

# Implementation of Animal Welfare Legislation and Animal Welfare Offences in Finland

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## 1 The Animal Welfare Act

### 1.1 Mistreatment of animals

It is common in Finland that crimes against animals catch the attention of the media. Generally, people have contempt for the perpetrators and regard the punishments as too lenient. Moreover, authorities often face criticism for being too passive, especially animal welfare officials.

According to Article 13 of the Lisbon Treaty,<sup>1</sup> animals are sentient beings, which obligates Member States to take the requirements of animal welfare into account. In other words, the status of an animal as a sentient being is recognised in EU law. However, this does not mean that animals are granted legal rights. Neither the Animal Welfare Act (247/1996, AWA) nor any other law in Finland grants animals any proper rights. In the Finnish legal tradition, animals are considered things that can be owned by humans.<sup>2</sup> Nevertheless, animals are given special protection under the AWA.

It is also worth noticing that the status of an animal in legislation depends on the manner in which the animal is being used. For example, a laboratory worker is allowed to inflict on a rabbit in experimental use suffering, pain and agony that would be prohibited if the animal were a pet. If rabbits are raised as farmed animals, the provisions regarding farmed animals must be taken into consideration. These animals can be treated in a manner which would be prohibited in the case of pets.

When someone inflicts unnecessary suffering, pain and agony (for example assaulting an animal, causing excessive strain, neglecting to provide adequate food, drink and care or any other cruelty) on an animal intentionally or by gross negligence, the person has committed a crime. The essential elements of mistreatment of animals vary depending on the species, the breed and the use of the animal. The provisions concerning cruelty towards animals are regulated mainly in the Criminal Code (39/1889, CC). These provisions are split into three levels: animal welfare offence (CC, Chapter 17 Section 14), aggravated animal welfare offence (CC, Chapter 17 Section 14a) and petty animal welfare offence (CC, Chapter 17 Section 15). Additionally, animal welfare infringement is regulated in Section 54 of the AWA. Animal welfare infringement is the mildest form of animal crime.

### 1.2 The aim and objectives of the animal welfare act

According to Section 2 of the AWA, the law is applied to all animals. This includes domestic animals, farm and other animals which are under the care and control of people, and wild animals. However, the application of the AWA requires that the animal is capable of experiencing suffering, pain and agony. Knowledge of animal consciousness has increased over the past few years. Studies have shown that many

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<sup>1</sup> Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C326.

<sup>2</sup> Government bill (HE) 6/1997 vp, 103 and 133. See the moral obligation of humans to respect animals: Governmental bill (HE) 36/1995 vp, 20.

animals are able to experience a variety of emotions.<sup>3</sup> For that reason, the presumption should be that an animal is capable of experiencing suffering, pain and agony.

The aim of the AWA is to protect animals from suffering, pain and agony, based on all available scientific knowledge of the treatment and keeping of animals. In addition, the law aims to create conditions such that the animals do not have to face any suffering which could be avoided in advance. The AWA also promotes animal welfare and good treatment.

The objectives of the AWA are laid down in Section 3(1), which states that animals must be taken care of without inflicting unnecessary suffering upon them. The infliction of unnecessary pain and agony is prohibited. Additionally, the keeping of animals must promote their welfare. Their physiological and behavioural needs must be taken into consideration. Thus, the AWA aims to protect animals from conditions and diseases that could affect them negatively.

Pain and agony may be synonymous, but the former is taken to mean unpleasant physical sensation resulting from injury, whereas agony may refer to distress, anxiety, fear or other unpleasant emotional suffering. Suffering refers to both physical and mental feelings that affect the health of an animal in a negative way. The keeping of animals for consumption purposes inevitably entails actions that cause them suffering. Unnecessary suffering can follow from a breeding method that does not sufficiently take into consideration the behavioural needs of an animal in an abnormal environment.<sup>4</sup> Examples of such methods are cattle being kept year-round in a barn without the possibility to walk around as required in legislation, or pigs being castrated without pain relief or anaesthesia.

The physiological needs of animals are needs that enable the proper functioning of their physiological systems, including sufficient and proper nutrition and exercise. Behavioural needs of an animal include the possibility for an animal to behave in a manner that is typical to its breed or species.<sup>5</sup>

Provisions concerning animals are found in other laws as well. For example, provisions concerning hunting, fishing, animal medication, breeding, artificial insemination, the use of vertebrates and cephalopods for scientific and educational purposes, animal transportation, genetic engineering and nature conservation, must all be complied with in addition to the AWA.

### **1.3 Animal welfare authorities**

Animal welfare authorities are regulated in Chapter 3 of the AWA. The authorities are divided into four separate categories. The supreme authority (the first category) is the Ministry of Agriculture and Forestry. That Ministry is responsible for directing and controlling the enforcement and compliance with the AWA, the provisions issued under it and the EU Council Regulation on the protection of animals at the time of killing (later Slaughter Regulation)<sup>6</sup>.

