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Legal standards and animal welfare in European countries

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Introduction

Throughout the centuries, animals' status has evolved from being seen as things to being regarded as sentient living beings. This change in outlook is largely due to progress in science leading to a greater and more accurate understanding of animal species. Animal protection law in Europe has kept abreast of these changes and animal welfare is now recognised in some countries.

Although it is difficult to define as a notion, given the diversity of species and specific characteristics of each individual within a single species, it has been firmly established that animal welfare is the result of several combining factors (physiological, environmental, health, social and psychological)¹. It is now widely accepted on a national, European and international level that animal welfare is ensured by five freedoms:

- Freedom from hunger and thirst (by ready access to fresh water and diet to maintain health and vigour).
- Freedom from discomfort (by providing an appropriate environment including shelter and a comfortable resting area).
- Freedom from pain, injury or disease (by prevention or rapid diagnosis and treatment).
- Freedom to express normal behaviour (by providing sufficient space, proper facilities and company of the animal's own kind).
- Freedom from fear and distress (by ensuring conditions and treatment which avoid mental suffering).

While the first three freedoms aim to protect the animal's bodily integrity, the meaning of the last two is entirely different because the aim is to guarantee a quality of life for the animal. An examination of various pieces of national legislation on the protection of animals shows that while various provisions prohibit physical harm to animals, very few take into account concern for its welfare. Indeed, very few European lawmakers have passed laws that recognise and protect the five freedoms.

Protection of bodily integrity

The 19th century saw the beginnings of animal protection in Europe in England, followed a few years later by France². However, these basic laws did not ensure full protection of animals. They did not extend beyond shielding young children from shows they found difficult to bear and/or offensive. It was not until the second half of the 20th century that the first general laws were passed, which, for the most part, introduced general provisions against acts of cruelty. Some, however, have included exemption clauses.

1. Principle

The first general laws on the protection of animals appeared in the 1960s³. This legislative movement continued on throughout the 20th century, but for most European countries the 1990s were a turning point. In the space of ten years, no fewer than 12 countries passed general laws⁴.

This trend has continued on through the 21st century⁵. All European countries now have protective provisions. Four countries have also incorporated animal protection into the highest law of their legal system: Switzerland (1992), Germany (2002), Luxembourg (2007) and Austria (2013). Luxembourg is unique in that it is the only country to have given animal welfare constitutional value. Since the 2007 constitutional reform, Article 11bis of the Constitution stipulates that "[the State] promotes the protection and welfare of animals."

These national provisions, by prohibiting all forms of physical harm, implement the first three freedoms outlined to protect animals against physical harm (freedom from hunger or thirst, from discomfort, pain, injury or disease). However, it took several stages to achieve this result.

The first legislative phase saw the adoption of laws punishing cruel treatment of animals. Originally, this only covered acts committed in public but was then extended to any cruel treatment in private. Poor treatment is characterised as any form or physical harm done to the animal, whether voluntarily or involuntarily, sometimes even through neglect. This means any situation that could harm the animal such as an ill-fitting restraint, lack of water or food, absence of care if sick or injured, or exposure to harsh weather conditions. The final phase led to the prohibition of any act of cruelty defined as a wilful act intended to harm the animal.

French legislation is a perfect illustration of these three phases. On 2 July 1850, the Grammont Act imposed penalties against those displaying cruelty to animals in public. Then in 1898, the prohibition was extended to private premises but omitted to adopt any corresponding criminal provisions. It was not until 7 September 1959 that a criminal provision was added to punish poor treatment of animals, whether in public or private, by a fine. In 1963, the notion of an act of cruelty appeared in French legislation and then in 1976, lawmakers made abandonment and serious injury a crime. It took until 2004 for sexual abuse to become a criminal offence.

As it stands, mistreatment and cruelty are punishable as a minor or major offence depending on the nature of the harm to the animal:

- unintentional harm to the life or integrity of the animal: €450 fine;
- mistreatment: €750 fine;
- intentional harm to the life of an animal (needless): €1,500 fine;
- acts of cruelty, serious injury, sexual abuse, and abandonment: €30,000 fine and/or two-year jail sentence.

The comparative study of national legislations shows great disparity in the penalties applied for mistreatment of animals. Depending on the country, an act of cruelty may be punished by a five-year jail sentence (Ireland) down to a €500 fine (Bulgaria).

