

Protection from Cruelty for Animals in Europe: An improving picture?

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Abstract

This article examines laws relating to animal cruelty in Europe in the context of evidence of new approaches in eastern Europe. These are contrasted with existing provision in other jurisdictions including the European Union. Different definitions of animal cruelty are examined considering the increasing influence of legislation framed to provide care based on animal sentience. We examine how this draws legislators into areas of psychological as well as physical abuse. Positive developments are contrasted with areas of provision that are significantly in need of reform such as fur-farming. We suggest that although there is evidence of progress in relation to protecting animals from cruelty across Europe, there remains much to be done to improve the clarity and consistency of laws aimed at preventing poor animal treatment, enhanced investigative provision and appropriate sentencing powers. We argue that there is much to be gained from working alongside environmentalists, highlighting areas of good practice to campaigners and focussing campaigns on proper investigation and sentencing, as well as introducing new legislation.

Keywords

Animal cruelty, animal sentience, sentencing, punishment for cruelty, animal welfare

Introduction

This article examines some of the steps that

have been taken in various countries in Europe¹ in relation to animal cruelty. It considers the various legal frameworks, drawing on examples from some specific countries and the European Union. In recent years, Europe has seen a significant increase in national and international legislation aimed at preventing acts of cruelty and improving the welfare of animals.² Defining animal cruelty is complex as the line between protecting 'welfare' and protecting against 'cruelty' is often very thin. However, this article focusses on the development of the law relating to cruelty in European countries, whilst recognising that this is a narrow term intrinsically connected to the wider goal of animal welfare and the two may sometimes overlap.

Animal cruelty laws tend to focus on neglect³ or intentional cruelty,⁴ but what is deemed 'cruel' depends on the type of animal and where the cruelty takes place. The issue is whether legal provision and their enforcement in the countries of Europe has adequately advanced the overall protection of animals against cruel practices. It also involves asking whether those laws have kept pace with debates around animal sentience and the philosophical issues this gives rise to. It concludes by highlighting areas of best practice and suggests areas for reform.

1 A good overview is provided by Laws Around the World (advocates-for-animals.com)

2 See the Animal Protection Index at <https://api.worldanimalprotection.org/> for a full European summary. Also <https://www.globalanimallaw.org/database/national/index.html> for a worldwide summary; United Kingdom details are given at www.gov.uk/guidance/animal-welfare#legislation

3 For example, hoarding see www.peta.org.uk/issues/animals-not-abuse/cruelty-to-animals/

4 Hussain, G (2021) Animal Cruelty: What you can do right now to prevent it. Available at Animal Cruelty: What Is Animal Cruelty and How to Recognize It (sentientmedia.org) (Accessed 7May 2022)



Anti-cruelty laws in Europe

The introduction of laws to protect animals is crucial in protection terms but in terms of satisfying moral claims for animals it has only gone so far.⁵ The UK has, traditionally, been regarded, rightly or wrongly, as a leader in animal welfare⁶ and has a relatively long history of legislation covering offences of cruelty to animals, beginning with 'Martin's Act' in 1822.⁷ Most anti-cruelty provision is now covered in the Animal Welfare Act 2006, which defines several cruelty offences. Animal cruelty, which applies to all vertebrate animals, is defined in the Act including:

- Causing unnecessary suffering (section 4).
- Carrying out a non-exempted mutilation

⁵ Kotzmann, J. and Pendergrast, N., 2019. Animal rights: time to start unpacking what rights and for whom. *Mitchell Hamline L. Rev.*, 46, p.157, at p.196.

⁶ Wills, J., 2018. A nation of animal lovers? The case for a general animal killing offence in UK law. *King's Law Journal*, 29(3), pp.407-436.

⁷ An Act to Prevent the Cruel and Improper Treatment of Cattle, D (1822), 3 Geo 4, C70.

(section 5).

- Docking the tail of a dog except where permitted (sections 6(1) and 6(2)).
- Administering a poison to an animal (section 7); and
- Involvement in an animal fight (section 8).⁸

In addition, additional protection is given to specific animals in other legislation such as those that are commonly hunted in the United Kingdom. The Hunting Act (2004) makes it an offence to hunt any wild mammal with dogs, except within limited circumstances that are defined in the Act, and it is allowed only in limited circumstances.⁹ However, those that have followed the

⁸ Smith, R. (2011) 'Investigating financial aspects of dog-fighting in the UK', *Journal of Financial Crime*, 18(4), pp. 336–346. doi: 10.1108/13590791111173687.

Greenberg, D (2021) 'Animal welfare'. Available at: <https://uk.westlaw.com/Document/ID294ABF03F9211E-2824AEFB7D8791C65/View/FullText.html> (Accessed: 29 January 2022).

⁹ Hunting Act 2004 c 37; Report of Committee of Inquiry into Hunting with Dogs in England & Wales 9th June 2000, The Burns report at <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/>

passage of this legislation into practice since 2004 will be aware of the continuing controversy caused by hunting. Evidence suggests that the hunting community continues to break the law as shown by the relatively high number of prosecutions under the Act, and continued confrontations with anti-hunt protestors who have concerns for the cruelty known to exist in hunting.¹⁰ There is also legislation that has been passed in response to public campaigns. The Animal Welfare (Service Animals) Act 1999¹¹ means that those who attack or injure service animals cannot claim self-defence. There are other areas of the human-animal relationship where acts that would be considered cruelty in normal circumstances are specifically exempt from prosecution such as animal experimentation and badger culling.