The second category, the Finnish Food Authority, serves as the central governmental authority that is responsible for guiding and supervising the enforcement and compliance of the AWA and provisions based on it. Furthermore, the Finnish Food Authority has responsibilities based on Slaughter Regulation.

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<sup>3</sup> See about the consciousness of animals, 'The Cambridge Declaration on Consciousness' (2012) <<http://fcmconference.org/img/CambridgeDeclarationOnConsciousness.pdf>> accessed 1 February 2019.

<sup>4</sup> Government bill (HE) 36/1995 vp, 20.

<sup>5</sup> Government bill (HE) 36/1995 vp, 20.

<sup>6</sup> Council Regulation (EC) 1099/2009 on the protection of animals at the time of killing [2009] OJ L303, 1–30.

The third category is the territorial animal welfare authorities, the Regional State Administrative Agencies. These Agencies monitor the enforcement and compliance of the AWA and they also have responsibilities based on the Slaughter Regulation.

The fourth category comprises several local authorities with responsibility for animal welfare: the municipal veterinarians, the authorities responsible for municipal health protection control and the police. They enforce compliance with the AWA as well as provisions and regulations issued under it within the territory of the municipality. The veterinary officer for meat inspection handles compliance with the AWA and other provisions and regulations issued under it at slaughterhouses. At a border crossing, exit point and veterinary border control point, the veterinary officer for border control supervises the compliance with the AWA and provisions and regulations issued under it.

Moreover, according to Section 38 of the AWA, the Regional State Administrative Agencies can grant an individual person a license to act as an animal welfare supervisor who then has the power to act when an offence is suspected.<sup>7</sup> However, an animal welfare supervisor is not an authority. A proper education, enough experience and knowledge of the inspected species are prerequisites for acting as an animal welfare supervisor. Completion of a course on animal welfare is a requirement. The license can include one or more species. An animal welfare supervisor does not have the right to perform an inspection that violates domestic peace; only the animal welfare authorities have that right. Nevertheless, an animal welfare supervisor is allowed to assist the animal welfare authorities when an inspection requires disturbance of domestic peace (Section 39(4) of the AWA).

The Finnish Federation for Animal Welfare Associations (SEY) also provides animal welfare counselling and information via telephone or e-mail. In addition, the counsellors also make visits to farms or to other places where animals are kept.<sup>8</sup> However, since the counsellors have no official status in the animal welfare administration they act as private individuals.<sup>9</sup>

## 2 Animals in the administrative and criminal procedure

Matters concerning animal welfare can be dealt with either in an administrative or criminal procedure or in both at the same time. If an individual or an authority suspects maltreatment of an animal the individual or authority informs the animal welfare officials, which can then conduct an animal welfare inspection.

During the inspection, the owner or the possessor of the animal must be heard, unless the inspection is urgent and hearing the owner or possessor would incur delay. After the inspection, the authority makes a legal administrative decision, which is subject to appeal in the administrative court. The initiation of an appeal in the administrative court begins the administrative procedure. The ruling of the administrative court must be implemented for it to have significance, but there is no specific provision for the enforcement of its decisions.

A criminal procedure concerning a crime against an animal starts when the police initiate a preliminary investigation based on a notification or otherwise resulting from police observations regarding

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<sup>7</sup> There are 18 animal welfare supervisors. Finnish Food Authority, 'Eläinten hyvinvoinnin valvonta 2018', 8 <[https://www.ruokavirasto.fi/globalassets/viljelijat/elaintenpito/elainten-hyvinvointi/elainten\\_hyvinvoinnin\\_valvonta\\_2018.pdf](https://www.ruokavirasto.fi/globalassets/viljelijat/elaintenpito/elainten-hyvinvointi/elainten_hyvinvoinnin_valvonta_2018.pdf)> accessed 10 June 2019.

<sup>8</sup> There are approximately 75 voluntary animal welfare counsellors. Annually, they make around 1300 visits to animal shelters. Suomen eläinsuojeluyhdistysten liitto SEY (The Finnish Federation for Animal Welfare Associations), 'SEYn eläinsuojeluneuvot' <<https://www.sey.fi/seytoimii/elainsuojeluneuvonta>> accessed 20 August 2019.

<sup>9</sup> It is also possible for a city to hire an animal welfare counsellor. This has been done in the City of Turku. However, this kind of animal welfare counsellor is not an official animal welfare authority as indicated in the AWA.

compliance with the law. An animal welfare investigation may precede the notification. Thereafter, the criminal procedure proceeds to the consideration of charges and possibly to a hearing in a district court. A permit for continued consideration from the court of appeal is needed if the first judgement is appealed against. However, the permit is not required if the defendant is convicted and given a sentence of more than eight months imprisonment.<sup>10</sup> Appealing to the Supreme Court also requires a permit. The criminal procedure ends with the enforcement of the punishment. If the punishment includes provision for a ban on the keeping of animals, supervision of the ban becomes an administrative matter.

