



UDC 347.12:303

DOI: 10.31548/law/1.2023.09

Judicial protection of intellectual property rights to animal breeds in civil proceedings (comparative legal aspect)

Mariia Golubei*

Applicant

National University of Life and Environmental Sciences of Ukraine
03041, 15 Heroiv Oborony Str., Kyiv, Ukraine
<https://orcid.org/0000-0003-2236-5011>

Article's History:

Abstract

Received: 29.10.22

Revised: 20.01.23

Accepted: 22.02.23

The relevance of this study is conditioned upon the lack of specialized legal regulation concerning the breed of animals as an object of intellectual property, which considerably complicates the judicial protection of property and personal non-property rights. The purpose of this study was to investigate the civil legal protection of intellectual property rights for animal breeds in Ukraine, considering foreign practices. For the systematic study of Ukrainian and foreign legislation, formal-legal, logical-legal, comparative-legal, and other special methods were used. Through the analysis of the Ukrainian regulatory framework, it was found that the provisions of the patent legislation must be considered for the implementation of judicial protection of rights to animal breeds. The results of the study of the provisions of the specialized laws of Ukraine from the standpoint of civil legal protection of intellectual property rights were presented and the following methods of protection were highlighted, which by analogy can be applied to the animal breed: recognition of the right, change, or termination of the legal relationship, restoration of the position that existed before the violation of the right, recognition of the deed invalid, termination of infringing actions, compensation for damages and moral damage, forced performance of the obligation in kind. It was established

Suggested Citation:

Golubei, M. (2023). Judicial protection of intellectual property rights to animal breeds in civil proceedings (comparative legal aspect). *Law. Human. Environment*, 14(1), 9-22. doi: 10.31548/law/1.2023.09.



*Corresponding author

Copyright © The Author(s). This is an open access article distributed under the terms of the Creative Commons Attribution License 4.0 (<https://creativecommons.org/licenses/by/4.0/>)

that a special method of judicial protection of animal breed rights is the application of a one-time penalty in the form of a certain amount of money instead of compensation for damages. Using a comparative legal analysis of foreign practices, namely in the Czech Republic, Bulgaria, and Kyrgyzstan, it was discovered that the legal protection of animal breed rights is primarily determined by the presence of a protective legal document, such as a patent or certificate. The theoretical value of this paper is that this study is the first to analyse the issue of judicial civil law protection of animal breeds as an object of intellectual property law in Ukraine, while also factoring in the foreign practices. The practical value is that the study results can be used to eliminate gaps and conflicts in the legal regulation of animal breeds as objects of intellectual property. The proposals expressed in this paper can be considered in the legislative initiatives

Keywords: civil protection; methods of protection of civil right and interest; selective achievement; violation of law; patent; foreign practices

Introduction

Judicial protection of rights, specifically intellectual property, is the most effective jurisdictional form of protection. In Ukraine, it is implemented by courts of general jurisdiction in various forms of proceedings (civil, economic, administrative, criminal). Judicial protection of the right is a guiding constitutional principle. Article 55 of the Constitution of Ukraine guarantees the protection of rights and freedoms in court (Constitution of Ukraine, 1996). This article focuses on the civil law aspect of the protection of intellectual property rights for animal breeds, as such a narrow approach allows for a more qualitative and complete disclosure of the issue.

Effective legal protection is impossible without a correctly chosen civil law method of protecting intellectual property rights, the non-exhaustive list of which is specified in Article 16 of the Civil Code of Ukraine (the CCU) (2003). Presently, there is a need to improve the system of protection of intellectual property rights in civil proceedings. The choice of the method of protection in this area should be approached especially carefully, since the judicial protection of rights to various

objects of intellectual property law differs, which is caused primarily by the different legal nature of the objects of intellectual and creative activity.

Such a non-conventional object of intellectual property law as an animal breed is left out of due consideration in Ukrainian legislation, namely in the aspect of protectionability, turnover, rights, and obligations of subjects, legal document, etc. This, admittedly, prevents the right owners of the animal breed from implementing judicial protection of the violated or contested non-property and/or property right. To fully cover this issue, it is necessary to analyse and consider foreign, primarily European, practices, since there is a critical lack of national practice of statutory regulation of the issue. All the above determines the relevance of this study.

The studies of many scientists cover the issue of protection of intellectual property rights, as well as its definitional understanding. O. Drozdov and M. Pototskyi (2022) are optimistic for the newly created Supreme Court on Intellectual Property, whose activities should solve the problem of considering the specific features of legal

relations in the field when applying methods of protection, as well as unifying the practice of applying intellectual property legislation by courts property. For this, however, more than one year of well-established functioning of the court is needed. O.P. Orliuk (2016) emphasizes the urgent task of Ukraine, which has chosen an innovative European integration path of development, to create proper and effective conditions for the protection of intellectual property rights. One of the tools for fulfilling this task should be the comprehensive development of national special legislation, factoring in the European norms.