Many European countries have laws protecting animals from cruelty, which prohibit mistreating animals, as well as a failure to act in case of animal abuse. Denmark has legislation prohibiting specific forms of animal cruelty and creates a duty of care which covers failures to act as well as deliberate acts of abuse. It covers physical and psychological well-being, as does the law in Sweden which has similar provisions that cover both animals in captivity and wild animals. Austria's Animal Welfare Act (2004) goes beyond EU requirements and covers all animals in relation to cruelty but there are exceptions in relation to wild animals that are hunted or fished and for non-stunning in religious slaughter.

Switzerland appears to have gone further than most other countries in Europe: Article 4(2) of the Animal Welfare Act (2005) prohibits inflicting pain, suffering or harm on an animal, inducing anxiety in an animal or disregarding its dignity in any other way without justification. The mishandling, neglect or unnecessary overworking of animals is also prohibited. Article 26 of the Animal Welfare Act (2005) and the Animal Welfare Ordinance (2020) give more detail on which

specific conducts are prohibited. Strictly prohibited acts include abandonment, neglect, bestiality, organising animal fights and the killing of animals in a manner involving agonising pain. The slaughter of animals without prior stunning is also prohibited. The legislation is wide reaching in its scope and covers all vertebrates as well as cephalopods and decapods".¹² Switzerland is notable because the Act covers all animals and goes a step towards linking much more closely both physical and psychological harm. This is not unique, but it does take the law closer to recognising more clearly the effect of psychological harm as a form of cruelty.

It has often been the case in protecting animals that such harm has fallen under the banner of 'welfare' and therefore not been treated as seriously as direct physical harm. An issue in the Swiss law is that draft animals and stray cats are not as well protected which leaves Switzerland with some underlying anomalies in coverage. The Swiss constitution provides for referenda to be held in certain circumstances such as constitutional change or following successful campaigns by initiative committees that are supported by 100,000 signatures. In February 2022 the nation voted on banning animal experimentation which failed 20.9: 79.1% so maintaining the status quo on animal experiments, and the Basel Canton (area) was able to vote on whether non-human primates should have their rights enshrined in the Basel constitution which failed by 25.3: 74.7%.¹³

In most European countries coverage is much more conservative and restricted in nature. In Spain, for example, animal cruelty offences exclude hunting and fishing, wildlife, bullfighting shows and regulated sports-competitions, (which have their own regulatory regulations).¹⁴ However, as of 5th January 2022, Spain has introduced new protection for domestic animals are classified as 'sentient beings' instead of merely property as they were previously. This applies to all animals kept as pets so extends beyond mammalian companion animals to reptiles, birds and fish. To keep a pet, potential owners must undergo training in how to care for

attachment_data/file/265552/4763.pdf

10 See, for example, Morris, S, 2022. 'Wiltshire hunt supporters fined after admitting clashing with saboteurs', The Guardian 6th April 2022. At <https://www.theguardian.com/uk-news/2022/apr/06/wiltshire-hunt-supporters-fined-after-admitting-clashing-with-saboteurs> Accessed 14th June 2022.

11 Animal Welfare (Service Animals) Act 1999 c 15.

12 Switzerland | World Animal Protection

13 See <https://www.swissinfo.ch/eng/> for details.

14 Law 32/2007 Article 14 Spain | World Animal Protection

them.¹⁵ Whilst this is a welcome development and certainly places Spain amongst those countries considering animal welfare more seriously as a legislative issue, there is the anomaly of the lack of similar considerations being applied to other animals. More still needs to be done and Spanish animal welfare organisations are calling for Spain to alter its position relating to, for example, the infamous bull-fighting cruelty exemption, and their lack of protection for working animals generally.

France provides protection against cruelty through animal welfare provisions in the Rural and Maritime Fishing Code, as Chapter IV is dedicated to animal protection. The French Ministry of Agriculture and Food's website explains that animal abuse may be characterised by physical beatings and by situations of deprivation or neglect, and that the law covers both. For instance, under Articles L-214 to L-217 of the Rural and Maritime Fishing Code, animal abuse includes depriving companion animals of food and water, or failure to provide a suitable environment. However, the practice of force-feeding ducks and geese to produce foie gras is exempted from anti-cruelty legislation".¹⁶

France also has limited categories of animals that are covered so only those that are owned have protection from deliberate acts of cruelty and neglect.¹⁷ The Penal Code makes it an offence to seriously physically abuse or sexually abuse, to commit an act of cruelty to, or to abandon a domesticated animal, or a tamed animal, or an animal held in captivity. There are exemptions for bullfighting where an uninterrupted local tradition can be invoked, and for cockfighting in localities where an uninterrupted tradition can be established.¹⁸ This shows how extensive coverage of animal cruelty is often restricted in countries according to local custom, practice, and perceived human benefits. The fact that cruelty is defined differently in terms of these criteria acts as a significant barrier to establishing a coherent set of international principles

regarding definitions and provisions to cover animal cruelty. This is illustrated by the French provision in that the law concerning deliberate and intentional cruelty does not apply to wild animals, although conservation measures are in place for mutilation, destruction, capture and poaching of endangered or protected species in the Environment Code and Ministerial Orders list protected species".¹⁹

