directly) from the active subject (the human being), in a direct recognition of the respect for the life and welfare of animals as living and sentient beings.

2. Implications for the protection of ownerless animals.

It should be pointed out that currently sentient animals that do not have an owner are at an enormous disadvantage, leading to the fact that the exercise of the criminal action is only legitimized when a protected legal right is affected or endangered, and necessarily, since there is no victim, the State will not be able to continue a criminal process for animal abuse; and this will lead to fact that in such cases the purpose of Law No. 30407 is not fulfilled, since they are excluded. However, it is worth insisting that precisely purpose of the aforementioned law is to protect all animals, and its location within patrimonial crimes is a real limitation because it causes exclusion of animals without an owner; however, it should be reflected on this, since life as a value is a constitutionally protected right without any distinction, then animals without an owner cannot be left without criminal protection. Such position should not be understood as the ignorance animals are a source of nutrients and proteins indispensable in human nutrition, but neither can be allowed acts of cruelty and unnecessary physical mistreatment, based on the compassion that every person should feel towards a sentient being.

Therefore, protecting animals without owners implies advancing towards a fairer society that recognizes animals beyond the economic benefit that can be obtained from them, as co-inhabitants of the same planet, without them human life would not be possible, recognizing that animals are sentient living beings, that have an important role in ecosystem, with the capacity to suffer and suffer; And before this, human beings should not be indifferent, but as citizens who adhere to ethics and morality, show their compassion in dealing with animals, providing everything necessary to not suffer unnecessarily, and to be treated with dignity, regardless of the purpose of obtaining the animal.

Safeguarding animals from all mistreatment or cruel treatment and respecting their lives will lead to need for the specialization of animal protection institutions to assist in the resolution of situations arising from this type of crime, as well as judges and prosecutors; likewise, the specialization of forensic area will be necessary to carry out the scientific determination of the causes that produced the death or to identify the injuries or psychological damage that are the result of animal mistreatment. Likewise, police units specialized in animal abuse should be created to carry out preventive and repressive actions.

Discussion

4.1 Alternatives and Reform Proposals:

In order to provide a solution to the complex problem of animal mistreatment and to truly materialize the purpose of Law N. ° 30407, consideration should be given to possibility that in a future reform of the penal code, the crime of animal abuse be relocated outside of patrimonial crimes, creating a specific section of crimes, which could be called against the conservation of biological diversity, or "crimes against animals"; or failing that, it could be incorporated to crimes against natural resources, because it is considered more adjusted and coherent with the purpose pursued in the indicated norm.

The enormous advantage of creating a specific section for crimes of animal mistreatment derived from the purpose of Law No. 30407, is that it is considered more adjusted and coherent. ° 30407, is that animal protection would be recognized in a concrete and specific way, considering them as sentient beings that without completely abandoning fact they can be susceptible to property, they would be given a particular treatment that distinguishes them from things or real estate, for their capacity to feel, for the role they play within the ecosystem for preservation of the planet and conservation of human life, they deserve special protection, ensuring life, their welfare and adequate conservation. Conserving biological diversity is one of society's priorities, and for this reason, it should be pointed out that animals are a natural heritage of the whole society; which in turn implies imposing responsible behavior norms that allow animals as a natural resource to be used in a sustainable manner; Likewise, any illegal activity in which the lives of sentient animals are put at risk, causing unnecessary damage, suffering, mistreatment and any behavior may generate psychological damage, as well as the incorporation of ethical perspectives and animal rights that make it possible to materialize an adequate and fair protection, should be avoided. Therefore, it is important and unavoidable that in the not-too-distant future the legislation continues to advance and be reformed, to cover all aspects related to animal protection, which generates the conceptualization of legal right protected in terms of animal mistreatment be revised.

4.2. Review of the protected legal interest:

Reviewing the legal right protected in the case of animal abuse should be focused on recognizing intrinsic value of life and welfare of animals, regardless of their patrimonial status. This would allow a more comprehensive and coherent protection with a regulation for protection of sentient animals. It is worth indicating that, although it must be recognized that there have been advances in the reforms that seek to protect the life of animals and their welfare, they are still insufficient for them to be protected as a living and sentient being (Jaurrieta et al., 2019). Therefore, considering that life is a legal good of high value for society is legally recognized in legal system, and considering many animals are indispensable for the subsistence of the human species, it would not be correct to value life of the animal as equal to the life of the human being, but this does not imply for that reason it should be disregarded; Rather, it would imply that their life has a value with a lower rank than of human beings, and that any human action that necessarily implies sacrificing the life of an animal totally excludes any act of mistreatment that is unnecessary; which leads to indicate that the way that implies less suffering for the sentient animal must be adopted.

