

# Cases And Other Materials Concerning Animal Welfare

## *Friend v United Kingdom; Countryside Alliance v United Kingdom (2010) 50 EHRR SE6*

1. These two applications were brought following extensive litigation in the United Kingdom, commencing in the High Court and concluding in the House of Lords. The applications brought before the European Court of Human Rights (ECtHR) sought to challenge various bans on fox hunting and the hunting of other wild mammals with dogs in the United Kingdom. The first application was brought by a British national and related to his challenge to the ban on hunting in Scotland and to a similar ban in England and Wales. The second application was lodged by Countryside Alliance, a non-governmental organisation that seeks to influence legislation and public policy that has an impact on the country side, rural people and their activities. The ten remaining applicants were British nationals who claimed to have been affected by the ban in different ways. Countryside Alliance and the ten other applicants sought to challenge hunting bans in England and Wales only. The first applicant argued that the hunting ban in England and Wales was a violation of his rights under Articles 8 (right to respect for private and

family life), 9 (freedom of thought, conscience and religion) and 11 (freedom of assembly and association) of the Convention and of Article 14 (prohibition of discrimination) taken in conjunction with those Articles. The second applicants complained under Article 8 of the Convention and Article 1 of Protocol 1 (protection of property).

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2. Ultimately, the ECtHR held that it was unable to accept that the hunting bans introduced by the Hunting Act 2004 and the Protection of Wild Mammals (Scotland) Act 2002 amounted to a violation of the applicants' rights under Article 8. It stated that although Article 8 encompasses the right to establish and develop relationships with other human beings, even a broad construction of it does not mean that it protects every activity a person may engage in with other human beings in order to establish such relationships.

The ECtHR further declared that it shared the view of the House of Lords that hunting is by its very nature a public activity and therefore too far removed from the personal autonomy of the applicants for the hunting bans to amount to an interference with their rights under Article 8. In relation to the applicants' argument that hunting is part of their lifestyle, the Court also held that mere participation in a common social activity, without more, cannot create membership of a national or ethnic minority. In relation to the argument advanced by the second applicants that the bans amounted to a violation of the right to respect for one's home, the Court held that the concept of home does not include land over which the owner permits or causes a sport to be conducted.

3. With respect to arguments made pursuant to Article 11, the ECtHR held that while it was prepared to assume that the Article may extend to the protection of an assembly of an essentially social character, it noted that the hunting bans in Scotland, England and Wales as they apply to the first applicant did not prevent or restrict his right to assemble with other huntsmen and thus did not interfere with his right of assembly *per se*. Alternatively, the Court indicated that it shared

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the view of Lord Bingham to the effect that the interference may be regarded as justified under paragraph 2 of Article 11. In relation to the question of necessity and proportionality of the bans, the Court recalled that State authorities are in principle in a better position than the international judge to give an opinion on the exact content of those moral and ethical requirements. Further, a wider margin of appreciation must be accorded to State authorities in regulating a particular assembly the further that assembly moves from one of a political character to one of a purely social character. Hence, the ECtHR ultimately held that the hunting bans fell within the margin of appreciation enjoyed by the State. Similarly, in relation to the alleged violation of Article 1 of Protocol 1, the ECtHR held that it was unnecessary to establish the extent to which this Article was engaged, since, even assuming that the ban in England and Wales interfered with the property rights of the second applicants, it considered that the ban served a legitimate aim and was proportionate for the purpose of that Article. Interestingly, the ECtHR also held that the United Kingdom courts (High Court, Court of Appeal and House of Lords) had given the greatest possible scrutiny to the applicants' complaints and were each unanimous in finding that the ban was proportionate as a result of which, serious reasons would be required for the ECtHR to depart from their clear findings.

***The Royal Society for the Prevention of Cruelty to Animals v King* [2010] EWHC 637 (Admin)**

1. This was an appeal by case stated from a decision of a District Judge of

the Magistrates' Court delivered at Portsmouth Magistrates' Court dismissing six summonses against the respondents alleging offences under the Animal Welfare Act 2006.