In some countries, it is at a local level that provisions for the protection of an animal's bodily integrity have been adopted. Before Italy ratified the European Convention for the Protection of Pet Animals in 2011, in 2005, Rome City Council had already banned onyxectomy (removal of the claws of cats), electric collars, ear cropping and tail docking in dogs for non-therapeutic purposes, and required that dogs were given daily walks. Along similar lines, the town of Monza became the first community in Italy to prohibit its inhabitants from keeping goldfish in bowls.

2. Limits

These national provisions do not always ensure total protection of the bodily integrity of animals given the various exemptions included on the one hand, and the level of sanctions applied on the other.

Several European legislations contain exemptions that authorise the violation of the bodily integrity of animals. This is the case in France where provisions of the Penal Code⁶ penalising acts of cruelty do not apply to bullfighting and cockfighting where these are done as part of a continued

local tradition. Cultural traditions are also used to legitimise the practice of bullfighting in Portugal and Spain⁷.

Other than these widely contested practices, there are a number of situations that are still authorised despite the suffering they cause. Thus, it is legal to hit a dog or horse in order to train it or to use an electric collar, to watch greyhound racing as entertainment⁸, or, in animal husbandry, to commit intrusive acts such as castration, tubal ligation, beak-trimming or dehorning.

Sexual abuse is still possible without penalty in three European countries (Finland, Hungary and Romania).

The second limit results from the absence of dissuasive sanctions. In many countries, the fines are relatively low and prison sentences either non-existent or short⁹. For countries that do have relatively harsh sentences¹⁰, there is a wide berth between the sanctions that are applicable and those that are passed. So in France, where the penalties in principle seem severe¹¹, judges very rarely hand out prison sentences. They only do so when the act of cruelty is committed under particular circumstances. This was the case for the sinister case of Oscar the cat, who had been subjected to violence and whose suffering had been filmed and then posted on social media¹².

The protection against bodily harm is a necessary but nonetheless insufficient condition for ensuring the welfare of an animal. So that this goal can be achieved, the social and psychological dimensions must be taken into account.

Protection of quality of life

The protection of animals, other than their physical protection, needs to include the prevention of any form of psychological distress and the preservation of the social life of gregarious animals. Every animal should enjoy these two freedoms.

1. Principle

The adoption of European standards has led to a minimum level of protection for the welfare of livestock. However, these regulations are still patchy and do not cover certain species¹³ or certain situations such as transport or slaughter. Because there are no general European regulations, only a few species' welfare appears to be ensured from birth to death. To make up for this regulatory deficiency, several European states have adopted higher standards, which are more restrictive than the European standards. Legislative provisions explicitly refer to welfare in Norway (1974), Luxembourg (1983), Belgium (1986), Sweden (1988), Germany (1998), Malta (2002) and the United Kingdom (2006). Some bodies of law go as far as to specify what animal welfare entails. This is the case of Switzerland, Greece and the United Kingdom. The UK Act of 2006 explicitly refers to the five freedoms as the base for animal welfare, the recent Greek Law (2012) takes this a step further by incorporating an obligation to provide daily walking or exercise, depending on the species. The Greek lawmakers must have been inspired by their Swiss counterparts, who adopted similar measures in 2008 (OPan, 2008¹⁴).

Other legislations set minimum standards for living conditions. Some indicate a minimum amount of space that the animal must be given or a number of hours in a day the animal must be able to move freely in an outdoor area suited to the needs of its species. The majority of animals concerned by these provisions are pet dogs and cats. Some countries also have provisions regulating cages for some types of rodents, size of decorative aquariums or even compliance with a day/night cycle for fish (Switzerland).

It is also important to note that several countries have acknowledged the gregarious nature of certain species. In Bulgaria and Switzerland, owners are barred from keeping certain animals

alone. While the Bulgarian law states a general principle, the Swiss provisions specify which species are concerned¹⁵ (OPAn, 2008).

Finally, given that respect for an animal comes from a deeper understanding of its nature and needs, both physiological and behavioural, several laws require that owners are taught certain biological and/or ethological aspects¹⁶.

The acknowledgement of the sentient nature of animals has led to a positive change in European and national regulations. However, there is still progress to be made in order to remove barriers blocking the recognition and validity of animal welfare.

2. Limits

Welfare will become tangible, particularly for livestock, only on the double condition that the existing provisions are respected and certain animal husbandry practices are abolished.

The effectiveness of various European and national measures largely depends on how indicators used to measure animal welfare are implemented. While these indicators are created by animal scientists (biologist, ethologists, veterinarians, etc.), European and national procedures need to be put into place to ensure compliance with these regulations. This is why Member States can be penalised by the European Union Court of Justice if they fail to fulfil their obligations¹⁷. For instance, a court case was brought by the European Commission against Italy for failure to implement the EU directive laying down minimum standards for the protection of laying hens (Directive 1999/74/EC¹⁸).