In addition, guaranteeing the life and welfare of the domestic and wild sentient animal in captivity implies whoever assumes the responsibility of caring for an animal must provide it with sufficient food for its subsistence, as well as treating it carefully and respectfully, providing it with an environment that is suitable for its adequate development, and that it also receives veterinary care and medicines that allow it to enjoy adequate health. In addition, by recognizing that the animal is a subject of law, consequently the recognition of right to the life of the animal and its welfare is generated, in which as natural patrimony of society, the particular interest of the owner would yield to the social interests of protection, preservation and conservation, clearing the controversy that arises when the owner of the animal causes damage to an animal, making possible without any limitation the punitive action of the state to punish the behaviors capable of producing damage or putting at risk the life of the animal

to punish violators of the criminal law. And that, in addition to the above, animals would also be jointly protected, without any type of discrimination.

4.3. Ethical and Animal Rights Perspectives:

Including ethical perspectives and animal rights within legislation is most convenient alternative to guide human behavior, towards the achievement of a better coexistence of citizens, which significantly strengthens protection of animals; because considering and recognizing animals as subjects of rights, who hold the ownership of right to live and enjoy welfare, will generate a legislative approach that is more just and equitable. It can be taken as an example the crimes to the flora, fauna and domestic animals of Spanish penal code, that specifically in article 37, a typification is made that allows the clear understanding that it is protecting the bioethical obligations that the human being has with the animals, meaning to give them a benevolent treatment, free of mistreatment both psychic and physical. This is one of conceptions that widely strengthen and allow a clearer understanding of criminal types against animal abuse and abandonment; in which the violation of general interest is committed, consisting of respecting all bioethical obligations people have with animals and which includes respecting environment, from which the rest of obligations that have been alluded to are derived (García-Sole, 2010).

The whole moral status of animals stems from the fact that they should be considered as beings that have the capacity to feel both pleasure and pain, in other words, by conceiving them as sentient beings it is possible for them to be the object of a moral consideration, and since they have a moral entity, they should not be treated in any way, It is indispensable to consider their welfare, and it is necessary to progressively abandon legal approach that animals are mere things or real estate, but rather to understand that the relationship that animals develop with humans goes much further, and that all human behavior that causes harm to them, and in which human conduct is barbaric against them, should be removed. And it is precisely there where vehement need arises to regulate and redefine human behavior that affects animals, because thanks to the various scientific advances that have emerged that have made it possible to demonstrate that animals are capable of feeling, as well as the emergence of various movements that seek to defend and protect animals, putting pressure on society and on the different legislative bodies, which led to the recognition of legal status of sentient beings to animals.

In this sense, it is worth pointing out that sentient beings are all those living beings that have been endowed with sensitivity, requiring special protection by mankind, to contribute to their conservation and care for their welfare by refraining from harming them through any type of behavior. Therefore, the legal status of animals as sentient beings opens the way for a broad discussion in which they are recognized as subjects of rights; and consequently, they should be considered as direct victims of the unlawful action and guilty of animal abuse represented by the state through the Public Prosecutor's Office in criminal proceedings (Ariza and Díaz, 2022).

4.4. Comparison with International Models:

Within current international models, it can be observed that the regulations inherent to animal rights are in full development, and have shown to be effective in the protection of animals:

Spain, has considerably strengthened the legal system for the protection of animals, due to the enactment of Law 17/2021 dated 15/12/2021, where the modification of both the Civil Code, the Mortgage Law and the Civil Procedure Law, regarding the entire legal regime of animals, and which was published on 16/12/2021 in the BOE, which is currently in force; where a modification of enormous legal relevance is introduced to the legal concept of pets, which are recognized as living beings that are endowed with sensitivity, and that have a nature widely differentiated from goods and things, and also with respect to the nature in which the coexistence of people with animals arises or develops. In this legal system, there are different trends regarding the conception of companion animals. In one sense, it is given in a negative sense because animal is qualified as not being a thing; and in another sense, they are qualified in a positive sense, by recognizing the essence of beings that are different from both people and things.