The judge upheld the submission that there was no case to answer because the informations had been laid more than six months after the dates of the alleged offences and were therefore outside the limitation period prescribed by section 127 of the Magistrates' Courts Act 1980. The prosecution had sought to rely upon section 31 of the Animal Welfare Act 2006 which provides that notwithstanding anything in section 127 of the Magistrates' Courts Act 1980, a Magistrates' Court may try an information relating to an offence under the 2006 Act if, *inter alia*, the information is laid before the end of the period of three years beginning with the date of the commission of the offence and before the end of the period of six months beginning with the date on which evidence which the prosecutor thinks is sufficient to justify the proceedings comes to his knowledge. In relation to the latter, a certificate signed by the prosecutor indicating the date on which evidence came to his knowledge is conclusive evidence of the fact. The prosecution had failed to produce a signed certificate or to adduce any other admissible evidence of the existence of a certificate. It had only presented the Court with a statement of the prosecution case manager dated 13 August 2009 attaching an unsigned letter dated 29th January 2008 indicating that evidence came to his knowledge on 27 December 2007 in respect of informations laid on 12 February 2008. The statement indicated that the original letter had been signed and provided to the court for service on the court.

2. In dismissing the appeal, the High Court held that given a certificate in

proper form is conclusive, subject to limited qualifications recognised in the case law, the court should not adopt a loose approach to the formal requirements of the subsection. Good faith requires that somebody signing a certificate should be applying his mind to what he is doing and should have at that time knowledge of the matters which he is certifying. In this case, there was reason to doubt the accuracy of the memory of the prosecution case manager in relation to the signing of the original certificate.

***Ward v RSPCA* [2010] EWHC 347 (Admin)**

1. Mr. Ward and his partner had operated a smallholding which was inspected by the RSPCA. Inspectors found that two of Mr. Ward's ponies were in a severely distressed state and were suffering muscle wastage due to a worm infestation. The RSPCA discovered that Mr. Ward and his partner had administered treatment, but when that had been unsuccessful, they had not sought advice from a vet. When the RSPCA intervened, the ponies received treatment and recovered. In the Magistrates' Court, Mr. Ward was convicted of causing unnecessary suffering to the ponies pursuant to section 4 of the Animal Welfare Act 2006. He was disqualified from owning equine animals or cattle, keeping them or participating in the keeping of such animals and prohibited from applying to lift the disqualification for three years. He appealed to the Crown Court and then to the High Court by way of case stated. The three questions put to that court were whether:

- the court was entitled to consider either of Mr. Ward's two previous convictions for causing unnecessary suffering to animals material to the issue of disqualification;
- it was appropriate to include cattle within Mr. Ward's disqualification;
- the court was entitled to give weight to the fact that Mr. Ward's previous disqualification expired less than three years before the commission of the instant offences;
- it was inconsistent to disqualify Mr. Ward while not disqualifying his partner;
- it was appropriate to disqualify Mr. Ward when he was carrying on business in a partnership with another.

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2. The High Court ultimately dismissed Mr. Ward's appeal, holding that it was clear pursuant to section 143(2) of the Criminal Justice Act that the court was entitled to have regard to previous convictions and to treat them as an aggravating factor. Given that one of Mr. Ward's previous convictions had concerned cattle and given his lack of care in the instant case, it was right that cattle had been included in the current disqualification. The Crown Court had also been right to stress that the last disqualification had expired only three years before the later

offences. There was reason for the difference in treatment between Mr. Ward and his partner, namely the latter did not have any previous convictions. Further, in relation to the last question, the High Court held that the 2006 Act was intended to promote the welfare of animals and part of the mechanism of protection was an order for disqualification following conviction for an offence. In view of this, it was appropriate to disqualify Mr. Ward though this may cast a burden upon his partner.

### ***RSPCA v Johnson*** **[2009] EWHC 2702** **(Admin)**

1. In this case, the RSPCA appealed by way of case stated against a decision of a District Judge that an information had been laid out of time. The RSPCA had laid an information on 11 June 2008 against Mr. Johnson for causing unnecessary suffering to an animal between May 2007 and June 2007. The RSPCA first saw the horse in question on 11 June 2007 and made concerted efforts to find Mr. Johnson, having identified him through the British Horseracing Authority. He was eventually located in May 2008. The RSPCA sought to rely upon a letter dated 4 June 2008 and signed by its prosecutions case manager certifying that it was not until 21 December 2007 that evidence sufficient to justify the proceedings had come into his possession. Mr. Johnson argued that the information had been laid outside the six-month time limit imposed by section 127 of the Magistrates' Court Act. The District Judge found that there was sufficient evidence by August 2007 that Mr. Johnson owned the horse and that the delay in issuing the information amounted to an abuse of process. He also found that the

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certificate was a misguided attempt to extend time. The issue before the High Court was whether the certificate was conclusive evidence of when the RSPCA had sufficient evidence to justify the prosecution, with the RSPCA submitting that the judge had no power to go behind the certificate to conduct an analysis of who knew what and when.