Administrative decisions after an animal welfare inspection can thus lead to an administrative process, a criminal process or both. An administrative decision can be retained or overturned in the administrative procedure. In a criminal procedure, cruelty towards animals can lead to a punishment, a possible ban on the keeping of animals and a forfeiture. The ban can have more serious consequences for the convicted person than a punishment, especially if he or she makes their livelihood from animals. A prohibition or an order given in an administrative decision is a more effective way to protect the animal than waiting for the preliminary investigation, consideration of charges and the ruling of a court. For the criminal procedure to proceed, there must be at least a strong suspicion of cruelty towards animals, sometimes involving animal deaths or the necessity to put animals down. By contrast, administrative compulsion measures can be used quickly when the care of animals is deemed inadequate. This can prevent the suffering of the animal. However, the direct effects perish if the enforcement of the administrative decision is ignored.

Although a criminal procedure does not provide the animals with immediate protection in the same way as the administrative procedure, it is nevertheless necessary and justified from a preventative perspective. The criminalisation of the maltreatment of an animal sends a social message and strengthens the idea that cruelty towards animals is wrong and immoral. The possibility of a ban on keeping animals is intended to ensure that animals will not become victims of people who are criminally negligent because they are unable to take care of their animals.

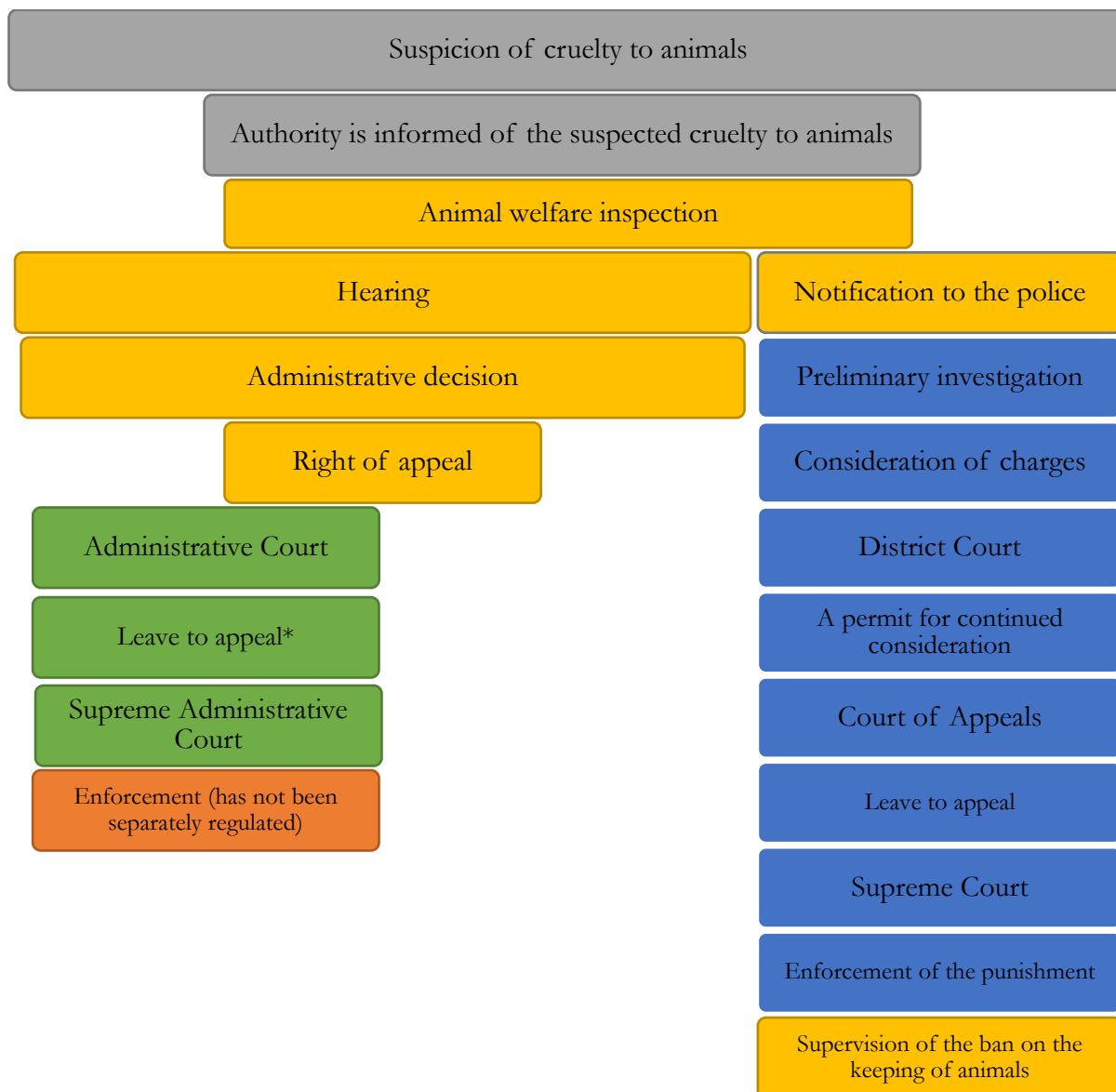
Figure 1 presents the procedures of an animal welfare matter in Finland in a condensed form. Both an administrative and a criminal procedure can be in progress independently and possibly even simultaneously. If there is suspicion that the AWA, provisions based on it or the Slaughter Regulation are being violated, the animal welfare official must, according to Section 63 of the AWA, inform the police without delay. The animal welfare authority has no discretion to inform the police.<sup>11</sup> If there are both procedures in progress, it is possible that the administrative procedure results in the nullification of