A.O. Kodynets (2018) emphasizes the absence of a unified judicial approach to resolving disputes in the field of intellectual property in many instances, which certainly adversely affects the legal protection of owners of property and personal non-property rights of intellectual property. He also considers the effective activity of a specialized court on intellectual property issues as one of the possible ways to solve the issue. O.M. Korotun (2019) also points to insufficient attention paid to the protection of intellectual property in Ukraine, specifically rights to animal breeds. He, as well as O. Svetlichnyj (2017), emphasizes the importance of improving primarily procedural legislation (Korotun, 2019).

V.O. Tokareva (2020) fairly points out that the subjective right to civil protection is determined through the “triad” of the following powers: the ability to behave in a particular way; the right to demand particular behaviour from third parties and the possibility to obtain legal protection; A.V. Shabalin (2020) emphasizes that under the civil law judicial protection of intellectual property rights, it is appropriate to consider the active behaviour of the subject of intellectual property rights, which is implemented by applying to the court, aimed at protecting and restoring rights,

stopping the offence, and obtaining compensation for the damage and losses.

At the dissertation level, the aspects of judicial protection of intellectual property rights were considered by: G.V. Lebedeva (2021), who investigated various aspects of the protection of the rights and interests of individuals that are violated as a result of the use of objects of intellectual property law. However, the species of animals also stayed outside the focus of scientists; H.Ye. Mydzhyn (2021) focused her attention on the administrative legal protection of intellectual property rights in Ukraine; G.A. Ulianova (2015) indicates that civil law protection of intellectual property should be aimed not only at stopping the violation and restoring rights, but also at detecting it and making it impossible to commit it in the future.

All the doctrinal provisions mentioned above are certainly important. However, the subject of the civil law aspect of judicial protection of intellectual property rights specifically for the breed of animals is still unexplored. The foreign practices of regulation of this issue are also ignored. Considering this, the study of the issues of civil legal judicial protection of intellectual property rights for animal breeds in Ukraine, factoring in the foreign practices of regulating this issue, became the purpose of this study.

Fulfilling the set purpose is impossible without completing the following tasks:

1) to cover the specific features of judicial protection of rights to objects of intellectual property rights in civil proceedings;

2) to determine the current state and real ability to exercise the right to judicial protection for authors and owners of property rights to animal breeds;

3) to outline methods of civil law protection of intellectual property rights for animal breeds;

4) to investigate the foreign practices of regulating the issue of civil law protection of intellectual property rights to animal breeds in court.

The scientific originality of this study lies in a comprehensive analysis of the issues of judicial protection of intellectual property rights to animal breeds within the framework of civil proceedings, as well as a comparative legal analysis of this issue considering the foreign practices of those countries where the issue of intellectual property rights to animal breeds, namely its protection, is governed by separate specialized laws.

Materials and Methods

Apart from legal doctrine, the author of this study analysed both Ukrainian and foreign legal acts: the Civil Code of Ukraine (2003), Laws of Ukraine "On Copyright and Related Rights" (2022), "On Protection of Rights to Inventions and Utility Models" (1993), "On Breeding in Livestock Breeding" (1993), "On the Protection of Rights to Plant Varieties" (1993), the Law of the Republic of Bulgaria "On the Protection of New Varieties of Plants and Animal Breeds" (1996), the Law of the Czech Republic "On Protection of New Varieties of Plants and Breeds of Animals" (1989), the Law of the Republic of Kyrgyzstan "On Legal Protection of Breeding Achievements" (1998).

The study is based on several theoretical general scientific and special research methods. The formal-legal method was used for the systematic analysis of the Ukrainian and foreign legal framework, research of legal facts, unambiguous and correct understanding of legal constructions. The logical-legal method was also used to work with legal texts (codes, laws), review doctrinal provisions, i.e., various literature on the subject under study, to avoid putting forward contradictory hypotheses and drawing

false conclusions. The hermeneutic method also helped interpret legal texts correctly. The formulation of the hypothesis helped make assumptions about the state of certain legal phenomena, e.g., the fact that a patent can serve as a protective document for a breed of animals. The application of the method of analogies helped in establishing equivalence between different and similar legal phenomena, institutions (this allowed, for instance, to express the assumption that in terms of judicial protection, animal breeds and objects of patent law may be subject to the same legal regulation). When comparing the Ukrainian and foreign (Bulgarian, Czech, Kyrgyz) practices of regulating the issue of judicial protection of animal breeds as objects of intellectual property law, as well as for comparing objects of intellectual property law that are similar in their legal nature (for instance, animal breeds and varieties of plants), the comparative legal method prevailed. Such logical methods of cognition as induction (a method of reasoning from a particular judgment to a general one) and deduction (the flow of thought from a general to a particular judgment) enabled an in-depth analysis of the animal breed as a constituent part of objects of intellectual property law. At the stage of the initial, superficial acquaintance with the object of the study – the civil legal judicial protection of the breed of animals as an object of intellectual property law – direct or empirical analysis and synthesis was applied. Elementary theoretical analysis and synthesis were used to penetrate its essence. The comparative legal method also helped in finding various approaches to solving the problem. For instance, it helped to put forward several options for considering the breed of animals as an object of intellectual property law, specifically in the aspect of legal protection in civil proceedings.