2. In allowing the appeal the High Court held that there was no defect on the face of the certificate which was conclusive as to abuse of process. Although the District Judge had found abuse between June 2007 and June 2008, no abuse was revealed by the conduct of the RSPCA during the period up to the issuing of the information and much of the delay was caused by Mr. Johnson. It was in the public interest that careful enquiries were made and the more elusive a person was, the more likely an inspector would want to have the clearest evidence. While prosecutors are not permitted to shuffle papers between officers or to sit on information so as to extend a time limit, there is a degree of judgment involved in bringing a prosecution.

### **“Ban for owner of donkey in pig attack”** *The Times*, 17 April 2010

1. A man was found guilty in Towcester Magistrates' Court of eight counts of contravening the Animal Welfare Act 2006 by failing to prevent a donkey from attacking other farm animals. The prosecution

was brought by Northamptonshire County Council's trading standards department which adduced video footage showing the donkey holding a pig between its teeth and shaking it violently. The man was banned from keeping any animal except a cat or dog for three years and ordered to pay court costs of £6,080.

## **“Farmer admits allowing lame cattle to suffer” *Carmarthen Journal*, 14 April 2010**

1. A prosecution was brought in Cardigan Magistrates' Court by Ceredigion Council against a couple in relation to the manner in which they had kept 28 milking cows. Upon an initial inspection by animal health officers, the cows were found to be lame and an Improvement Notice was issued to the couple.

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Upon further examination one year later, lameness had not decreased. Six cows were housed in a shed where faeces were piled high and a water trough was full of faeces. There was no dry area nor water available. The couple initially pleaded not guilty to nine counts of causing unnecessary suffering to a protected animal under the Animal Welfare Act 2006. After a DVD

showing the extent of lameness in the cattle was played, defence counsel entered pleas of guilty to six counts. The Magistrate sentenced the farm owner to a conditional discharge for two years and also ordered him to pay £3,000 towards council costs.

## **Swiss public defender scheme for animals**

1. On 5 March 2010, *The Guardian* reported on the work of Antoine Goetschel, who has been the animal advocate for the canton of Zurich since 2007, though the position has existed since 1991. The article noted that Goetschel has been appointed to the position for a period of four years by the State in order to ensure that he not be perceived as being too close to animal rights NGOs, rather than as a civil servant.

2. The article also reported that in late 2008, a new Animal Act was passed into law in Switzerland which is 150 pages long and explains in great detail how dozens of species are to be kept by their owners, be they companion animals or livestock. It is anticipated that the law will come into force in November 2010, after which time the owner of a rabbit, for example, could be prosecuted for keeping their pet in a hutch that does not meet the legal criteria. In relation to this, Goetschel was reported as having argued that although the new Swiss law appears comprehensive, its protection is limited to vertebrates which, he stated, only account for 5% of the animal world. The species he represents in order of frequency are dogs, cows, cats and pigs.

3. The article referred to a referendum which was due to take place two days later in Switzerland

and which was to determine whether an animal advocate would be required by law in all twenty-six Swiss cantons. It was initiated by the Swiss Animal Protection Group through a mechanism whereby any citizen who collects 100,000 signatures from eligible voters can force a nationwide referendum on their chosen issue. Subsequent news reports indicate that the referendum of 7 March 2010 was defeated, though it seems that the canton of Zurich continues to maintain Goetschel as its animal advocate.

## **Letter to DEFRA regarding Beak Trimming of Laying Hens**

On 8 September 2009, Farm Animal Welfare Council (FAWC) wrote to Jim Fitzpatrick MP, Minister for Farming and the Environment in response to a 2007 request by Lord Rooker, then Minister for Animal Welfare, asking that FAWC reconsider its advice about beak trimming of laying hens in view of research that had been undertaken at the University of Glasgow on 'Chronic neurophysiologic and anatomical changes associated with infra-red beak treatment.'

In the letter, FAWC notes that beak trimming of laying hens is to be banned in Britain after December 2010.

It also expresses the view that, although the research at Glasgow found that hens do not suffer chronic pain after infra-red beak treatment, FAWC remains concerned about this method of beak trimming because of the trauma to the bird *during* the procedure, loss of a sensory tool and loss of integrity of a living animal by the removal of part of its beak. As a

result, FAWC, reiterates its earlier advice that beak trimming should not be permitted in Britain.