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<sup>10</sup> When evaluating the severity of the punishment one does not take the ban on the keeping of animals into account. Conditionality or unconditionality of the imprisonment does not affect it either. Government bill (HE) 246/2014 vp, 25.

<sup>11</sup> According to Section 188(1) of the Nature Conservation Act (527/2014) a notification to the police can be left out of the procedures if the act is insignificant overall and public interest does not demand the pressing of charges. The Water Act (587/2011) and Forest Act (1093/1996) also have similar provisions for discretion that concern the notification to officials. According to Chapter 14 Section 2 of the Water Act an official must notify the police of all violations against provisions or orders given in the Act if the violation is not considered insignificant under the circumstances. According to Section 22(1) of the Forest Act, a notification to the police can be omitted if the violation or dereliction is insignificant and public interest does not demand a detailed investigation of the matter.

the administrative decision, but the criminal procedure decides to convict the accused party, or vice versa. Administrative compulsion and a criminal conviction do not violate the *ne bis in idem* -prohibition<sup>12</sup>.



**Figure 1.** Progress of an animal welfare matter in administration (yellow), in administrative procedure (green) and criminal procedure (blue).

\*Will come into force on January 1, 2020. Government Bill (HE) 29/2018 vp.

<sup>12</sup> The *ne bis in idem* -prohibition is based on Protocol 7 of the European Convention on Human Rights (ECHR). Section 4(1) of the protocol states that “no one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State”. The application of the prohibition requires that both sanctions must be comparable to criminal punishments. There have been several judgements in the ECHR and in the Supreme Court of Finland that are based on the *ne bis in idem* -prohibition. The prohibition was reflected in a case concerning animal welfare in the judgment given by the Court of Appeal of Eastern Finland in 2017. The court stated that measures ordered under Section 44 of the AWA do not preclude the implications of a criminal procedure. Court of Appeal of Eastern Finland 3.10.2017 R 17/141 No 17/138869.

## 3 Animal welfare control

### 3.1 The right to conduct an animal welfare investigation

Chapter 4 of the AWA regulates the supervision of animal welfare. An inspection is carried out if authorities are informed of a suspicion that an animal is being mistreated or misused according to the provisions of the AWA, provisions and regulations based on it, or the Slaughter Regulation. The inspection may be carried out by the Regional State Administrative Agency, a municipal veterinarian, local health protection authorities, the police or an animal welfare supervisor. Thus, the threshold of animal welfare supervision is an informed suspicion.<sup>13</sup> But what constitutes sufficient suspicion? The legislation and the drafting materials are silent on this issue, nor has the Finnish Food Authority given any instructions to veterinarians on the specifics of the threshold. Therefore, each situation has to be evaluated individually.

An inspection may also be carried out without a suspicion, according to Section 39(2) of the AWA, in a circus, zoo, permanent or travelling exhibition, animal contest, animal farms, game management farms, and in places where there is professional or otherwise large scale keeping of pets. In these cases, the inspection is also carried out by the Regional State Administrative Agency, a municipality veterinarian, a local health protection authority, the police or an animal welfare counsellor. Moreover, the inspection veterinarian and meat inspector can conduct inspections at animal shelters and slaughterhouses without suspicion. Naturally, the foregoing cases do not have any threshold that would need to be surpassed for the administrative procedure to start. Furthermore, the veterinarians of the Regional State Administrative Agencies conduct, according to Section 48 of the AWA, so-called EU-inspections involving taking of samples.<sup>14</sup> This is based on Council Directive 98/58/EC of 20 July 1998 concerning the protection of animals kept for farming purposes.<sup>15</sup>

Inspections of animal premises or involving disturbance of domestic peace are regulated in Sections 39(3) and 39(4) of the AWA. The inspectors have the right to enter the spaces where the animals are being kept and take necessary samples. Both the animals and their surroundings are the targets of the inspection. Any food, equipment, tools and documentation can also be inspected. An inspection that breaches domestic peace can only be carried out by animal welfare authorities. A sample can be taken only if it is necessary to reveal specific details that come within the remit of the inspection and if there is reason to suspect a violation of the AWA.