Results and Discussion

Judicial protection of civil law and interest is considered one of the branch principles of civil law, it is a basic principle, the absence of which makes it impossible to effectively achieve the contractual legal purpose (Kolos, 2019).

Analysis of the provisions of special legislation in the field of intellectual property allows tracing the difference between the methods of protection prescribed for various objects of intellectual property rights (copyright and related rights, patent rights, rights to means that individualize goods and services, non-conventional objects). The diverse legal nature of the results of intellectual and creative activity, objective forms of expression of such objects, etc. are the reason for this (Torremans, 2019). The possibility of applying the general methods of protection prescribed in Article 16 of the CCU (2003) is excluded to the same extent and in the same way to all objects of intellectual property law because each of them has a separate specificity in terms of legal protection (Moore & Frederickson, 2020). That is why, in the opinion of the author of this study, it is worth considering in detail the specific features of judicial protection of each of the objects of intellectual property law, especially those whose current legal regulation is neglected. First of all, civil proceedings are of the greatest interest, within the framework of which legal disputes arise most often.

Identifying the main methods of civil law protection of intellectual property rights, specifically for animal breeds, will ensure uniformity in the implementation of civil law protection of violated property and personal non-property rights. This is one of the tasks of the codification of legislation in the field of intellectual property (Mykytyn, 2016). Such a position is correct, but it seems appropriate that the adoption of a separate specialized legal act is not critically necessary for its

implementation. It is sufficient to single out these provisions in the laws already in force, e.g., the Law of Ukraine "On Animal Breeding in Livestock Breeding" (1993). This will help avoid the dispersion of legal regulation and the predominance of the number of regulations over their quality.

To protect intellectual property rights, the court is entitled to apply any methods established in civil legislation. The current CCU (2003) in Article 16 prescribes ten non-exhaustive options for the protection of property and non-property rights and legal interests that can be applied by the court. However, not all the listed methods have the same application for different objects of intellectual property law. Thus, patent rights and trademark rights or other means of individualization of goods and services are valid from the moment of state registration. That is why a common way of contesting the rights to these objects is the demand to declare the issued security document (patent or certificate) invalid. To protect the rights of this group, it will not be common, for instance, to require compulsory performance of the obligation in kind. This thesis is correct and corresponds to the legal nature of objects of intellectual property rights, where legal protection is not subject to the object of the material world itself, but to property and personal non-property rights to it. That is why, the choice of the method of legal protection depends on such factors as the nature of the violated or contested right, as well as the type and nature of the offence committed (Kodynets, 2018). The protection of intellectual property rights to animal breeds is interesting and rather problematic from the perspective of legal protection, since Ukrainian legislation, considering this object as one of the possible non-conventional objects of intellectual property law, does not prescribe criteria for its protection-ability and does not establish a legal protection

document for it. Considering this, it is advisable to analyse the specific features of legal protection of other objects of intellectual property law, primarily inventions, since the animal breed gravitates to the objects of patent law (Smulders *et al.*, 2021). Thus, according to the provisions of Article 25 of the Law of Ukraine “On Animal Breeding in Livestock Breeding”, a breeding achievement in the field of breeding livestock breeding is recognized as an invention (1993). It is also necessary to consider the specific features of judicial protection of plant varieties, since these non-conventional objects of intellectual property law are similar in their legal nature.

Paragraph 2, Part 1, Article 52 of the Law of Ukraine “On Copyright and Related Rights” (2022) prescribes the right of a person whose rights have been violated to apply to the court for recognition and renewal of their rights. A person is entitled to apply to the court with a claim for the restoration of their violated rights or the termination of actions that violate their rights or create a threat of such violation; to file claims for moral damages; on compensation for damages, including lost profit, or recovery of income received as a result of infringement of rights, or payment of compensation, etc.

Therefore, the law contains a rather wide list of actions that can be taken by the court to protect an unrecognized, infringed, or contested copyright or related rights.

Part 2 of Article 36 of the Law of Ukraine “On Protection of Rights to Inventions and Utility Models” (1993) states that courts, pursuant to their competence, resolve disputes about the authorship of an invention (utility model); violation of the rights of the patent holder; conclusion and execution of licence agreements; the right of the previous user; compensation. Here, unlike the previous law in the field of copyright and related

rights, there is no list of actions that a court can take to protect intellectual property rights to an invention/utility model.

Article 55 of the Law of Ukraine “On Protection of Rights to Plant Varieties” (1993) covers the issue of judicial protection in considerable detail. Thus, according to Part 1 of this Article, the court is entitled to make any of the following decisions:

a) make the violator compensate for moral (non-property) damage caused by the violation of rights to the variety;

b) make the violator compensate for damages caused by the violation of exclusive property rights to the plant variety;

c) collect from the violator the income received as a result of the violation of rights, including the lost profit;

d) collect compensation from the violator in the amount of 10 to 50,000 minimum wages (considering the form of guilt of the violator) instead of compensation for damages or collection of income;

e) stop the action that creates a real threat of violation of the rights of the owner of the variety (such a requirement can be implemented, e.g., by imposing a ban on the sale or other introduction of the plant variety into civil circulation) (Law of Ukraine No. 3116-XII..., 1993).