The reform had a comprehensive effect on the legal system, including the civil code, the mortgage law and the Civil Procedure Law. In the civil code there were significant changes of great relevance for criminal law, due to its enormous number of modified articles, which can be summarized in following aspects:

The establishment of animals as living beings with sensibility, in which their owner must exercise rights of the animals considering that they are sentient beings, so they must protect and ensure their welfare; in the same way, the owner must assume expenses caused by their care and cure, as well as the indemnities when they are injured or their death is caused. Rules related to the different matrimonial crises are incorporated to ensure an adequate regime of care and coexistence with the animal; and of the affective relationship caused by separations, divorces and marriage annulments; In addition, a regulation is introduced for companion animals, with respect to the existence of regulatory agreements between the spouses who are subject to a divorce or non-contentious separation, as well as for the different judicial resolutions of the contentious processes, where the destination, cohabitation and care of the animal is established, as well as the manner in which it is to be entrusted to one or both spouses. In fact, considerations are established referring to the agreement of the spouses that are detrimental to the animal, allowing the judges to adopt the measures that are more pertinent to the specific case.

It is established that in cases where animal mistreatment is proven, the shared custody and custody of the animal will be restricted, and the way in which the spouse to whom the animal was not entrusted may have the animal's company is regulated, as well as the sharing of the different burdens caused by care of the animal. Substantial modifications of the regulations referring to the possession of the animal were incorporated, indicating that they can be the object of possession, making a clear distinction of the things and fixing in a precise way the form in which it can be acquired and relative to the loss. A distinction is made between domesticated and wild animals, assimilating domesticated animals to domestic animals, because they have the habit of returning to the owner's home or because of their particular identification. In the same way, the obligation to return the animal to the owner or to the person in charge of its care in case a person finds it lost is introduced; being instituted that the signs of mistreatment will be one that produces disappearance of such obligation, having then to inform competent authority. Provisions referring to successions are introduced, as to the

destiny of the animal as a consequence of the death of the owner, as well as those dispositions of the last will of the de cujus, and an express regulation for the cases where there is no will.

Regarding the community of property, it was established that the animal will be owned when it belonged to one of the spouses before the beginning of partnership. Likewise, and in accordance with the concept that the animal is a living being endowed with sensibility, it was established animal cannot be pledged or mortgaged. In the same way, the referred norm, introduced the modification of article 605 of the Civil Procedure Law, incorporating a new numeral where it is established that animals are absolutely unseizable due to bond of affection that they have with the family; In the same way, article 771 LEC is modified, related to provisional measures prior to the separation, nullity or divorce, in which the aspects referred to the cohabitation, needs and attribution of the animal must be provided; and finally, regarding definitive measures related to the cases where there is no agreement between the parties that allow the judge to adopt decision he considers pertinent referred to the need of animal.

In the same order of ideas, it is worth indicating that the legal dispositions previously indicated, are closely related and harmonize in a coherent way with Spanish penal norm, which contains criminal figure of animal mistreatment, established in articles 340 bis, 340 ter, 340 quater and 340 quinquies, and are grouped in a separate section in the crimes against animals, having as legal good physical and psychic integrity of animals; In comparison with Peruvian legislation, it gives specific protection to animals since they are recognized as subjects of law, and in which the owner represents the interests of the animal; and different criminal types of the crime of animal abuse were established, which are described below:

The basic type of the crime of animal abuse, was regulated in Article 340 paragraph 1 of the Spanish Penal Code, consisting of the action of causing an injury to a tame, domesticated, domesticated animal or living temporarily or permanently in control of a person, which merits veterinary attention to restore animal's health, and which is carried out was of the activities regulated by law, which includes sexual acts. In this case, a prison sentence of three to eighteen months or a fine is imposed, as well as the disqualification to exercise the profession, trade or commerce related to animals and for the possession of animals. In the same way, the basic type can be constituted when injuries are caused to a vertebrate animal, with a penalty of 3 to 12 months of imprisonment or fine, and the corresponding disqualification mentioned above. The possibility of using firearms is also contemplated, with an additional penalty of deprivation of right to carry or possess firearms for a period of 1 to 4 years. This makes it possible to indicate that the basic type of the crime of animal abuse converges in three essential elements: the action of person outside the cases regulated by law; the production of an injury to the protected animal; and it is indifferent what caused the injury.

