

Other Material: Cases, Legislation and Statutory Instruments concerning Animal Welfare

Regina v Delia Clare Stacey [2009] EWCA Crim 760

On 6 March 2008, the appellant was found by an RSPCA inspector to be keeping on her land a chestnut mare which the inspector had seen in the summer of 2006 and as a result of whose emaciated state at that time the appellant had been disqualified from keeping animals for 3 years. On 24 July 2008, the appellant pleaded guilty to a number of offences and was committed to the Crown Court for sentence. On 19 September, she was sentenced to 56 days' imprisonment for being in breach of a disqualification order and was also sentenced to serve a further 56 days' imprisonment for being in breach of a suspended sentence which had been imposed in 2007 for her first offence. The appellant was ordered to pay £5,000 towards the costs of the prosecution and was disqualified from keeping animals for a further 5 years.

The single judge considering the application for leave to appeal gave permission for the appeal to be argued with respect to the costs order only. However, that matter was abandoned by the appellant mid-appeal and an extension of time was sought to apply for permission to appeal against the question of the disqualification period. The Court of Appeal, however, did not

find exceptional circumstances, as is required for a retrospective grant of an extension of time, and accordingly dismissed the appeal.

R (on the application of Royal Society for the Prevention of Cruelty to Animals) v Secretary of State for the Environment, Food and Rural Affairs [2008] EWHC 2321 (Admin); [2009] 1 CMLR 12

The RSPCA applied for judicial review of the respondent's provision by regulation of a measure of control of last resort, known as "ventilation shutdown", for the killing of birds in the event of a serious outbreak of avian disease, including influenza. This involved the cutting off of ventilation in buildings in which birds were housed so as to kill them by hyperthermia or organ failure as the temperature in the houses rose. The respondent had amended schedule 9 of the *Welfare of Animals (Slaughter or Killing) Regulations* 1995 by adding ventilation shutdown to the permitted methods of killing animals for the purpose of disease control already prescribed by the regulations which also implemented Directive

93/119. The RSPCA submitted that the amendment was incompatible with and *ultra vires* the Directive and also with general EU requirements as to proportionality and legal certainty of national implementing measures. It was the RSPCA's case that ventilation shutdown was in breach of EU law as it failed to spare birds from avoidable pain or suffering by not guaranteeing rapid unconsciousness until death.

The RSPCA's application was refused on the grounds that (1) though the provisions of the Directive were aimed at rapid transition to death during which animals subjected to it were spared avoidable excitement, pain and suffering, they did not require, as a condition of their use, a guarantee of absence of all such discomfort where the method and the exigency calling for its use as a last resort might not always be able to achieve this, (2) Member States enjoyed a broad margin of discretion in the field of animal health and (3) provision of an effective method of killing for the control of potentially widespread and deadly disease in the event of an outbreak so serious that no other known or developed method was practicable could not sensibly be the subject of detailed prescription for all circumstances. (See the article 'The use of ventilation shut-down as a killing method for poultry due to a disease outbreak' in this issue for a detailed discussion of the case.)

**Nationale Raad van
Dierenkwekers en
Liefhebbers VZW,
Andibel VZW v
Belgische Staat
(European Court of
Justice – Third Chamber)
[2009] Env. LR D2**

Actions for annulment of a Royal Decree establishing the list of animals which could be held in Belgium were brought in the domestic courts by an animal protection group and an animal traders association. The domestic court observed that the effect of the Royal Decree was to rule out the holding of the species referred to in Regulation 338/97/EC on the protection of species of wild fauna and flora by regulating trade therein and those not covered by the regulation, so that it had an influence on trade between Member States. Questions referred to the ECJ for a preliminary ruling concerned whether articles 28 EC and 30 EC precluded national legislation under which a prohibition on importing, holding or trading in mammals belonging to species other than those expressly referred to in that legislation applied to species of mammals which were not included in that regulation.

The ECJ held that Regulation 337/97/EC did not prevent Member States from adopting more stringent protective measures which were compatible with the EC Treaty. Articles 28 EC and 30 EC did not preclude national legislation which contained a prohibition on importing, holding or trading in mammals belonging to species other than those expressly referred to in that legislation, if the protection of or compliance with the interests and requirements of animal and human health and life could not be secured just as effectively by measures which obstructed intra-community

trade to a lesser extent. Restrictions on free movement of goods could be justified by imperative requirements such as the protection of the environment, including the ecological threat of escape into the wild.