There is no regulation concerning the passivity of an animal welfare authority. However, every authority has an obligation to act in accordance with the Administrative Procedure Act and legislation on public officials. An obligation to act means that an authority must use its competence to carry out the public tasks imposed on it. Passivity and the failure to act within the imposed competence can be judicial errors. On the other hand, it is fairly difficult to make an accusation of passivity in an effective judicial manner.<sup>16</sup>

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<sup>13</sup> A study that concentrated on pet animals revealed that in 33 percent of the cases an inspection was made before the report of an offence. Tarja Koskela, 'Eläinsuojelutarkastus ja eläinsuojelurikoksesta ilmoittaminen – Kansalaisaktiivisuutta vai viranomaisvalvontaa?' 2013/22 Edilex 1, 8. A suspicion can be notified by a private entity or another authority.

<sup>14</sup> The inspections are based on sampling because this ensures uniformity of coverage, risk allocation and supervision. Finnish Food Authority, 'Eläinten hyvinvoinnin valvonta 2015' (Evara/3300/0411/2016), 4 <<https://www.ruokavirasto.fi/globalassets/viljelijat/elaintenpito/elainten-hyvinvointi/elainten-hyvinvoinnin-valvonta-2015.pdf>> accessed 12 March 2019.

<sup>15</sup> Council Directive 98/58/EC on the protection of animals kept for farming purposes [1998] OJ L221, 23–27.

<sup>16</sup> Tarja Koskela, 'Optimaalinen eläinsuojelu rikosprosessissa ja julkishallinnossa' (LLD thesis, University of Eastern Finland 2017) 62–70.

### 3.2 Actions based on the inspection

As a consequence of the inspection the authority makes an administrative decision that initiates actions to protect the animal(s). These actions vary from instructions given to the owner to administrative compulsion measures. The competence to make administrative decisions that concern animal welfare is with the Regional State Administrative Agency, local health protection authorities, inspection veterinarians, border veterinarians and the police. When an animal welfare supervisor notices that the AWA, rules based on it or the Slaughter Regulation are breached, the supervisor must, according to Section 41(1) of the AWA, inform animal welfare authorities.

The potential measures against an offending owner or possessor of an animal have been tightened progressively. The inspective authority's primary task is to give instructions to enhance the welfare of the animal and to correct the faults. A minor fault, for example, might be that a cat or a dog does not exceptionally have drinking water available at the time of the inspection. Instructions are given in situations when there is no proper misconduct yet to be observed. The instructions can, for example, ensure that animals are given sufficient nutrition to avoid future harm.<sup>17</sup>

If the instructions are insufficiently observed, the authorities can use administrative coercive means. This means that an administrative order is given obliging the owner or possessor to discontinue the actions that breach animal welfare regulations (Section 42 of the AWA). Alternatively, the owner or possessor can be ordered to fulfil his responsibilities within a reasonable time period.<sup>18</sup>

Should the subject of an administrative decision fail to comply with a binding decision, its enforcement can be intensified by using means of compulsion.<sup>19</sup> These means might be either a penalty payment or a threat that otherwise something will be ordered done at the defaulter's expense. These are set to enhance the compliance to the primary obligation. A penalty payment can only be imposed on a party that is legally and factually obliged and capable of complying with the primary obligation. A penalty payment is an instrument that is used in administrative procedure, but which should not be confused with a penalty in a criminal procedure. The principle of proportionality must be applied when ordering a penalty payment, which is regulated in its own law (1113/1990).

If animal welfare reasons so require, the animal welfare authorities can, according to Section 44 of the AWA, take immediate action to ensure the welfare of an animal. The animal can be given proper treatment and provided with feed or other necessary nutrition or materials. If this is not feasible, the animal may be killed or sent to be slaughtered or sold, by auction or otherwise, at its current value.

If the animal welfare authority, primarily the veterinarian, decides to carry out some of the above-mentioned actions, the expenses will be covered by the owner or the possessor regardless of the chosen

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<sup>17</sup> Government bill (HE) 36/1995 vp, 32.

<sup>18</sup> Special provisions have been given regarding the supervision of animal products for human nutrition in Section 5 of Regulation (EC) 854/2004 of the European Parliament and of the Council of 29 April 2004, laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption OJ L139, 206. Supervision regarding the provisions of feed and food legislation and the animal health and welfare legislation is regulated in Section 54 of the Regulation (EC) 882/2004 of the European Parliament and the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules OJ L165, 1, and in Section 22 of the Slaughter Regulation.