In the east of Europe, in Russia, legislation provides that animals should be protected from abuse and prohibits various practices, namely: procedures that cause pain without the use of anaesthetic; organised animal fighting, and the feeding of live prey to predators (with an exception for the cultural and entertainment purposes). Article 11 of the Federal Law places enhanced responsibility on owners in cases of animal cruelty,²⁰ and provides for penalties in some other cases when there is a failure to act. Article 245 of the Penal Code of the Russian Federation contains a provision addressing cruelty to animals. Cruelty is not defined, but rather refers to two potential outcomes, namely injury or death of the animal, and such cases are addressed by law in observance of one of three cases, namely: i) when cruelty is caused with malicious or mercenary motives; ii) with the use of sadistic methods or iii) in the presence of minors.²¹ However, despite these provisions, the World Animal Protection Index raises concerns about the coverage of animal welfare in Russia, some of which could amount to cruelty in other jurisdictions. These include, for example, inadequate protection for animals raised in fur-farming, which also continues to raise concerns elsewhere, allowing excessive journeys for animals and its failure to deal with close confinement farm methods such as the use of battery cages for hens and farrowing crates for pigs. Depending on how one defines 'cruelty' the continuance of these practices, and similar such practices elsewhere in Europe, lay a challenge to the development of improved anti-cruelty provision across Europe.

In other areas of Europe, the situation seems to be worse in terms of direct regulation against cruelty to animals. In Romania, for example, the

15 See <https://rightcasa.com/new-animal-rights-laws-introduced-for-pets-in-spain/>

16 France | World Animal Protection

17 Under the Rural and Maritime Fishing Code and the Penal Code. France | World Animal Protection

18 Article 521-1 France | World Animal Protection

19 France | World Animal Protection

20 Article 11 of Federal Law No. 498-Φ3 Russia | World Animal Protection

21 Russia | World Animal Protection

Law on the Protection of Animals (2014) provides basic protection to animals, but the legislation does not define which animals are covered leaving the legislation somewhat weak in effect. However, there is some specific protection for other species such as those used in circuses and draft animal, but concerns remain that Romania has made relatively little progress in relation to animal cruelty. Problems have been encountered in relation to stray animals, particularly dogs which have been subject to very harsh treatment such as poisoning in mass culling.²²

Although most countries have some anti-cruelty legislation, Belarus is a notable exception having no laws preventing animal cruelty, leading to issues with the slaughter of animals, culling of stray animals and the overall care of farm animals.²³ It is highly likely that some of these practices would amount to cruelty under other jurisdictions. In Azerbaijan the brutal treatments of animals, which is defined as resulting in their death or severe injury, is prohibited by the Code of the Azerbaijan Republic on Administrative Violations (Article 129). At present, the application of this Code is limited since the term 'animal' is not defined. There is no indication given as to which animal species are concerned by Article 129, or what are the authorities responsible for monitoring the treatment of animals. As a result, the ability to implement this law is severely restricted".²⁴

As far as other countries in eastern Europe are concerned there is emerging anecdotal evidence from some groups operating there that there may be a shift of attitudes underway which could result in tighter restrictions on animal cruelty. Public support is important as it will drive legislative change and could lead to better chances of compliance with anti-cruelty law. This is supported by research which suggests that consumer attitudes to animal cruelty are changing in these countries.²⁵ This research

covering Bosnia Herzegovina, Bulgaria, Czech Republic, Croatia, North Macedonia, Hungary, Moldova, Poland, Romania, Serbia, Slovakia, Slovenia, and Ukraine, was conducted in relation to animals reared for food but it does reveal potentially changing attitudes towards animal welfare. However, the research suggests that this is not consistent amongst all those countries surveyed and revealed significant differences in public attitudes towards such animals.

In Moldova, from July 2022 animal abuse will be included as a crime in the criminal code which means that it will become an imprisonable offence rather than one attracting just a fine. Animal fighting will be outlawed. They have also included the 'Ukrainian' addition to animal crimes committed in front of children being an aggravating factor in sentencing.

In Ukraine, Law 2351 came into effect in November 2021,²⁶ and introduced the second highest term of imprisonment in Europe. Animal cruelty cases committed in front of children will be an aggravating factor when considering sentencing.²⁷ The impact of war in Ukraine and its ability to develop and implement law relating to animals are uncertain, but it is likely to have been significant in terms of the impact on animals as well as the plight of humans.

In Hungary the law on animal cruelty has been improved. The penal code has been expanded to cover cases of damage to nature, animal cruelty, and the organization of illegal animal fighting. Sentences have been increased to one to five years imprisonment and may be imposed for the offenses of cruelty to animals by using poison or baiting to kill more than one animal. The preparation of placing of poison or bait is also now punishable.²⁸

Therefore, there appears to be hope for the future in relation to developing animal cruelty laws in eastern Europe. However, there is still a long way to go before that provision allows for the protection found elsewhere to the west. Many

22 <https://api.worldanimalprotection.org/country/romania>

23 Belarus | World Animal Protection

24 Azerbaijan | World Animal Protection

25 Tomasevic, I., Bahelka, I., Čitek, J., Čandek-Potokar, M., Djekić, I., Getya, A., Guerrero, L., Ivanova, S., Kušec, G., Nakov, D. and Sołowiej, B., 2020. Attitudes and beliefs of eastern European consumers towards animal welfare. *Animals*, 10(7), p.1220.