National court cases tend to be the result of public outcry, by individuals or associations, at deplorable situations¹⁹. In Switzerland, an NGO was tasked to carry out certain checks so that they were as transparent and objective as possible²⁰. Other countries have implemented mechanisms to facilitate the detection and resolution of situations that are harmful to animals. For instance, Wallonia (Belgium) set up an Animal Welfare Council so that complaints of abuse or cruelty can be filed online, and in Austria each of the nine *Länder* has an ombudsman. This mediator, who is specialised in animal welfare, is authorised to plead in all cases related to the protection of animals.

Finally, for animal welfare to shift from being a concept to reality, practices need to evolve to phase out intensive farming and prohibit situations that cause suffering. Several European countries have already banned the production of foie gras²¹, fur farms²² and the sale of animals in pet shops²³.

Despite the number of existing European and national regulations, for animal welfare to be possible for each animal, there needs to be an obligation for each animal owner or handler to ensure that welfare. Today, humans are not obliged to treat animals well, they are banned from mistreating them. Treating an animal well means respecting the subject by ensuring its welfare. This needs a new legislative phase to take place.

References

1. Falaise, M., Animal law. What place for animal welfare? *Revue Semestrielle de Droit Animalier*, Oct. 2010, pp. 11-34.
2. Martin's Act (1822); Grammont Act (1850).
3. Particularly in Austria and Norway (1974), followed by France in 1976.
4. Denmark (1991); The Netherlands (1992); Cyprus (1994); Portugal (1995); Finland (1996); Germany, Spain, Hungary, Poland (1998); Croatia, Estonia, Slovenia (1999).
5. Then Italy (2004), the United Kingdom (2006) and Bulgaria (2008). Greece was the last country to adopt a general law on the protection of animals in 2012.
6. Article 521-1 of the French Penal Code.
7. Subject to provisions adopted by autonomous communities, such as Catalonia, which has banned bullfighting since 2012.
8. Frequently practised in Spain and England, where there are many fans of this type of "entertainment".
9. Fines: Austria = €7,500; Belgium, Luxembourg = €2,000; Bulgaria = €500.

No prison sentence: Austria, Bulgaria, Croatia, Spain.

10. Fines: Ireland = €250,000; Spain = €100,000; Germany = €50,000; France €30,000.

Prison sentence: Ireland = 5 years; Finland = 4 years; Switzerland, Germany = 3 years; France = 2 years; Belgium, Luxembourg = 6 months.

11. The severity of the penalties is relative given that in France, the theft of an animal is more severely punished than an act of cruelty to that animal. There have been several law proposals to enforce greater sanctions so that they reach the same level as those applied to theft (3 years imprisonment and a €45,000 fine). None of these have been passed.

12. This was the first time in France when a person convicted of committing an act of cruelty was given a prison sentence.

13. Laying hens, broiler chickens, calves and pigs.

14. Swiss Federal Council, Ordinance on animal protection, 23 April 2008 /Ordonnance sur la protection des animaux (OPAn)

15. Mainly llamas, fish, guinea pigs and horses.

16. In Switzerland, any person wanting to become a dog owner must hold a dog owner's licence. This licence is also required for owners of pigs, horses, sheep, laying hens, pullets and broiler chickens when the owner owns several animals of the same species.

17. For example, see CJEU, September 19, 2009, Commission of the European Communities/Hellenic Republic (Case C-416/07).

18. Council Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens, Official Journal L 203, 3 August 1999, pp. 53-57.; Court of Justice of the European Union, 22 May 2014, European Commission vs. Italian Republic, Case C-339/13.

19. This was also the case in France, during the recent Alès slaughterhouse scandal.

20. Spot checks are made particular during livestock transport and at slaughterhouses.

21. This is the case for Germany, Austria (6 provinces out of 9), Denmark, Finland, Ireland, Italy, Luxembourg, Norway, the Netherlands, Poland, the Czech Republic, the United Kingdom and Sweden. Several European member states produce foie gras: Belgium, Bulgaria, France, Spain, Hungary, and others.

22. Germany (2022), Austria, Belgium, Croatia, Denmark (partial ban), the Netherlands (for 2024), the Czech Republic, the United Kingdom, Slovenia, Sweden (partial ban).

23. Malta 2014.

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