

Animal Welfare in Constitutions

Dr. Gieri Bolliger

Attorney at Law, Author, Zurich

Source: Four Paws (Ed.), *Constitutional and Legislative Aspects of Animal Welfare in Europe*, Brussels 2007, pp. 12-13

Ethical animal welfare, the protection of animals for their own sake as sentient beings with a capacity for suffering, is no doubt one of the basic values of modern western states. But since the enforcement of this moral postulate cannot be guaranteed solely through societal self-responsibility, it needs strong support from binding law. For this reason, all European states have set up legal requirements to govern the care of animals, and some countries have had relevant laws in place for more than 150 years.

However, the protection of animals has until now rarely been fundamentally acknowledged in national constitutions. A constitution represents a state's highest standard of values. In central Europe, for instance, animal welfare is anchored only in the constitutions of German-speaking countries.

- In Germany, ethical animal welfare was written into the constitution, the Basic Law (Article 20a), in 2002, an act which concluded many years of debate on the standing of animal welfare within the constitution's structure. Article 20a of the Basic Law expressly determines that the state must protect animals within a framework of constitutional ruling. In this way, animal welfare has become the legal responsibility of the state and is seen as an "outstandingly important common good".
- In 2004, Austria had a similar ruling written into its Federal Constitution (Article 11, Paragraph 1), which empowered the federation to make laws affecting animal welfare. Federal



© Deutscher Bundestag

authority embraces in principle all matters that serve to protect and look after the welfare of animals, and the ruling provides the basis for the new Austrian animal welfare law, also adopted in 2004, which standardises animal welfare measures throughout the country.

- Animals have been constitutionally protected for the longest time in Switzerland, where animal welfare has already been anchored in the Federal Constitution, at least partially, for far longer than 100 years. A ban on slaughtering animals without first administering an anaesthetic was declared a constitutional principle in 1893. Although disputed, this article was valid for nearly 80 years until 1973 when Article 25bis (now Article 80) was adopted into the Constitution. This article declared animal welfare in general to be a state matter, giving

the federation the authority to enact an animal welfare law for the whole country. Since 1992, the animal welfare article has been augmented in a special way by Article 120, Paragraph 2 of the Federal Constitution (Article 24novies, Paragraph 3 of the old constitution). Switzerland is the only country in the world that grants constitutional protection to the "dignity of creation", explicitly according esteem to all non-human living beings, namely animals, at the highest legal level. The principle encompasses all legal aspects of human/animal interrelations and is supposed to restrict in particular the kind of treatment of animals that, although not necessarily associated with pain, suffering or damage, nevertheless affects other animal interests that must be respected by humans. Central features in this regard are the protection of animals from humiliation, from excessive instrumentalisation, and from intervention in their appearance.

- Efforts are also being made to integrate animal welfare into the Constitution of the European Union. The draft of the European Constitution contains an animal welfare passage (Article III-121) in which the Union and its Member States must take fully into account the need to protect animals as sentient beings when determining and implementing EU policies on agriculture, fishing, transportation, the domestic European market, research, technological development and space travel. However, the European Constitution has not yet come into force because some Member States have rejected it in referenda.

A constitution always reflects the overall values of a nation. The inclusion of animal welfare measures does not indicate a revolution in human/animal relations, but is rather an official and clear acknowledgement, at the highest level of law, that people cannot deal with animals at will and with no limitations set. Animals must be respected as sentient beings with a great capacity for suffering.

Above and beyond this symbolic character, constitutionalising the protection of animals – as well as their dignity, as prescribed in Switzerland – has far-reaching significance. It represents a

considerable reevaluation, since animal welfare becomes an interest protected by law with constitutional standing and a state goal that as a matter of principle is accorded the same status as other state goals. It becomes an important part of the national legal system and must therefore be taken into consideration in all other areas of governmental or private activity – regional planning, social policy, nature and homeland conservation, environmental protection, and so forth. It makes it more difficult to torment and mistreat animals, because the violation of an animal welfare law protected by a constitution is just as unacceptable as the violation of other constitutional rights.

The concept of the constitution, as a real programme, obligates all state authorities to help animal welfare achieve a high standing within the national legal and value systems and to further develop it politically, institutionally and through legislation. To meet the obligation of protecting and looking after the welfare of animals, a national legislature is thus urged to enact restrictive animal welfare regulations and to create suitable structures and means to guarantee the enforcement of these standards. Additionally, already existing animal protection regulations become safeguarded by the constitution. On the strength of their own constitutional status, such regulations can limit the basic rights of those who manage animals. In relation to other basic rights, the constitutionality of animal welfare thus leads to a kind of 'equality of weapons', in which the privileges of science, art, and religion or the freedom to choose a profession do not have priority over animal welfare concerns. Indeed, in any conflict between different constitutional rights, interests must always be weighed up in a balanced way. This means, for instance, that animal management must be adapted to the needs of animals and not depend solely on the economic interests of those who use animals.

Constitutional anchoring ultimately helps to achieve better legal protection and the enforcement of animal welfare rights by enabling the comprehensive monitoring of legality and the development of independent practice in the use and interpretation of animal welfare regulations by administrative authorities and the courts.

(translation: Joanne Runkel)