26 Official portal of the Verkhovna Rada of Ukraine

27 Law 2351 Has Come Into Force - What Does This Mean For Ukraine Animal Welfare Moving Forward? | Naturewatch Foundation

28 Animal Welfare Laws Being Tightened in Hungary - Hungary Today

countries in the EU such as Switzerland, Germany, Luxembourg and Austria go beyond EU requirements by incorporating reference to animal protection at a constitutional level. Others such as Norway, Belgium and Sweden have adopted higher standards of protection for livestock.²⁹

It is useful to look at the case-study of fur-farming cruelty to gauge the development of European approaches to animal cruelty, particularly in eastern Europe. Fur-farmed animals – most often mink, but also including foxes and other species, are of particular interest to animal cruelty campaigners because they are wild animals. This makes them uniquely unsuited to farming in cages, despite industry claims to the contrary. Europe remains at the centre of fur farming because of its involvement in both production and the market for fur, although the full effects of Covid restrictions have yet to work through the system. Even relatively developed countries such as Denmark and the Netherlands have a recent history of fur farming although this may have been ended by Covid19. In Denmark concerns about covid infection being spread by mink led to mass culling's and a temporary ban until 2023. Only a small number of farmers have expressed an interest to start up again if restrictions are lifted in 2023.³⁰ But the order to close until 2023 at the very least, may have ended fur-farming of Mink in Denmark. The Dutch government ordered the permanent closure of all mink farms in March 2021.³¹ Despite banning fur-farming in 2000, the United Kingdom remains at the heart of the industry because of its connections with the fashion industry. Although the UK government consulted on a ban in 2021, it finally abandoned the Animals Abroad Bill in May 2022 which might have included a ban on the importation of fur.³²

The fur industry is one of the great shaming

²⁹ Falaise, M., 2019. Legal Standards and Animal Welfare in European Countries. *Animal Welfare: From Science to Law*; Hild, S., Schweitzer, L., Eds.

³⁰ <https://www.theguardian.com/environment/2022/may/13/danish-farmers-turn-their-backs-on-mink-after-covid-mutation-cull>

³¹ <https://www.hsi.org/news-media/dutch-mink-fur-farms-to-be-permanently-closed/>

³² <https://www.worldanimalprotection.org.uk/news/qs-animals-abroad-bill#:~:text=The%20Animals%20Abroad%20Bill,of%20fur%20and%20foie%20gras>

spectacles of animal cruelty in Europe. Although it is classified officially as 'farming' there can be little doubt that it involves the most serious types of cruelty through psychological harm to wild species in the name of human vanity. It is unlike other types of farming in that those species have not been bred for captivity and retain their wild attributes. The scientific case is very strong in showing the suffering caused to animals in fur farming.³³ The scientific jury is no longer out on cruelty in fur-farming – it is firmly established.

In this context it is interesting to witness the fast-moving development of this area of animal cruelty.³⁴ The campaign group Fur Free Alliance³⁵ monitors the apparent rush to ban fur-farming across Europe (dates of implementation of each ban may be later than these decision dates) including recently, Bulgaria (June 2022), Ireland (March 2022) and Italy (December 2021). The list of European Countries banning fur-farming is growing and adding to those of Austria, Belgium, Croatia, Czechia, Estonia, Germany, Luxembourg, the Netherlands, Norway, Serbia, Slovakia, Slovenia, Switzerland, and the United Kingdom.³⁶ However, fur-farming seems to be persisting in some countries such as in Poland, Finland, Sweden, Latvia and Russia, although Covid 19 has imposed limits on mink farming. Even here there may be changes soon - Latvia is now proposing to ban fur farming by 2026.³⁷

For some time since 2000, European fur production was particularly resistant to ending in the Scandinavian countries mentioned above and in parts of eastern Europe. In 2021 it was reported that Denmark was seeking to move it fur production to pre-war Ukraine – probably to avoid the temporary ban on mink farming in

³³ <https://www.furfreealliance.com/wp-content/uploads/2015/11/Case-against-fur-farming.pdf>

³⁴ Gorbach, R., 2021. Fur farming. *Skin for skin?*. *Animal Ethics Review*, 1(1), pp.45-52.

³⁵ <https://www.furfreealliance.com/> Accessed 16th June 2022.

³⁶ Additional Information, fur Free Europe at file:///C:/Users/lawsbroo/Downloads/Fur%20Free%20Europe-%20additional%20info.pdf Accessed 16th June 2022.

³⁷ <https://eng.lsm.lv/article/society/environment/latvia-discusses-ban-on-fur-farming.a437279/#:~:text=There%20are%20currently%20five%20fur,greatly%20to%20the%20Latvian%20economy>



Denmark itself.³⁸ However, the picture does appear to be changing with the number of European countries, including those in Scandinavia and eastern Europe now looking to ban fur-farming. This is evidence that public sentiment against fur-farming is now resulting in anti-cruelty legislation even in areas of eastern Europe that were most resistant in previous years. Taken as a barometer of concern for animal welfare across Europe, the case of the fur industry signals that the momentum against cruelty is moving in the right direction.

For the purposes of this article, we can provide only a brief snapshot of the law covering animal cruelty across the numerous jurisdictions of Europe. The specific situation with the European Union will be dealt with later. However, it is useful to summarise the law that has been covered so far. The ways in which animal cruelty is dealt with in Europe is at different stages of evolution in different countries. Implementation of effective control through legislation and en-

forcement is complicated by differing notions of what constitutes cruelty according to the history and traditions of the different nations. There is no over-arching definition which reaches across jurisdictional boundaries. There is evidence that most countries in Europe have at least begun to recognise that animal cruelty legislation is desirable this is a step forward, but it is also important to ensure that the law is also enforced as is examined in the next section.