The specified provisions of special laws are the embodiment of the detailing of the general prescriptions of judicial protection of civil law and interest, prescribed in Articles 3 and 16 of the CCU (2003).

At the same time, not all special laws clearly outline the protection of non-property and exclusive property rights in court. The breed of animals, as a non-conventional, atypical object of intellectual property law, does not have a legally established legal mechanism for legal protection and security. The Law of Ukraine “On Animal Breeding in Livestock Breeding” (1993) does not

say anything about judicial protection of breeding achievements. This, admittedly, makes it impossible to properly protect the rights in court regarding this object.

As long as there is no specialized legal regulation in the field of protection of intellectual property rights for animal breeds, by analogy, it is advisable to apply the provisions of the Law of Ukraine “On Protection of Rights to Plant Varieties” (1993) and “On Protection of Rights to Inventions and Useful Models” (1993). Proceeding from the general provisions of the CCU (2003), owners of animal breed certificates have the following exclusive property rights: to use animal breeds invented by them; allow third parties to use animal breeds; to prevent illegal use of animal breeds, as well as to impose a ban on such use. Accordingly, if there is a violation or dispute of these, as well as non-property rights of the author of the animal breed, the person is entitled to demand legal protection and the court to perform any of the actions prescribed in Part 1 of Article 55 of the Law of Ukraine “On Protection of Rights to Plant Varieties” (1993).

Particular attention should be paid to such a method of legal protection as the application of a one-time monetary penalty instead of compensation for damages in case of improper use of an object of intellectual property rights. Article 432 of the CCU (2003) indicates that its amount is determined pursuant to the provisions of the law, considering the fault of the person and other circumstances that are important. That is, a one-time monetary penalty can be applied only when a special law on the protection of a particular object of intellectual property rights allows for such a possibility. An example is the already mentioned norms of Article 52 of the Law of Ukraine “On Copyright and Related Rights” (2022) and Article 55 of the Law of Ukraine “On Protection

of Rights to Plant Varieties” (1993). As for other objects of intellectual property law, this method cannot be applied given the fact that there are no special legal provisions.

Analysing all the methods of protection of intellectual property rights mentioned in the special laws, the following of them can be applied to the animal breed:

1) recognition of the right – when there is confirmation of a disputed or unrecognized right in court, e.g., recognition of authorship of an animal breed;

2) change or termination of legal relations, e.g., cancellation of a licence to use an animal breed;

3) restoration of the situation that existed prior to the violation of the right can be applied when the subjective right of the person, which was violated, still exists (Dyachenko & Likhtanska, 2017), e.g., the ban on advertising and offers for sale of an animal breed. Furthermore, such a method of protection can take place only if the violation causes the loss of the real ability of the subject of intellectual property to freely use the right belonging to it (Shtefan, 2014);

4) recognition of the transaction as invalid, e.g., recognition of the invalidity of the licence agreement;

5) termination of actions that violate the right, e.g., withdrawal of the object of selection achievement from civil turnover;

6) compensation for damages and moral damage;

7) forced performance of a duty, e.g., forced performance of a duty under a licence agreement.

Notably, not only subjective rights, but also legal interests, are subject to legal protection in the field of intellectual property. The main difference between these categories is that the subjective right is ensured by the presence of a corresponding duty to exercise the possibility of a person to act in a certain way. An interest protected by law does

not have such security. To protect the intellectual property rights of the animal breed, it is necessary to distinguish between subjective rights and legally protected interests. This is of great practical importance because, for instance, only the person whose rights or interests are infringed by the corresponding patent or certificate is entitled to file a lawsuit to declare a patent or certificate invalid (Kodynets, 2018). Such a conclusion of A. Kodynets is absolutely logical and convincing. On its basis, it can be argued that, if we consider the fact that usually the exclusive intellectual property rights for an animal breed belong to the patent owner, then the plaintiff must justify and prove precisely how their legitimate interests are violated due to the existence of a conflicting patent or certificate. In the case of failure to prove it, there are grounds for refusing to satisfy the claim.

The possibility of filing a lawsuit to protect the rights to the animal breed, however, is considerably complicated, according to some researchers, by the impossibility of obtaining a patent for this object of intellectual property rights. Without patent protection, according to I.L. Lytvynchuk (2018), breeders are in an almost defenceless position when dishonest use of the animal breed they bred occurs.