However, FAWC also notes that though the poultry industry was made aware of the 2010 ban on beak trimming some seven years ago, it has made limited progress on controlling injurious pecking of hens under commercial conditions by developing new husbandry systems, for example. As a result, the ban is likely to have a negative effect on hens. For this reason, FAWC proposes that the ban should not be introduced with effect from December 2010 but should be deferred until it can be demonstrated reliably and under commercial conditions that laying hens can be managed without beak trimming and without a greater risk to their welfare. It also recommends that infra-red treatment should be the only method used routinely from a set date, such as January 2011.

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FAWC's ultimate recommendations on this issue are as follows:

that Britain learns from producers in Switzerland, Austria and Scandinavia who are successfully managing large flocks of laying hens without beak trimming;

that a stronger emphasis is placed upon choice of strains and/or genetic selection for hens that are not prone to injurious pecking;

that there be use of smaller groups in husbandry systems (including enriched cages), both because they are advantageous in themselves and because they allow trials of alternatives to beak-trimming in part rather than all of a large flock;

that there be contingency plans for the control of injurious pecking in hens with intact beaks, including the financial implications;

that there be provided financial incentives for not beak trimming, for example, from retailers or from Common Agricultural Policy funding;

that the DEFRA Beak Trimming Action Group be reconvened with a mandate to develop and implement the above strategy, supported by public funds;

That the ban on beak trimming is not deferred indefinitely and that deferment is reviewed in 2015.

## **Ban whale hunting if serious about EU accession, says European Commission**

On 11 December 2009, Eurogroup reported that the European Commission had confirmed in a letter to the Whale and Dolphin Conservation Society that **Iceland will be required to ban the hunting of whales if it succeeds in becoming a new EU Member State.** Some months prior to December 2009, Iceland sought EU membership and talks began with the European Commission to investigate its eligibility to join. Animal welfare supporters across the Union subsequently expressed concern about Iceland's insistence on the keeping of the whale hunt, given that this is contrary to requirements for membership. Under the EU's

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Habitats Directive, whales are protected from deliberate disturbance, capture and killing within European Community waters. The Commission is expected to formulate its opinion on Iceland's accession application at some point during 2010

## **First step in court case against Spain over zoo infringement**

On 15 October 2009, Eurogroup reported that the first step was taken in legal proceedings against Spain over the country's infringement of the EU Zoo Directive. For a number of years, Spain had failed to meet EU regulations on the keeping of wild animals in zoos. Following the gathering of evidence by a number of Spanish animal welfare NGOs, the European Commission determined to investigate the situation. As Spain did not heed the warnings of the Commission rapidly to seek compliance with the rules, the European Court of Justice officially started legal proceedings against Spain at the end of August 2009. The court case will result in a judgment that pertains to zoos in no less than 9 of Spain's 17 autonomous regions. Criteria for obtaining the necessary licensing include compliance with Zoo Directive stipulations such as proper care for the animals' welfare, participation in scientific activities and contributing to the education of zoo visitors. Zoos that do not comply with these rules and therefore are not licensed should be closed, a duty Spain had neglected to carry out.

## News Digest

### Beavers and flooding?

Beavers, a “keystone” riparian species<sup>1</sup> have now been reintroduced to over 19 European countries. In part, this is due to the European Union’s Habitat Directive<sup>2</sup> which, for a number of reasons, requires Member States to consider the desirability of reintroducing certain species, but also because their presence “increases biodiversity and modifies the surrounding ecosystem” beneficially and “could offer help with flood protection”.<sup>3</sup>

Unfortunately, they are now being blamed for, inter alia, the recent flooding along the river Oder in Central Europe.<sup>4</sup> It is to be hoped that there will be an official inquiry into exactly what are the cause/s of the problem, which might perhaps include extraordinary weather, over-concretization and loss of wetlands.

### The Hackney Fox Attack.

On the night of 5 June, it seems that a fox crept into a house in London and made its way up the stairs into the bedroom of 9 month old twin girls, whom it then attacked. The injuries were serious, bites to the arms and faces with one baby ending up in intensive care. It cannot be emphasized enough that such behaviour is quite incredibly rare<sup>5</sup> and there is no way of knowing why it happened. Understandably, the family and neighbours want fox numbers reduced in their vicinity and pest control officers have already killed four animals, live-trapping,

then humanely destroying them. As the fox is classified as a pest, it does not receive the usual protection offered to animals under the Wildlife and Countryside Act 1981. It seems unlikely there will be a wholesale cull. However, perhaps the best way forward is by always treating foxes with respect, recognizing them for the wild animals they are, then, if we are lucky, these normally shy animals will continue to grace our gardens with their presence.