The need for effective enforcement – sentencing and punishment

The introduction of animal cruelty laws is an important step towards better treatment of animals. In many cases this is done through criminal law or codes and so for it to be effective there needs to be adequate sentencing and punishment for such offences. This is important not just for animals themselves, but this may also have significant gains for society as well. For example, there has been concern about the link between cruelty to animals and other violence against human

³⁸ Gorbach, R., 2021. Fur farming. Skin for skin? *Animal Ethics Review*, 1(1), pp.45-52.

family members³⁹ as well as a discussion about how cruelty to animals fits in with other issues of violence.⁴⁰ This is not just a recent concern as philosophers have raised similar concerns over the centuries.⁴¹

These concerns can have an impact at a legislative level. As recently as December 2021 the Spanish Government updated the Spanish Civil Code to provide that animals will no longer be considered as 'objects', but sentient beings. This change was made in consideration of domestic violence against humans and pets which was arising in divorce cases and proving to be difficult for lawyers to raise. There was no provision relating to the sentencing of animals in the Spanish Civil Code and the animals involved were being dealt with only as property even if there was evidence that they had been abused by one of the parties.⁴²

The link between animal and domestic human violence is so well established that it has led to calls by, for example, the campaign group People for the Ethical Treatment of Animals (PETA), that it adds extra impetus to ensuring that abusers of animals should be adequately prosecuted and sentenced.⁴³ This leaves the anomaly that the cause of reducing animal cruelty may be improved as a secondary concern to human cruelty and suffering. This will satisfy those who advocate that any gain is worthwhile and is also likely to be welcomed by those who advocate from a stronger animal rights or personhood perspective – even if they are not satisfied that

the route taken for this outcome recognises the inherent value of animal life. However, the use of the link between human and animal suffering as a way of seeking change in reporting practices has given rise to a useful consequence in relation to reducing overall animal cruelty, as well as benefitting humans.

In terms of deterrence in many countries there has been pressure to increase the sentences given in cases of animal cruelty.⁴⁴ In the UK the Animal Welfare (Sentencing) Act (2021), increased the maximum sentence for specific offences under the Animal Welfare Act 2006 Act from six months to five years in custody offenders can also receive an unlimited fine. These are also now made either way offences, meaning they can be heard in either in a Magistrates Court, or a Crown Court where sentencing powers are greater. There is consultation until August 2022⁴⁵ to revise and update the sentencing guideline for animal cruelty.⁴⁶ At present there are different guidelines for domestic and captive animals⁴⁷ and wildlife offences.⁴⁸ The changes to maximum penalties enable courts to take a firmer approach to cases such as dog fighting, abuse of puppies and kittens, illegally cropping a dog's ears and gross neglect of farm animals.⁴⁹ However, this will not affect wildlife crimes.

In Ireland, punishment for the most serious cases of cruelty is also five years.⁵⁰ This is also the case in Poland where the Penal Code imposes fines, forfeiture of animals, bans on animal ownership, and sentences of imprisonment from

39 Lockwood, R., and Hodge, G.R., 1986. The tangled web of animal abuse: The links between cruelty to animals and human violence. *Humane Society News*, Summer, pp.10-15; *The Link between Animal Abuse and Human Violence* Edited by Andrew Linzey. Brighton and Portland: Sussex Academic Press, 2009. 346 pages. ISBN: 978-1-84519-324-9.

40 Nurse, A. (2020) 'Masculinities and Animal Harm', *Men and masculinities*, 23(5), pp. 908–926. doi: 10.1177/1097184X20965458.

41 Regan, Tom & Singer, Peter (eds.) (1989). *Animal Rights and Human Obligations*. Cambridge University Press. Available on PhilArchive: <https://philarchive.org/archive/REGARA>

42 See: <https://english.elpais.com/society/2021-12-03/spain-approves-new-law-recognizing-animals-as-sentient-beings.html>

43 www.peta.org.uk/issues/animals-not-abuse/cruelty-to-animals/

44 The UK Centre for Animal Law (2019) Submission to the House of Commons Public Bill Committee on the Animal Welfare (Sentencing) Bill. Available at: <https://online.fliphtml5.com/pfupa/mzst/#p=2> (Accessed: 8 May 2022)

45 For an interesting discussion about this see www.advocates-for-animals.com/post/will-new-sentencing-guidelines-for-animal-welfare-offences-result-in-more-prison-sentences

46 *Animal cruelty: Consultation – Sentencing* (sentencingcouncil.org.uk) (Accessed 8 May 2022)

47 www.cps.gov.uk/legal-guidance/offences-involving-domestic-and-captive-animals

48 www.cps.gov.uk/legal-guidance/wildlife-offences

49 www.gov.uk/government/news/maximum-prison-sentence-for-animal-cruelty-raised-to-five-years

50 *Animal Health and Welfare Act, 2013*

3 months up to 3 years, or 5 years in cases of extreme cruelty⁵¹. However, the longest term of imprisonment is found in Greece which has recently increased maximum punishment to ten years for serious animal abuse with a minimum of one year.⁵² However, the definition of abuse is quite extreme in that this maximum applies to poisoning, hanging, burning and mutilating animals.⁵³