German scientist C. Schreider (2018) also emphasizes the need to patent an animal breed as an important prerequisite for legal protection of intellectual property rights to it. Patent protection is becoming increasingly critical for animal breeding as it becomes significantly more “technical” (e.g., in reproductive technology). Technological advance also helps include genes in animal breeds with special characteristics. That is, there are strong prerequisites for the protection of animal breeds precisely within the limits of patent law. The researcher claims that the current absence of the term “animal breed” in the patent legislation means in fact uncertainty regarding the special

judicial mechanism for the protection of this object. Presently, for instance, in Germany, it is theoretically possible within the limits of patent law to exercise the right to judicial protection of animal breeds exclusively as innovations that meet the criteria of an invention (Schreider, 2018), although the animal breed itself as a product of conventional breeding cannot be recognized as an invention (European Patent Convention, 2000).

This emphasis on patent protection is correct because within the limits of patent law, in connection with the existence of a protective document – a patent assigned to a particular subject (the owner of property and/or personal non-property rights), it is much easier to realize the right to judicial protection. However, this does not mean that another law enforcement document – authorization or certificate – will be ineffective in this aspect. There is, for instance, a position regarding the judicial protection of animal breeds through a separate *Sui generis* mechanism, where an animal breed is considered as an independent object of intellectual property law, and not an invention or other object of intellectual property law (Ischebeck, 2015), which actually corresponds to the state of affairs in Ukraine, where the breed of animals is recognized as a separate object, but not yet regulated at all.

In the context of the subject of the right to judicial protection, the Chinese researcher Y. Hou (2019) expresses an interesting opinion. He proposes to introduce the so-called rights of farmers. Thus, in cases of protection of rights to animal breeds, the plaintiff holds intellectual property rights to this object. After the breeding of the animal breed, the latter can be sold to the farmer/farm without transferring to them the intellectual property right to this object. After the use of animal breeds in production and business activities, the interested party in case of a tort against a

given animal breed is also the farmer who purchased such a breed. That is why, in the case of infringement of intellectual property rights on an animal breed that is physically owned by a particular farmer, the latter should be a joint plaintiff with the owner of intellectual property rights (breeder, inventor, etc.). In the opinion of the author of this article, to avoid such complications, it is advisable to immediately alienate a certain amount of property rights, which allows the farmer, who has been harmed, to independently file a lawsuit in court with a demand for the protection of their right.

Notably, the already mentioned sui generis intellectual property system for animal breeds exists only in Bulgaria (Law of the Republic of Bulgaria..., 1996) and the Czech Republic (Law of the Czech Republic..., 1989). Outside the European continent, such a system also exists in the Republic of Kyrgyzstan (Law of the Kyrgyz Republic..., 1998). It is appropriate to analyse how the principle of judicial protection of intellectual property rights for animal breeds is implemented at the legislative level in these countries.

The Law of the Republic of Bulgaria "On the Protection of New Varieties of Plants and Animal Breeds" (1996) does not contain a list of actions that can be taken by the court to protect the rights of the author of the animal breed (which in the Law is called "the author of the animal breed" or "the breeder") or the owner of the certificate (authorizing document for the animal breed). Article 46 generally prescribes that cases relating to the creation, protection, and rights arising from the animal breed certificate shall be decided administratively or by court. While Article 47 of the mentioned law contains an exhaustive list of cases when the case should be resolved not in court, but in an administrative procedure, e.g., appeals against decisions on refusal to issue a certificate for an animal breed.

Furthermore, separate articles outline situations when the author of an animal breed (or breeder) is entitled to legal protection of their right. For instance, Part 2 of Article 25 states that the breeder is entitled to fair compensation in case the breed of animals created by them is used by another person, e.g., under the licence agreement prescribed by Article 22 of this Law. Without the agreement, the amount of compensation is determined by the court.

Part 1 of Article 51 of the Law of the Republic of Bulgaria "On the Protection of New Varieties of Plants and Animal Breeds" describes which disputes regarding the protection of intellectual property rights on animal breeds are considered by the court. For instance: disputes about authorship (co-authorship); disputes about the right to a certificate; disputes about the violation of the rights of the applicant and the exclusive rights of the owner of the certificate; disputes related to the conclusion of licence agreements, their execution, and termination; disputes regarding the official nature of the animal breed and the amount of remuneration paid to the author of the official bred variety; disputes related to the amount of compensation due to the certificate holder in the event of the issuance of a compulsory licence.

The following provision of the Law is interesting: any person who violates the exclusive property rights of the owner of the certificate, i.e., exercises any of the latter's exclusive rights without their consent, is punished by a fine in a fixed amount (Part 2 of Article 51). Moreover, reproductive material illegally possessed by such a person is subject to confiscation. Such a fine is an administrative penalty, which does not exclude other civil sanctions and criminal liability.

Therefore, Bulgarian legislation outlines the issue of judicial protection of intellectual property rights for animal breeds in quite detailed terms

but does not make provision for an extended list of protection methods and actions that the court can take to protect the rights of the certificate owner.