<sup>19</sup> Administrative compulsion can be indirect or direct. Indirect compulsion aims to coerce a party to perform a certain task or stop a certain action under penalty of an official imposition. The prerequisite is that the prohibition, order or administrative compulsion has a legal basis. Direct compulsion means that a desired situation is achieved through the actions of authorities.

measures. If the selling or slaughtering provides income, the expenses are deducted from that income, any remainder being given to the owner or the possessor.

The expenses of urgent procedures done to an animal can be covered by the sum allocated for the official veterinary treatment in exceptional circumstances. In this case, the expenses will nonetheless be collected from the owner or possessor according to standard recovery procedures that apply to taxes and other payments. If the expenses cannot be recovered, they will remain expenses of the state.

## 4 Animal crimes and example cases

### 4.1 Animal welfare offence

Animal welfare offence is regulated in the Criminal Code, Chapter 17 Section 14, as follows:

A person who intentionally or through gross negligence, by violence, excessive burdening, failure to provide the necessary care or food in violation of

- 1) the Animal Welfare Act or a provision given on its basis,
- 2) the Act on the Transport of Animals (1429/2006) or a provision given on its basis,
- 3) annex I of Council Regulation (EC) No 1/2005 on the protection of animals in transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97 or
- 4) Council Regulation (EC) No 1099/2009 on the protection of animals at the time of killing

treats an animal cruelly or inflicts unnecessary suffering, pain or anguish on an animal, shall be sentenced for an *animal welfare offence* to a fine or to imprisonment for a maximum of two years.

In each subsection below examples of actual cases are given to illustrate how law functions in animal welfare offence.

#### 4.1.1 Violence

The first example of an animal welfare offence involving assault on an animal involved person A, who had kicked and hit a cow multiple times with a wooden stick after the animal had given birth. After this A had strapped a rope onto the horns of the cow and dragged the cow out of the barn approx. 20–30 meters by using a bucket loader. During the act, pieces of skin had been ripped off. A had left the cow outside for a whole day before putting it down with a gun. A was convicted of an animal welfare offence and sentenced to 80 day fines<sup>20,21</sup>.

In the other case person B had assaulted C's eight-month-old dog by pulling it by its leash, causing the choke collar to strangle the dog. B had also kicked the dog more than ten times. Some of the kicking happened while the dog was suspended in the air by its leash. After a few hours, the dog died of its

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<sup>20</sup> A fine is passed as day fines and it is based on the offender's monthly income. The minimum amount of a day fine is 6 euros. The minimum number of day fines is one and the maximum is 120 (Criminal Code, Chapter 2a Section 1) and a joint fine may be at most 240 day fines (Criminal Code, Chapter 7 Section 3).

<sup>21</sup> District Court of Northern Savo 22.5.2015 R 14/2218 No 15/122482.



injuries. B was convicted of an animal welfare offence and damage to property and sentenced to joint conditional imprisonment<sup>22</sup> for three months.<sup>23</sup>

#### **4.1.2 Excessive burdening**

An act was considered an animal welfare offence because it caused excessive burdening, when person D had chased a wolverine with a snowmobile by following its tracks. The wolverine was chased for four kilometres before the pursuer caught up with it. D then shot it once with a shotgun at close range so that a part of the animal's chin came off. After the first shot the wolverine had fled another 200 metres before it was shot again by D. D was convicted of a hunting offence, animal welfare offence, cross-country traffic offence and hunting infringement to a joint conditional imprisonment for 5 months.<sup>24</sup>

In a similar case, persons E and F had chased a bear that was fleeing from them. They chased the bear with a snowmobile for dozens of kilometres, and according to the prosecution causing the bear excessive physical stress and suffering. E and F had intended to kill the bear. The District Court determined that it could not be shown that the bear had suffered excessive stress or pain (as described in CC 17:14) and therefore the charges were dropped.<sup>25</sup>

#### **4.1.3 Failure to provide the necessary care or food**

An act was considered an animal welfare offence involving rejection of necessary treatment, when person G had neglected to provide two dogs with sufficient nutrition between 1.2.2016 and 16.4.2016. In April 2016, G had also left his apartment for a week, leaving the dogs without necessary care. The apartment was full of excrement and dirt, and therefore unsuitable for keeping animals. G was convicted of an animal welfare offence and sentenced to a conditional imprisonment of 60 days and banned from keeping any animals for the next 4 years.<sup>26</sup>