Some Western European countries impose comparatively short terms of imprisonment. In the Netherlands⁵⁴ enforcement of animal cruelty is punishable⁵⁵ by fines or imprisonment of up to six months. Austria imposes a maximum of one year imprisonment for curtly offences,⁵⁶ whereas in Denmark this is increased for two years if it involves reckless or gross negligence.⁵⁷ In Spain, mistreatment of any animal, with the exception of non-captive wild animals, is punishable by up to two years imprisonment,⁵⁸ warnings and fines.⁵⁹ Animals can also be seized, offending establishments closed and activities stopped.⁶⁰ Article 337 of the Spanish Penal Code provides that those who cruelly mistreat pets and unjustifiably cause death or injuries causing serious physical impairment are liable to imprisonment sentences of between three months and one year. Article 632(2) provides that those who those who cruelly mistreat pets without amounting to an offence under Article 337 are liable to between 20 and 60 days imprisonment or between 20

and 30 days community service.⁶¹ France also has a sliding scale of offences relating to cruelty on domestic, tamed, and captive animals some of which are also unlikely to have a deterrence effect. However, the most serious cruelty issues, including abandonment of animals, can lead to two years imprisonment and/or a fine.⁶² Germany has a longer three-year maximum term of imprisonment for offences relating to cruel or long-lasting infliction of pain or suffering on vertebrates.⁶³

Switzerland provides an interesting example as the law covers a wide definition of activities that can lead to imprisonment and the tariffs are higher than elsewhere.⁶⁴ Anyone who wilfully mistreats or neglects an animal, unnecessarily overworks it or in any other way disregards its dignity is liable to a fine or imprisonment of up to three years. Anyone who does so through negligence is liable to a fine or imprisonment of up to 180 days. The Animal Welfare Act (2005) also imposes imprisonment or a fine for general maltreatment of animals.⁶⁵

Other sanctions imposed by various countries include removal of the animal from the owner and the person convicted of such an offence may be banned from keeping animals. This is the case in Austria,⁶⁶ Denmark, Germany⁶⁷, Poland⁶⁸ and Switzerland.⁶⁹ On the face of it this appears to be a progressive step for animal in moving them out of harm's way. However, one should be mindful of the destination for these animals in terms of this being the in the best interests of the animal.

Another relatively unusual step is shown in Poland where fines gathered by the state used for

51 www.advocates-for-animals.com/post/poland

52 Kokkinidis T, 2021. Greece introduces new regulations for pets, Stricter penalties for abuse. Available at: [Greece Introduces New Regulations for Pets; Stricter Penalties for Abuse \(greekreporter.com\)](http://greekreporter.com) (Accessed 16 September 2021).

53 Animal Cruelty in Greece Now Punishable by Up to 10 Years in Prison (greekreporter.com) (6 nov 2020)

54 Animal welfare regulations | Animal welfare | Government.nl

55 Article 8.12(3) and 8.12(4) of the Netherlands' Animals Act 2011 provide that infringement of the anti-cruelty provisions of Article 2.1(1).

56 Article 222 of the Penal Code.

57 (Article 29). Denmark | World Animal Protection

58 The Penal Code (2015) Spain | World Animal Protection

59 Law 32/2007 Spain | World Animal Protection

60 Spain | World Animal Protection

61 Article 337 of the Penal Code Spain | World Animal Protection

62 (Article 521-1) France | World Animal Protection

63 Article 17 of the Animal Protection Act (TierSchG) Germany | World Animal Protection

64 Article 26 of the Animal Welfare Act (2005).

65 Switzerland | World Animal Protection

66 Austria | World Animal Protection

67 (Articles 19 and 20).Germany | World Animal Protection

68 Poland | World Animal Protection

69 Switzerland | World Animal Protection

the benefit of animal protection, for example, for the benefit of the Society for the Prevention of Cruelty to Animals in Poland⁷⁰ under Article 35 of the Polish Animal Protection Act 1998. This is quite progressive to see fines for animal cruelty being applied to related issues in animal protection. This example of good practice could be used elsewhere. However, for the penalties to be effective it is important that enforcement action is taken for example in Poland: "According to research conducted by two NGOs, over 70% of all animal cruelty cases are discontinued, and only 19% end up in court".⁷¹

In Russia the Penal Code of the Russian Federation (2012) imposes penalties for cruelty to animals involving their death or injury which has occurred in connection with malicious or mercenary motives, the use of sadistic methods or in the presence of minors. Offenders are potentially subject to fines, compulsory or corrective labour and imprisonment, the tariffs for which are increased if those acts were committed by a group of persons or by an organised group.⁷² Some countries have enforcement provisions, but they are likewise only for serious cruelty and attract only small fines. In Azerbaijan a fine is imposed for "causing brutal treatments to animals," but the fine is very small.⁷³ In Belarus, as mentioned previously, there is no anti-cruelty legislation and, therefore, no corresponding mechanisms for enforcement or corrective justice by fines, imprisonment or otherwise.⁷⁴

In terms of enforcement and sentencing reform, it is ethically and philosophically desirable that any animal cruelty law should apply to all animals and at the least those defined as sentient, it should cover both physical and psychological wellbeing and cover a failure to act as well as deliberate acts of abuse. This is ethically desirable because it would ensure that humans have an incentive to live their lives according to moral standards. It is philosophically desirable as it accords with growing evidence of our fundamental knowledge about animal sentience and the impact of cruelty on animals. But in terms of sanc-

tions there does need to be some thought about what sanctions provide the best deterrence and whether imprisonment should be the focus of penal policy.⁷⁵ We suggest that education and working with both authorities and potential perpetrators might provide a longer lasting solution because it creates knowledge and encourages compliance.

Who Should enforce the law?