If we turn to the practices of the Czech Republic, the Law of the Czech Republic "On the Protection of New Varieties of Plants and Animal Breeds" (1989) also covers the issue of judicial protection of intellectual property rights on animal breeds, but in less detail. Article 26 states that in cases of violation of the rights to the animal breed, the owner of the certificate, which is the legal document for the animal breed, or the author, if they are not the owner of the certificate, may demand the termination of the violation and elimination of the consequences of such violation. These prescriptions reflect the following methods of protection: cessation of infringing actions and restoration of the situation that existed before the violation of the right.

Furthermore, if damages are caused by the violation, then the person to whom they were caused is entitled to compensation. In cases of damage, apart from damage to property, the injured person is entitled to adequate satisfaction, which may also take the form of monetary compensation. That is, this refers to compensation for moral damage.

By analogy with the Bulgarian legal regulation, Article 28 of the Czech Law also contains provisions on the imposition of a fine on a person who has violated the rights of the owner of the certificate, specifically if the person, without having the right to do so, commercially uses the breed. Such actions of the violator are considered an administrative offence. Whereas Article 27 of the specified Law prescribes fines for legal entities in case they violate the rights of the owner of the certificate.

Thus, in the context of judicial protection of intellectual property rights to animal breeds, the Law of the Czech Republic emphasizes the possibility of imposing fines on the violator (which

is an administrative penalty), and also mentions two more methods of judicial protection. The Law does not prescribe an extended list of the latter.

The Law of the Republic of Kyrgyzstan "On Legal Protection of Breeding Achievements" (1998) specifies that a patent is the legal document for an animal breed. The patent owner, pursuant to Article 23, can be not only the author of a breeding achievement, but also the employer in the case of creating a breed of animals within the scope of official duties or their legal successor.

Article 28 of this Law contains a non-exhaustive list of ways to protect intellectual property rights to animal breeds by the court. Thus, the patent owner is entitled to demand the following from the infringer:

- a) recognition of the patent owner's rights;
- b) restoration of the status quo and termination of actions that violate rights or threaten to violate them, as well as elimination of the consequences of such actions;
- c) compensation for losses, specifically lost profit;
- d) recovery of the income received by the infringer for violating the rights of the patent owner, instead of compensation for damages;
- e) apply any other means of protection prescribed by regulations on the protection of the rights of the patent owner.

This list is extensive and analogous to the general methods of protection contained in the Civil Code of Ukraine (2003).

In general, using evidence from the specialized legislation of the Republic of Bulgaria, the Czech Republic and the Republic of Kyrgyzstan in the field of judicial protection of intellectual property rights for animal breeds, it can be observed that judicial protection is primarily determined by the existence of a protective legal document that certifies the authorship of the animal

breed and secures intellectual property rights. In the Czech Republic and Bulgaria, the legal document is a certificate, in Kyrgyzstan – a patent. Such a document can also be a licence under which exclusive property rights are transferred. A person whose intellectual property right has been violated or is not recognized can demand the protection of their right both in civil proceedings and within the framework of administrative or criminal proceedings (if there are grounds for this). In the Czech Republic and Bulgaria, the violator of the intellectual property rights of an animal breed must pay a fine, which is considered an administrative sanction.

Conclusions

Thus, summarizing the analysis of the issues of civil legal protection of animal breeds as objects of intellectual property law in a comparative legal aspect, it is possible to reach conclusions that answer the questions posed in the tasks of this study.

1. The specific features of judicial protection of rights to objects of intellectual property rights in civil proceedings are as follows: due to the different legal nature of the results of intellectual and creative activity, as well as objective forms of expression of such objects, not all methods of protection of civil law and interest can be equally applied to various objects of intellectual property law; the nature of the violated or contested right, as well as the type and nature of the offence committed, affect the choice of the method of legal protection.

2. Presently, in Ukraine, even though the breed of animals is envisaged as a possible object of intellectual property rights, there is no legal and practical basis for the judicial protection of property and personal non-property rights to this object during civil proceedings, while abroad, statutory regulation is available in only a

few countries. For the implementation of judicial protection of rights to animal breeds under such conditions, it is necessary to consider the provisions of patent legislation because animal breeds are subject to the objects of patent law, as well as the Law of Ukraine “On the Protection of Rights to Plant Varieties”, where the issue of judicial protection is covered in considerable detail. In general, the patenting of an animal breed is considered in the scientific community as the most convincing prerequisite for applying to court for the protection of rights to this object. However, judicial protection within, e.g., the *Sui generis* system should not be excluded.

3. The study of the provisions of specialized laws of Ukraine from the standpoint of civil legal protection of intellectual property rights helped identify methods of protection that can be applied by analogy to the breed of animals, namely: recognition of the right, change, or termination of the legal relationship, restoration of the situation that existed before the violation of the right, recognition of the deed as invalid, termination of actions that violate the right, compensation for damages and moral damage, forced performance of the obligation in kind. A special method of judicial protection of animal breed rights is the application of a one-time penalty in the form of a certain amount of money instead of compensation for damages.