### Badger Cull

In September 2009, the Minister for Rural Affairs in Wales announced she would be signing the Order which would give Welsh Ministers the powers to implement the cull of badgers to curb bovine TB.<sup>6</sup> Although the Badger Trust brought an action in judicial review to challenge this decision, the High Court ruled that the cull was lawful.<sup>7</sup> The cull was on again, only to be postponed once more, until the result of the Badger Trust’s appeal is heard about the end of June. Meanwhile, in England, in 2007, the Independent Scientific Group on Cattle TB published its final report on the Randomised Badger Culling Trial (RBCT), one of its many conclusions being “badgers are a clear source of infection for cattle”.<sup>8</sup> It also recommended the removal of some badgers. However, Sir David King made it quite clear that “the overriding aim is to control TB in cattle ... it is not to eliminate badgers” although “a secondary aim

is to control TB in those badger populations ...” in certain areas of high cattle TB prevalence.<sup>9</sup> Defra then commissioned a report<sup>10</sup> to study the aftermath of the RBCT. Published in February 2010, it claimed that the benefits of widespread badger culling were not sustainable 3 ½ years after a cull has ended. Furthermore, ““patchy” and “unco-ordinated circumstances” are highly likely to increase rather than reduce incidences of bovine TB in cattle”.<sup>11</sup> In May, an update on the report “released by one of the research group has shown that the positive effects of culling had “reappeared” 37 - 42 months after culling in the trial area had ceased”.<sup>12</sup> New Zealand, which had a similarly intractable problem, has now managed dramatically to reduce its incidence of bovine TB using a 3-pronged approach. The main disease vector is the possum, an invasive non-native species, and TB has been eradicated “from 10 of the geographic areas through targeted killing of possums”.<sup>13</sup> In addition, farmers “fund and are deeply involved in all aspects of the TB programme”.<sup>14</sup> More importantly, “the AHB and Otago University ... have developed an oral TB vaccine for possums” and have visited both the UK and Ireland regarding an oral vaccine for badgers, a vaccine that is already being evaluated in Ireland where it seems to be “relatively efficacious in preventing TB in badgers”.<sup>15</sup> Is the Government really going to carry out a cull when vaccination seems about ready to solve the problem?

<sup>1</sup> Collen and Gibson, 2001.

<sup>2</sup> Council Directive 92/43/EEC of 21 May 1992 on the Conservation of Natural Habitats and of Wild Fauna and Flora, OJ. No. L 206 of 22 July 1992.

<sup>3</sup> Briefing Paper for the Salmon and Trout Association – see [www.salmon-trout.org/Beaver\\_Reintroduction\\_Briefing\\_paper.pdf](http://www.salmon-trout.org/Beaver_Reintroduction_Briefing_paper.pdf) accessed 15/06/2010.

<sup>4</sup> Roger Boyes “Floods cause havoc as beavers bite the land that saves them”, The Times 27 May 2010. They are also holding up the construction of a controversial bridge and have tunnelled into a sewerage works releasing untreated sewerage.

<sup>5</sup> In 2009, “5,221 people, including 1,250 children, were treated in hospital in England...” for dog bites – see Iain Hollingshead “Outfoxed”, The Daily Telegraph, 12 June 2010. This informative article also contains some beautiful pictures of foxes.

<sup>6</sup> “Powers sought for badger cull”, <http://news.bbc.co.uk/1/hi/wales/8282779.stm> Accessed 10 June 2010.

<sup>7</sup> Valerie Elliott “High Court gives go-ahead for badger cull to curb bovine TB”, The Times, 17 April 2010.

<sup>8</sup> Sir David King “Bovine Tuberculosis in Cattle and Badgers” a report by the Chief Scientific Adviser.

<sup>9</sup> Ibid.

<sup>10</sup> Carried out by Imperial College London and the Zoological Society of London.

<sup>11</sup> “Badger culls not cost effective”, <http://news.bbc.co.uk/1/hi/wales/8507010.stm> Accessed 10 June 2010.

<sup>12</sup> “Badger culling can control TB, says research”, Farmers Weekly, 28 May 2010 <http://www.fwi.co.uk/Articles/2010/05/28/121478/Badger-culling-can-control-TB-say...> Accessed 10 June 2010.

<sup>13</sup> “Ways in which New Zealand has reduced bovine TB” <http://www.clearstats.co.uk/bovinetbnewzealand.php> Accessed 10 June 2010.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.