In another case person H had neglected to look after some pigs that were in his charge, denying them sufficient nutrition, water and medical care. There had been rotting carcasses and bones of dead pigs amongst the living ones. Some of the remains had been eaten by the other pigs. The condition of the living pigs had varied significantly. Some of the sows had untreated udder infections and one could not even stand up because of leg injuries. The water pipes had broken in the farrow unit so that the animals did not have any drinking water available. Also, the quality of the air was extremely bad. Other units had shortages in the water systems and the structures of the stalls were in bad condition. The stalls were covered by a 5-centimetre layer of faeces and the animals were dirty. The manure removal system had not been used or it was broken. The living pigs were put down for animal welfare reasons. H was convicted of an animal welfare offence, sentenced to a conditional imprisonment of six months and issued with a ban on the keeping of any animals for the next 7 years.<sup>27</sup>

#### **4.1.4 Animal transport**

An act has been considered an animal welfare offence during animal transportation, when person J had not provided cows with enough nutrition, water or rest when they were on the way to the slaughterhouse.

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<sup>22</sup> If a person is to be sentenced to imprisonment for two or more offences at the same time, he or she shall be sentenced to a joint punishment of imprisonment, unless otherwise provided elsewhere in law (Criminal Code, Chapter 7 Section 1).

<sup>23</sup> District Court of Päijät-Häme 27.3.2014 R 14/15 No 14/114002.

<sup>24</sup> District Court of Lappi 26.4.2013 R 12/300 No 13/507.

<sup>25</sup> District Court of Oulu 8.2.2011 R 10/2799 No 11/299.

<sup>26</sup> District Court of Vantaa 14.9.2016 R 16/1795 No 16/137038.

<sup>27</sup> District Court of Central Ostrobothnia 12.11.2015 R 15/333 No 15/148817.

In addition, milking had not been carried out every 12 hours, thus violating the regulated time limit. The first transportation had lasted 14 hours and 40 minutes even though the vehicle had been approved for transportations of no more than 8 hours' duration. The insides of the vehicles were filled with faeces and urine and the quality of air was poor. Person J was convicted of an animal welfare offence and sentenced to 40 day fines.<sup>28</sup>

#### 4.1.5 Killing

An act has been considered an animal welfare offence during the killing of the animal, when person K had killed a three-month old cat by drowning it in hot water. K had placed the cat in a basket filled with hot water and pressed the cat under the surface. The cat had drowned within minutes. K was convicted of an animal welfare offence and sentenced to 35 day fines.<sup>29</sup>

In another case a person L had slit the throat of a puppy with a kitchen knife at the request of its owner. As a consequence of the cutting, the hyoid bones had been damaged, and the gullet and windpipe were in contact with the outside air. The puppy had been able to escape, and it was later found still alive in a nearby shack. The wound was swollen, purulent and stinking. The veterinarian was forced to put the dog down for animal welfare reasons. L was convicted of an animal welfare offence, sentenced to a conditional imprisonment of 60 days and banned from the keeping of any animals for the next 2 years.<sup>30</sup>

## 4.2 Aggravated animal welfare offences

Aggravated animal welfare offence is regulated in the Criminal Code, Chapter 17 Section 14a, as follows:

If in the animal offence

- 1) the offence is committed in an exceptionally brutal or cruel manner,
- 2) the offence is directed at a considerably large number of animals, or
- 3) the intention is to obtain considerable financial benefit,

and the offence is aggravated also when assessed as a whole, the offender shall be sentenced for an *aggravated animal welfare offence* to imprisonment for at least four months and at most four years.

Examples of such offences are given below.

### 4.2.1 Brutal or cruel manner

A crime was committed in a particularly brutal and cruel manner<sup>31</sup>, when person M had deliberately physically abused his dog every day for several months by beating it against tables, door frames, the floor etc. Later examination found multiple bruises, a fracture of the right thigh bone, a loose paw nail, a huge haematoma under the chin, severe swelling in the head and bleeding from the urethra. M was convicted

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<sup>28</sup> District Court of Oulu 18.2.2011 R 09/2511 No 11/513.

<sup>29</sup> District Court of Northern Savo 18.2.2015 R 15/134 No 15/107233.

<sup>30</sup> District Court of Ylivieska-Raahe 15.1.2013 R 12/909 No 13/69.

<sup>31</sup> The emphasis is in the roughness of the act – kicking in the head is considered rough and cruel. Violence towards a defenceless animal is usually considered ruthless. An extremely rough or cruel act can be, for example, setting the animal on fire, repeated torture or infliction of a slow death. Also, dog and cock fights are considered extremely rough and cruel. Government bill (HE) 97/2010 vp, 24.

of an aggravated animal welfare offence to a conditional imprisonment of 6 months and was issued with a ban on the keeping of animals (pets) for the next 5 years.<sup>32</sup>