**European Ministers of
Agriculture agree on
new law concerning
welfare of animals
before slaughter:**

On 22 June 2009, European Ministers of Agriculture agreed a new EU law which aims to improve the welfare of animals before they are slaughtered. It adapts to new technologies and scientific findings by requiring that slaughterhouses appoint an animal welfare officer and operators who are trained and issued a certificate of competence before they are permitted to handle the animals.

Eurogroup for Animals describes the alterations made by the law to existing circumstances as “minor” and failing to address the more serious welfare abuses committed in slaughterhouses such as the killing of conscious animals for religious purposes, as well as the inversion and stunning in a water bath of chickens. Eurogroup for Animals also observes that the new Regulation will not come into force until 2013 and permits the introduction by Member States of stricter rules for religious slaughter if they so choose, rather than introducing EU-wide rules. Eurogroup argues that the vote of the Agriculture Committee on 16 March 2009 weakened the proposal drawn up by the European Commission and the draft report of rapporteur Janusz Wojcienchowski on limiting the suffering of animals sent to slaughter. The Committee voted

against the requirement of having an animal welfare officer present in all slaughterhouses and for all abattoir personnel to be trained and granted a certificate of competence.

**Eurogroup for Animals
expresses concern over
proposal for new EU
rules to improve animal
transport:**

In April 2009, the European Commission proposed to implement new rules aimed at improving the welfare of animals during transport which, inter alia, restricted the time that animals may spend in transport to the slaughterhouse to 9 hours. Eurogroup for Animals believed that the proposal effectively weakened the protection of transported animals by not imposing appropriate measures or including clear specifications. Further, despite the 9-hour restriction, the proposal permitted the granting by Member States of a variety of exemptions. Finally, the very broad definition of “slaughter animals” contained in the proposal also permitted transporters to avoid journey time restrictions by claiming, for example, that the aim of the transport was further fattening of the animals. Eurogroup for Animals wrote to the European Commission to express these and other concerns about the proposed new rules and asked that they be considered before the proposal was sent to the full College of Commissioners.

**European Commission
Communication on
aquaculture:**

On 8 April 2009, the Fisheries Directorate of the European

Commission presented a Communication on the EU's aquaculture which recognised the importance of the welfare of farmed fish for the development of sustainable aquaculture. The Commission also indicated its plans to launch a project to evaluate fish welfare in aquaculture with a view to the introduction of legislation in relation to this field.

European Parliament votes against the sale of food from cloned animals:

On 25 March 2009, the European Parliament voted against the sale of food products from cloned animals and their offspring. Rather than including rules concerning cloning for food production in the EU's pending novel foods regulation, the European Parliament requested a specific Commission proposal to prohibit the cloning of animals for food as well as the importation of related products.

In September 2008, the European Parliament made a similar request, through parliamentary resolution, that the European Commission ban cloning. This request was not acted upon. The 25 March vote however, carried greater weight as the novel foods dossier was subject to the co-decision procedure which bestows greater decision-making power upon the European Parliament.

European Food Safety Authority (EFSA) opinion on cow welfare and food safety:

The EFSA Biological Hazards Panel has published a new scientific

Opinion on aspects of dairy cow husbandry which affect food safety. It reiterates the importance of the cows' welfare to the safety of their milk and beef products. Interestingly, although the report concludes that husbandry criteria such as the proper management of the herd to prevent animal stress ought to be established to ensure that sufficient biosafety guarantees are met, it also warns of the dangers of certain welfare measures such as access to outdoor spaces, which may contribute to the threat of disease.

The Opinion notes that the importance of proper management of dairy farm operations not only to animal welfare but also food safety is reflected in the passing of *Council Directive 2002/99/EC*, which aims to ensure that only those products originating from healthy animals are brought on the market by laying down general animal health requirements applicable to all stages of production of products of animal origin. In addition, *Regulation (EC) 852/2004* on the hygiene of foodstuffs regardless of their origin, and *Regulation (EC) 853/2004* on specific hygiene rules for foods of animal origin, define the responsibilities of dairy farmers. Further, *Regulation (EC) 882/2004* includes specific duties of competent authorities for the verification of compliance with the General Food Law and the animal health and welfare legislation.

The Biological Hazards Panel also indicates that stress-mediated suppression of immune function caused by trauma and/or malnutrition and production of neuroendocrine hormones stimulates responses such as enhanced growth or virulence. It is known that a number of farming-related factors such as housing conditions may impose stress on animals. These

include inappropriate handling by humans, inadequate feeding/watering, inappropriate levels of temperature and noise, higher concentrations of ammonia, hydrogen sulfide or carbon dioxide in confined spaces, disruption of social relationships and mixing with unfamiliar individuals.