4. It is critical to consider foreign practices in the field of judicial protection of rights to animal breeds. The analysis of the relevant regulatory framework, which has been formed in the Czech Republic, Bulgaria, and Kyrgyzstan, suggests that the judicial protection of animal breed rights, specifically in civil proceedings, is determined primarily by the existence of a protective legal document that certifies the authorship of the animal breed and secures intellectual property rights (e.g., a patent or certificate). The legislation of

Bulgaria outlines the issue of judicial protection of intellectual property rights for animal breeds in detail but does not make provision for an extended list of methods of protection and actions that the court can take to protect the rights of the owner of the law enforcement document.

In general, the purpose set at the beginning of this study can be considered fulfilled. The prospect of further research is the search and analysis of court practice on the chosen subject, as well as consideration of the features of judicial protection of intellectual property rights on animal

breeds within the framework of administrative and criminal proceedings.

Acknowledgements

The author of this study would like to acknowledge Liliia Oleksandrivna Pankova, the scientific supervisor, for the comprehensive support in authoring the paper, for scientific advice and apt critique.

Conflict of Interests

None.

References

- [1] Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15#Text>.
- [2] Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254k/96-bp#Text>.
- [3] Drozdov O., & Pototskyi M. (2022). Legal and organizational principles of creation high court of intellectual property. *Theory and Practice of Intellectual Property*, 2, 39-53. doi: [10.33731/22022.259743](https://doi.org/10.33731/22022.259743).
- [4] Dyachenko, S., & Likhtanska, D. (2017). [Problems of restoring the situation that existed before the infringement of intellectual property rights](#). *Actual Problems of Law*, 3, 122-126.
- [5] European Patent Convention, 17th edition (2000, November). Retrieved from <https://www.epo.org/law-practice/legal-texts/epc.html>.
- [6] Hou, Y. (2019). Protecting new plant varieties in China and its major problems. In K.C. Liu, & U.S. Racherla (Eds.), *Innovation, economic development, and intellectual property in India and China* (pp. 327-346). Singapore: Springer. doi: [10.1007/978-981-13-8102-7_14](https://doi.org/10.1007/978-981-13-8102-7_14).
- [7] Ischebeck, G. (2015). *Die Patentierung von Tieren: Der Schutz geistigen Eigentums für Erfindungen in der Tierzucht im Rahmen der Biopatentrichtlinie 98/44/EG (Geistiges Eigentum und Wettbewerbsrecht)*. Tübingen: Mohr Siebeck.
- [8] Kodynets, A. (2018). [Protection of intellectual property rights in the context of the implementation of the judicial reform](#). *Entrepreneurship, Economy and Law*, 3, 9-13.
- [9] Kolos, S.S. (2019). Protection of intellectual property rights in the context of judicial reform. *Journal of Civil Studies*, 33, 73-77. doi: [10.32837/chc.v0i33.82](https://doi.org/10.32837/chc.v0i33.82).
- [10] Korotun, O.M. (2019). Protecting intellectual property rights: Current state of the procedure law development. *Subcarpathian Law Herald*, 3 (Vol. 1), 101-105. doi: [10.32837/pyuv.v1i3\(28\).329](https://doi.org/10.32837/pyuv.v1i3(28).329).
- [11] Law of the Czech Republic No. 132 "On the Legal Protection of New Varieties of Plant and Breeds of Animals". (1989, November). Retrieved from <https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/cz/cz015en.pdf>.
- [12] Law of the Kyrgyz Republic No. 79 "On Legal Protection of Breeding Achievements". (1998, June). Retrieved from <http://www.cawater-info.net/library/eng/kyr-pvp98.pdf>.