In the aggravated type, it is established in article 340 bis second paragraph, which corresponds to the penalties indicated above, where it will be increased by half, when any of the circumstances indicated concur: The use of weapons or any instrument, method, or form that endangers life or health of the animal; to carry it out with cruelty; to produce the loss of organs, of any sense or of a member of the animal; that the action has been carried out by the owner or by the person responsible for the care of the animal; that the act is witnessed by a particularly vulnerable person or by a minor; to carry it out for profit; to carry it out with the

purpose of coercing, harassing, intimidating or generating a psychic impairment of his spouse or ex, or whoever has been united to any affective relationship even if there has not been cohabitation; to carry it out in a public event or to carry out the diffusion through any information or communication technology; to use explosives, or with similar weapons or with poison. On the other hand, section 3 regulates the aggravated type that as a result of the injury results in the death of the animal, in which the penalty to be imposed is from 12 to 24 years of imprisonment, disqualification of two to four years to exercise the profession, trade or commerce related to animals and for their possession; and when the crime is committed using firearms, the deprivation of the carrying of a weapon or the right to possess weapons may be decreed for a period of 2 to 5 years. In the same manner, the attenuated type of the crime of animal mistreatment contained in article 340 bis fourth paragraph was established, where it is reflected that, if the injuries caused to the animal do not merit veterinary treatment, or if the animal is seriously mistreated and no injuries are caused, a fine of 1 to 2 months must be imposed, or in its absence, community work between 1 and 30 days, as well as the disqualification referred to in preceding paragraphs.

On the other hand, the crime of abandonment of animals was established, in Article 340, third paragraph, by which it is configured from the fact that a person abandons a vertebrate animal that has it under his responsibility, leaving it in conditions that endanger its integrity or its life. In which a fine of 1 to 6 months may be imposed, or community service for a period of 31 to 90 days, as well as disqualification to keep animals or to exercise the profession, trade or commerce related to animals. In addition, Article 340 paragraph 4, which contains a reference to Article 31 bis, specifies a legal person may commit crime of animal abuse, leading to a fine of 1 to 3 years when crime contains a prison sentence of more than two years, a fine of six months to two years for other cases; likewise, the penalties established in Article 33 may be additionally imposed. 7 paragraphs b) to g), consisting of dissolving the legal person, the suspension of activities for a time not exceeding 5 years, the closing of the premises for same time indicated above, among others. In another sense, the Spanish penal code in article 340 quinquies contains the provision that allows the court to adopt the necessary precautionary measures to materialize the protection of the protected legal right of the crime of animal abuse, making it possible to provisionally change both the ownership and the care of the animal.

When contrasting the model of animal protection in Spanish legislation with the Peruvian legislation, it can be evidenced that the Spanish legislation has a wide protection for animals, where they are even recognized as subjects of rights, and that there is the configuration of a variety of types of crimes that are derived from the basic criminal type of animal mistreatment. It can be noted that, in Peru, there is a certain lack of interest in building and protecting legal protectionist purposes in favor of animals, and this is because the Peruvian penal code only typifies the crime of abandonment and acts of cruelty against domestic and wild animals, According to the provisions of article 206-A of the substantive criminal code, where the act of cruelty against an animal and abandonment is penalized with a prison sentence not exceeding three years, in addition to a fine of 180 days, and the disqualification consisting of a definitive or temporary incapacity to keep animals. On the other hand, it establishes aggravating circumstance that, if the death of the animal is caused by the abandonment or cruelty, the penalty to be imposed will be between 3 and 5 years, with an additional fine of 150 to 360 days of fine and disqualification.