However, as mentioned above, the Opinion suggests that access to the outdoors has a number of implications for both farm animals' (including cows) welfare and food safety. For example, the spread and transmission of microbial hazards is increased when grouped animals are kept in confined spaces. Access to the outdoors can also be beneficial for cows, which in turn has beneficial effects on the safety of foods from these animals. However, access to the outdoors can increase animals' exposure to the surroundings and wildlife-associated hazards. Due to insufficient currently available information, the Biological Hazards Panel determines in its Opinion that it is not possible to make a universal judgment on the superiority/inferiority of either indoor or outdoor farming practices from the overall food safety perspective.

Ultimately, the Opinion concludes that in principle, ensuring on-farm welfare of dairy cows contributes to and is beneficial for the food safety aspects of their products entering the food chain. Good farming/hygienic practices that include the provision of optimal animal welfare enhance the animals' resistance to infections and reduce on-farm spread of food safety hazards. However, some dairy farming practices that are considered beneficial for dairy cows' welfare may also increase the risks of food-borne pathogens in the animals and/or their products entering the food chain. Finally, the Opinion asserts that

available information is not sufficient to quantify individually the ultimate food safety outcome of the opposing (welfare-beneficial but food safety-undesirable) effects of these factors. The Opinion made only one recommendation, namely, that further multidisciplinary research on the relationship (positive or negative interaction) between animal welfare and food safety-related factors on dairy farms should be encouraged.

Prohibition on sale of products derived from seals:

On 5 May 2009, the EU adopted a ban on the import, transit and placing on its internal market of seal products obtained as a result of commercial seal hunts, following similar bans enacted into domestic law in Belgium (March 2007), Netherlands (July 2007), USA, Slovenia, Mexico and Croatia. It is anticipated that the UK and Germany will follow the latter's example and also enact domestic legislation bringing about a similar ban. The EU prohibition however, contains an exemption allowing for non-commercial use and sustainable hunting.

MEPs voted overwhelmingly in favour of the ban, ignoring threats by countries wishing to sustain the seal trade to take the EU before a WTO dispute panel.

The idea behind the EU ban began in 2006 when the European Parliament adopted a Resolution requesting the European Commission to propose an EU-wide ban on seal products. Following this move, the European Commission requested that the European Food Safety Authority prepare a study on the welfare aspects of the killing and skinning of seals, which it did in December 2007.

ZOOS European Commission to take Spain to the European Court of Justice over its failure to properly enforce EU rules on the keeping of animals in zoos:

Eurogroup for Animals reports that the European Commission is to take Spain to the European Court of Justice over its failure to enforce the EU's Zoo Directive, which required Spain to have inspected and licensed all of its zoos by April 2005. This deadline was not adhered to and it is reported that there remain today zoos operating without the necessary licensing and guarantee that the animals residing in them are cared for in welfare-friendly conditions.

Report on failure of EU zoos to implement European rules concerning wild animals:

In May 2009, Eurogroup for Animals produced a report on the enforcement of the EU Zoo Directive which concluded that many EU zoos have yet to fully implement European rules regarding the keeping of wild animals and national authorities are still failing to enforce legislation on zoo keeping. The report highlighted in particular a lack of information provided by authorities, a lack of resources allocated to the licensing and inspection of zoos, and a failure to establish clear guidelines for their scientific and educational activities. Finally, the report called upon the next EU Environment Commissioner

to conduct a formal evaluation of the Zoo Directive implementation including stakeholder participation.

ANIMAL EXPERIMENTATION Proposals for the revision of 1986 Directive on the protection of animals

In May 2009 the European Parliament voted on the proposal for the revision of *Council Directive 86/609/EEC*. The 1986 Directive makes provision for the protection of animals used for experimental or other scientific purposes and was transposed into UK law by the *Animals (Scientific Procedures) Act 1986*.

The European Commission announced its intention to review and revise the 1986 Directive in 2001 and the Proposals for the Revision of Directive 86/609/EEC were published and considered by the Agriculture and Rural Development Committee, the Environment, Public Health and Food Safety Committee and Industry, Research and Energy Committee of the European Parliament.

MEPs voted in favour of better protection for laboratory animals through the development of alternatives to animal testing as well as the promotion of alternatives in education and training. However, the vote did not result in the inclusion of amendments that would have ensured the phasing out of the use of wild-caught primates and weakened the proposed rules for the authorisation of procedures involving testing on animals.