In the UK investigation and prosecution of most animal cruelty cases⁷⁶ is undertaken by the RSPCA⁷⁷ and their work practices follow those of the Code for Crown Prosecutors.⁷⁸ Other enforcement routes exist through local authorities in relation to, for example, dog breeding, and the police in relation to, for example, wildlife crime. It is an anomaly in the criminal justice system to have the chief responsibility for enforcing laws in the hands of, in this case, a non-governmental charity using private prosecutions. This has an impact in resources available and affects the links to educational and preventative actions at governmental level. It is very doubtful whether this kind of structure would be acceptable in relation to crimes against human beings and it could be viewed as being vulnerable to lack of capacity, despite the obviously hard work and professionalism of those involved.⁷⁹

In most other countries in Europe, the police are responsible for enforcement, sometimes in conjunction with other governmental bodies. In the Netherlands and Finland, for example, police resources are dedicated to the enforcement

70 Article 35 Poland | World Animal Protection

71 www.advocates-for-animals.com/post/poland

72 Russia | World Animal Protection

73 Azerbaijan | World Animal Protection

74 Belarus | World Animal Protection

75 Marceau, J. (2019). *Beyond Cages*. In *Beyond Cages: Animal Law and Criminal Punishment* (pp. 1-11). Cambridge: Cambridge University Press. Also Marceau, J and Gruen, L (2022) 'Carceral Logics', Cambridge: Cambridge University Press.

76 RSPCA, Prosecuting animal cruelty and neglect. Available at: <https://www.rspca.org.uk/whatwedo/end-cruelty/prosecution> URL (Accessed: 8 June 2022). And RSPCA Getting justice for animals. Available at: <https://www.rspca.org.uk/whatwedo/strategy/prosecution> URL (Accessed: 8 June 2022).

77 www.rspca.org.uk/whatwedo/endcruelty/prosecution

78 www.cps.gov.uk/publication/code-crown-prosecutors

79 Nurse, A., 2013. Privatising the green police: The role of NGOs in wildlife law enforcement. *Crime, law and social change*, 59(3), pp.305-318.

of animal cruelty law. Austria maintains an Animal Protection Ombudsperson for each state, a country-wide Animal Protection Council⁸⁰ and an Animal Protection Enforcement Council which includes the heads of various enforcement bodies, government officials and the animal welfare ombudsmen. It is a multi-layered approach showing a commitment to preventing animal cruelty but as is the case elsewhere, Austria is criticised in relation to other areas such as hunting, stunning at slaughter techniques and other issues.⁸¹ This shows that even with significant political involvement, apparently secure routes to investigation and prosecution, and appropriate sentences as the constituent parts of a country's overall response to animal cruelty, it may still have important moral questions to answer. There is often a sting in the tail in relation to the overall picture.

Conclusion

There does appear to be some movement on issues of animal cruelty in areas of Europe where legislation and control was previously very weak as seen with Moldova in 2022 and Ukraine in 2021, and the response of several countries over concerns about fur-farming. However, some of these may be attributed to concerns about human health arising from Covid 19. It has been shown that animal 'cruelty' means different things in different countries. It is no surprise, therefore, that aspects of cruelty are dealt with differently in European states, or not dealt with at all. It is possible to draw some observations about the development of the law in Europe regarding animal cruelty and abuse, but it is by no means a clear or uniform picture.

The first issue relates to problems associated with definitions of cruelty in Europe in different jurisdictions, even in those countries which are members of the European Union. This is particularly relevant because there is growing recognition of the need to regulate in accordance with animal 'sentience', led by science, as way of redefining what is acceptable in human use of animals in law. Sentience has long been recognised in the European Union in Article 13 of the

TFEU,⁸² but there has been doubts as to its effectiveness.⁸³ This development may redraw the lines defining cruelty as certain forms of practice previously accepted in for example farming, animal experimentation, control of wildlife or regulating domestically kept animals, may be drawn into sharper focus as they involve significant psychological cruelty which is currently accepted in law. The case-study of fur farming discussed above is a good example of changing definitions of cruelty extending into psychological abuse which results in persuasive arguments to change legislation. Europe appears to be a leader in this field but there are anomalies and gaps in the overall control of cruel practices. Article 13 has been underused and of comparatively low effect as it has not heralded a coherent set of regulations on a pan-European scale. There are doubts, for example, regarding its wording such as a requirement to 'pay full regard' to animal welfare in devising legislation, and the fact that farming and experimentation continue although these practices clearly make animals pay a very heavy price.⁸⁴

Amongst several countries legislating along sentience lines, the UK was embroiled in a four-year debate on how to legislate in this area following its exit from the EU.⁸⁵ This led to the Animal Welfare (Sentience Act) 2022 which covers vertebrates, any cephalopod, mollusc and decapod crustacean. In terms of other invertebrates these can be added using delegated legislation.⁸⁶ The introduction of this specific legislation was the result of a concerted campaign by animal welfare groups and members of parlia-

80 Articles 38 to 48 of the Animal Welfare Act 2004.

81 Austria | World Animal Protection

82 Consolidated version of the Treaty on the Functioning of the European Union. Official Journal of the European Union art.13, October 26, 2012, 2012 O.J. (C326) 47.

83 Nurse, A., 2018. A question of sentience: Brexit, animal welfare and animal protection law. *J. Animal & Env'tl. L.*, 10, p.32.

84 See Compassion in World Farming, 2017, Separating fact from fiction on animal sentience, at <https://www.ciwf.org.uk/news/2017/11/separating-fact-from-fiction-on-animal-sentience> accessed 30 June 2022; see also House of Commons Briefing paper Number 8155, 8 August 2018 at <https://researchbriefings.files.parliament.uk/documents/CBP-8155/CBP-8155.pdf>.