Conclusions

A. Recapitulation of findings

Animal abuse has caused enormous damage to the planet's biodiversity, generating ecosystem instability, due to the loss of different species and the disappearance of multiple resources that are indispensable for human life, generating negative climatic impacts that lead to environmental and ecological chaos. This led to the emergence of the Universal Declaration of Animal Rights, which was approved on October 15, 1978 by the United Nations Educational, Scientific and Cultural Organization, which recognizes right to life of animals, the right to respect, protection and dignified treatment, establishing the requirement that people should avoid any type of mistreatment, cruel treatment or any form of unnecessary suffering; Likewise, it is recognized that the animal's natural environment must be respected and guaranteed; establishing biocide as a human action that produces the unnecessary death of an animal, and genocide if the fact produces the death of a large number of animals. This legal instrument has inspired creation of legislation that establishes the protection of animals, as occurred in case of Spain, Germany, Puerto Rico, Colombia, Peru, among others.

However, it can be specified that, although criminal law is the adequate instrument to sanction illicit conducts because administrative law fails in this task, different discrepancies have arisen regarding the concept of the protected legal right, because there is no uniformity in the exact determination of the legal right that must be protected. It is argued that animal mistreatment does not constitute a crime against the environment because it separates the domesticated animals from the rest and the behavior does not have repercussions on balance of the environment; This criterion is not shared because, although it is true that there is an exclusion of domestic and wild animals, it is also true that the mistreatment and death of animals produces an impact on the different biospheres, as stated by Jaurrieta (2019), indicating that the large-scale impact of damage to animals affects the existing reserves and has an impact on the fauna.

Likewise, it is convenient to indicate that the mistreatment of animals violates the animal's right to life, physical or psychological integrity, and the welfare of animals as sentient beings; As established in the precedent set in the sentence of the Fifth Supraprovincial Unipersonal Criminal Court of Chiclayo-Ferreñafe dated 06/07/2021, related to file 06261-2020, in which it was indicated that the crime of abandonment and acts of cruelty committed against animals seeks the protection of the life and integrity of the animal as a sentient being, a criterion that is in close harmony with the Universal Declaration of Animal Rights and the purpose of Law No. 30407 of 2016. ° 30407 of the year 2016 in which it is established that the norm seeks to safeguard the integrity and life of animals.

B. Call for action and reform

The location of the crime of animal abuse within the patrimonial crimes generates enormous problems to achieve an adequate protection against abuse, suffering or cruelty committed against animals, by making it difficult to impose the penalty attributed to the crime, because it remains open the possibility that by protecting the patrimony of a person, and being owner himself who incurs in the mistreatment of the animal the punishable act remains unpunished

because both active subject and the passive subject are the same person, causing a criminal legal dilemma that needs to be overcome. On the other hand, it also happens that animals without owners are unprotected from the criminal law, because in such cases there would be no affectation or endangering of any patrimony, and consequently the state is not legitimized to carry out the criminal prosecution because there is no victim or any affectation whatsoever.

All this leads to indicate that in accordance with the purpose of Law No. 30407, it is indispensable that the State has the legal right to prosecute. 30407, it is essential to reform the Peruvian penal code, creating a specific section of crimes in which animals are directly protected, which could be called "crimes against the conservation of biological diversity", or "crimes against animals" in which the protection of life, physical or psychological integrity, and the welfare of animals as sentient beings is clearly and coherently established, recognizing the special protection of animals without this implying the abandonment of the fact that they are susceptible to property, and that in short, the criminal legal dilemmas that make it difficult to give them due protection are overcome, and that make it possible to give them the particular treatment that distinguishes them from real estate and things due to their capacity to feel, in which the role they play in the ecosystem for the preservation of the planet and the conservation of human life is recognized, ensuring their life, welfare and adequate conservation.

C. Implications of research in animal protection

The research carried out leads to prevent and/or avoid any type of mistreatment of animals, protecting their life, integrity and welfare, which leads to eradicate any practice that may produce or have the capacity to put at risk the life of sentient animals; As well as the encouragement of incorporation of animal rights and ethical perspectives that make possible the materialization of a fair and adequate protection according to the current realities; which will undoubtedly lead to continue advancing and developing Peruvian legislation for protection of animals with a fairer and more equitable legislative approach.

In addition, the adequate protection of the life of animals in Peru will produce an affectation of the legal system that will result in the advancement of the due protection of animals, generating that people assume a more benevolent behavior, and in which the human being acts with due consideration to animals for their capacity to feel, contributing both to the conservation of the different animal species and to production of a healthier human-animal relationship.

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