- [13] Law of the Republic of Bulgaria No. 84/4 "On the Protection of New Plant Varieties and Animal Breeds". (1996, October). Retrieved from <https://www.bpo.bg/uploaded/files/869-ACT-ON-PROTECTION-OF-NEW-PLANT-VARIETIES-AND-ANIMAL-BREED1.pdf>.
- [14] Law of Ukraine No. 2811-IX "On Copyright and Related Rights". (2022, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/2811-20#Text>.
- [15] Law of Ukraine No. 3116-XII "On Protection of Plant Variety Rights". (1993, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/3116-12#Text>.
- [16] Law of Ukraine No. 3687-XII "On Protection of Rights to Inventions and Utility Models". (1993, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/3687-12#Text>.
- [17] Law of Ukraine No. 3691-XII "On Breeding Matters in Animal Husbandry". (1993, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/3691-12#Text>.
- [18] Lebedeva, G.V. (2021). *Protection of the rights and interests of natural person violated as a result of the use of intellectual property rights* (PhD thesis, National University "Odessa Law Academy", Odessa, Ukraine).
- [19] Lytvynchuk, I.L. (2018). *Intellectual property management in the system of scientific and educational support of agricultural economy* (Doctoral thesis, Zhytomyr National Agro-Ecological University, Zhytomyr, Ukraine).
- [20] Moore, K., & Frederickson, R. (2020). *Strong roots: Comparative analysis of patent protection for plants and animals*. Retrieved from <https://ipwatchdog.com/2020/08/05/strong-roots-comparative-analysis-patent-protection-animals-plants/id=123649/#>.
- [21] Mydzhyn, H.Ye. (2021). *Administrative and legal protection of intellectual property rights in Ukraine* (PhD thesis, Lviv State University of Internal Affairs, Lviv, Ukraine).
- [22] Mykytyn, V.I. (2016). *Some special features for civil protective method of intellectual property rights protection*. *Actual Problems of Law*, 1, 128-133.
- [23] Orliuk, O.P. (2016). *Protection of intellectual property rights in the context of European integration*. *Bulletin of the National Academy of Legal Sciences of Ukraine*, 3, 58-74.
- [24] Schreider, C. (2018). *Patentierung in der Tierzucht – im Spannungsfeld zwischen geistigem Eigentum und Agrobiodiversität* (Doktorarbeit, Universität Kassel, Kassel, Deutschland). doi: [10.19211/KUP9783737606653](https://doi.org/10.19211/KUP9783737606653).
- [25] Shabalin, A.V. (2020). *Actual issues of protection of intellectual property rights*. Kyiv: Interservice.
- [26] Shtefan, A. (2014). Restoration of the situation that existed before the violation of the right and renovation of the right as ways of protecting copyright. *Theory and Practice of Intellectual Property*, 5, 43-48.
- [27] Smulders, M.J.M., van de Wiel, C.C.M., & Lotz, L.A.P. (2021). The use of intellectual property systems in plant breeding for ensuring deployment of good agricultural practices. *Agronomy*, 11, article number 1163. doi: [10.3390/agronomy11061163](https://doi.org/10.3390/agronomy11061163).
- [28] Svetlichnyj, O. (2017). *Protection of intellectual property in the light of judicial reform in Ukraine*. *Public Law*, 4, 88-94.
- [29] Tokareva, V.O. (2020). For the protection of intellectual property rights. *Časopis civilistiki*, 36, 51-56. doi: [10.32837/chc.v0i36.201](https://doi.org/10.32837/chc.v0i36.201).
- [30] Torremans, P. (2019). *Holyoak and Torremans intellectual property law* (9th ed.). Oxford: Oxford University Press. doi: [10.1093/he/9780198836452.001.0001](https://doi.org/10.1093/he/9780198836452.001.0001).
- [31] Ulianova, G.A. (2015). *Methodological problems of civil-legal protection of intellectual property rights against plagiarism* (Doctoral thesis, National University "Odessa Law Academy", Odessa, Ukraine).

Судовий захист прав інтелектуальної власності на породу тварин у цивільному провадженні (порівняльно-правовий аспект)

Марія Василівна Голубей

Здобувач

Національний університет біоресурсів та природокористування
03041, вул. Героїв Оборони, 15, м. Київ, Україна
<https://orcid.org/0000-0003-2236-5011>

Анотація

Актуальність дослідження зумовлено відсутністю спеціалізованого нормативно-правового регулювання стосовно породи тварин як об'єкта інтелектуальної власності, що значно ускладнює судовий захист майнових та особистих немайнових прав. Мета статті – дослідити цивільно-правовий судовий захист прав інтелектуальної власності на породу тварин в Україні з урахуванням закордонного досвіду. Для систематичного вивчення українського та зарубіжного законодавства застосовано формально-юридичний, логіко-юридичний, порівняльно-правовий та інші спеціальні методи. Шляхом аналізу української нормативно-правової бази виявлено, що для реалізації судового захисту прав на породу тварин необхідно враховувати положення патентного законодавства. Представлено результати дослідження положень спеціалізованих законів України з погляду цивільно-правового судового захисту прав інтелектуальної власності та виділено такі способи захисту, що за аналогією можуть бути застосовані до породи тварин: визнання права, зміна чи припинення правовідношення, відновлення становища, яке було до порушення права, визнання правочину недійсним, припинення дій, що порушують право, відшкодування збитків та моральної шкоди, примусове виконання обов'язку в натурі. З'ясовано, що особливим способом судового захисту прав на породу тварин є застосування одноразового стягнення у вигляді певної грошової суми замість відшкодування збитків. За допомогою порівняльно-правового аналізу зарубіжного досвіду, а саме Чехії, Болгарії та Киргизстану прослідковано, що судовий захист прав на породу тварин зумовлюється передусім наявністю охоронного правостановлювального документа, наприклад патенту чи сертифіката. Теоретична цінність дослідження полягає в тому, що вперше проаналізовано питання судового цивільно-правового захисту порід тварин як об'єкта права інтелектуальної власності в Україні з урахуванням зарубіжного досвіду. Практична цінність – у тому, що отримані результати можна використати для усунення прогалин та колізій у правовому регулюванні порід тварин як об'єктів інтелектуальної власності. Висловлені в роботі пропозиції можуть бути взяті до уваги в процесі законотворчої ініціативи

Ключові слова: цивільно-правовий захист; способи захисту цивільного права та інтересу; селекційне досягнення; порушення права; патент; закордонний досвід