85 Brooman, S., 2018. Animal Sentience in UK Law: Does the new clause need claws? *United Kingdom Journal of Animal Law* 2: 1, 21-31.

86 See section 5 for the full definition.

ment to avoid losing Article 13 from English law in the post Brexit era. It was a defining moment in that the specific recognition of sentience in English law was seen both as an important symbolic moment, and potentially one that could lead to improved animal welfare by improving the situation of animals in relation to cruelty and abuse. How this new provision affects existing law through the new Animal Sentience committee will be observed very closely to establish whether it is purely symbolic or leads to tangible improvements in animal welfare. However, whilst these developments regarding sentience are welcome, cultural differences in attitudes to animals across Europe mean that a satisfactory general approach which includes protecting animals' sentient requirements is a long way off.

The lack of consistency across Europe is highlighted by the fact that what is considered cruel in one jurisdiction may be allowed in another.⁸⁷ Some specific protection for farm animals is almost universal, but some persisting practices such as the force feeding of ducks and geese to produce foie gras are scientifically proven to be cruel. The same applies religious slaughter of animals⁸⁸ and there is an argument that the use of farmed animals is inherently cruel.⁸⁹ This can also be argued in relation to many other uses of animals⁹⁰ such as those animals used in experimentation.⁹¹

Although a universal definition of cruelty is lacking, this could be developed through reference to the World Animal Health Organisation animal welfare standards⁹² and the European Convention on animal welfare. There are also some very

persuasive templates in circulation such as the Universal Declaration on Animal Welfare suggested by the World Society for the Protection of Animals.⁹³ Whilst there have been improvements and many organisations work tirelessly to improve this situation, there is a need for a generally accepted set of standards for animals akin to the Universal Declaration of Human Rights.⁹⁴

Developments in Europe appear to be outpacing many other areas of the globe such as parts of America, Asia and Africa, but linking environmental concerns with those for animals could enhance the pace of change for both. This appears to have more appeal in public attitudes than is evident in legislation. However, if change comes too quickly it may lead to cruelty being exported to countries where legislation is weak or absent and welfare gains will be lost unless markets adjust accordingly to prevent cruelty-fuelled undercutting. On balance though, the leading legislator-protectors amongst the countries of Europe are probably amongst the most qualified to show the way.

In conclusion, despite recent developments in eastern Europe discussed here, and significant steps to deal with cases of animal cruelty that appear to be emerging right across Europe there is still a great deal of inconsistency and work to be done. Even in countries with comparatively good record in this area, there are concerns that economic human interests trump animal welfare concerns almost at every turn. Millions of wild animals, such as monkeys, tigers, and lions, are kept as pets, traded illegally, or used in circuses and other forms of entertainment. Farm practices expose millions of animals to cruel practices and there is evidence of unimaginable animal suffering in other areas such as the keeping of exotic pets, trafficking wild animals and their use in the entertainment industry such as zoos and circuses.⁹⁵ In some European countries 'sporting' practices such as hunting, and bullfighting continue to cause concern. There is much to do to

87 www.ciwf.org.uk/factory-farming/animal-cruelty/; Leone, L., 2020. Farm animal welfare under scrutiny: issues unsolved by the EU legislator. *Eur. J. Legal Stud.*, 12, p.47.

88 Brooman, S., 2016. In Search of the Missing Ingredient: Religious Slaughter, Incremental Failure and the Quest for the Right to Know. *Journal of Animal Ethics* 6(2): 153-163.

89 www.euronews.com/my-europe/2016/07/22/animal-cruelty-is-violence-inherent-to-abattoirs

90 See for example FAACE - Fight Against Animal Cruelty in Europe

91 EU science report highlights recent progress in use of non-animal methods | Cruelty Free Europe

92 See <https://www.woah.org/app/uploads/2021/03/en-oie-aw-strategy.pdf>

93 https://www.worldanimalprotection.ca/sites/default/files/media/ca_-_en_files/case_for_a_udaw_tcm22-8305.pdf

94 Assembly, U.G., 1948. Universal declaration of human rights. UN General Assembly, 302(2), pp.14-25.

95 See the website of the Europe-based animal welfare group, Animal Advocacy and Protection at Our approach - AAP English



protect animals and much of this is linked with efforts to stem the damage caused by global warming – there is no doubt that environmentalists and animal welfare campaigners should work together for the betterment of humans and animals alike.

However, despite the challenges evident in Europe hope can be found in continuing work to improve local approaches to animal cruelty and to recognise animal sentience. This runs contrary to such wide-spread cruel practices highlighted by the Eurogroup on Animal Welfare and many others and discussed here. There is progress but it should not be pretended that this involves rapid change. The answer lies in a combination of approaches in supporting those who place pressure on law makers, continuing to educate those who might perpetrate cruel practices and ensuring that those who do are subject to sufficient and appropriate punishment. Developing the wider international approach to animal welfare will also be important.⁹⁶ Some of the most

notable scientists and philosophers across the centuries drew attention to the fact that animals are deserving of protection because they possess sentient qualities. Across Europe and elsewhere, humankind is still trying to put into law the logical and emergent consequences of their observations.

96 Legge, D., Brooman, S. Reflecting on 25 Years of Teaching Animal Law: Is it Time for an International Crime

of Animal Ecocide? *Liverpool Law Rev* 41, 201–218 (2020).