In another case, person N had owned 23 bovines whose nutrition, sanitation and other treatment had been neglected to the point that some had died. The floor of the barn was covered in faeces. Faeces was found on feeding tables and the depth of faeces under the animals was over half a metre. The calf unit had the same amount of faeces. One dead calf was found almost completely decomposed under the faeces. Another partly rotted calf was found on the top of a radiator. Ten to twelve cow carcasses in the stall slots had largely rotted away. The lack of treatment had been complete and long-lasting. N tried to cover up his actions by setting the barn on fire. All but one of the living cows died in the fire and the one that escaped had to be put down afterwards. N was convicted of an aggravated animal welfare offence and sentenced to a conditional imprisonment of 10 months and banned from the keeping of any animals for the rest of his life. He was also sentenced to 40 day fines.<sup>33</sup>

An act was considered an aggravated animal welfare offence when person O had deliberately physically abused a (four-year-old) dog owned by X. The abuse was caused by the dog's failure to obey O's orders. The dog had feared O and tried to run away from O. O had hit the dog with a plastic shoehorn several times. The shoehorn had broken due to the heavy hitting. Afterwards O had continued the beating with a rug beater. The dog looked for shelter behind a bed, but O had continued to beat the dog while standing on top of the bed. Finally, the dog had crawled under a low dresser and O again whipped the animal with the rug beater. Another person had found the dog several days later and taken it to the veterinarian. The dog had been bleeding badly and it had been vomiting constantly. Some of the dog's teeth had been torn from the gums and others stuck out unnaturally. Other soft tissue injuries were also discovered. O was convicted of an aggravated animal welfare offence, sentenced to a conditional imprisonment of 7 months and issued with a ban on the keeping of dogs or other small animals for the next 5 years.<sup>34</sup>

#### **4.2.2 Large numbers of animals**

An aggravated animal welfare offence was committed by person P who had owned and managed approx. 400 sheep. The feeding of the animals had been neglected which had resulted in severe malnourishment. The feed had not been sheltered from dirt and the water containers were also dirty. The sheep had not been sheared and their cloven hoofs had not been taken care of. Because of this bad treatment, the sheep were filthy all over and had begun to shed their wool. The untreated cloven hoofs had caused movement difficulties and pain. The stalls were dirty, and the structures were assessed as dangerous for the sheep. The animals had endured extreme coldness due to their wet living conditions and dirty wool. The maltreatment had been long-lasting. The sheep had to be put down quickly for animal welfare reasons. P was convicted of an aggravated animal welfare offence to a conditional imprisonment of 4 months and banned from the keeping of farm animals for a year.<sup>35</sup>

Another case involved person Q, who had kept a large number of sheep between 8.9.2011 and 5.8.2015. The number varied from 200 to 500. During several animal welfare inspections, numerous insufficiencies were found in the living conditions and treatment of the animals, for example:

- the shearing had been neglected and the animals were dirty,
- lack of food and water,

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<sup>32</sup> District Court of Päijät-Häme 10.12.2015 R 15/523 No 15/153922.

<sup>33</sup> District Court of Central Ostrobothnia 13.6.2013 R 13/103 No 13/104458.

<sup>34</sup> District Court of Oulu 8.11.2013 R 12/2699 No 13/124625.

<sup>35</sup> District Court of Northern Carelia 27.5.2015 R 15/421 No 15/123219.

- the environment contained harmful substances,
- the buildings were dangerous,
- the weather shelters were faulty,
- cloven hoofs were uncared for,
- carcasses of sheep were found amongst the living ones,
- the treatment of sick animals was neglected (an ewe had its horn burst through its skin and the skin had an infectious inflammation, some ewes had abscesses in their udders, one had several rotting lambs in its uterus, some sheep had frostbitten ears), and
- orphan lambs were left for dead.

Q was convicted of an aggravated animal welfare offence and degradation of the environment, sentenced to a joint conditional imprisonment of one year and banned from the keeping of any animals for life.<sup>36</sup>

#### 4.2.3 Considerable financial benefit

The act can be considered an aggravated animal welfare offence if there is an intention to obtain considerable financial benefit. For an act to be considered aggravated, it is required that activities have circumvented the animal welfare legislation to pursue significant financial profits. Thus, an aggravated act might also come under the aforementioned classification involving large numbers of animals. However, it must be acknowledged that a large number of animals is not essential for the pursuit of financial profit.<sup>37</sup> For instance, individual or small numbers of animals with valuable fur or rarity value may fetch a high price in the markets.

An example of an act that was considered as an aggravated animal welfare offence occurred between 27.10.2013 and 9.2.2016, when person R was keeping 50 dogs solely for the purpose of seeking financial benefit from the sale of puppies.<sup>38</sup>

### 4.3 Petty animal welfare offence

Petty animal welfare offence is regulated in the Criminal Code, Chapter 17 Section 15, as follows:

If the animal welfare offence, in view of the nature of the suffering, pain or torment caused or the other circumstances of the offence, is petty when assessed as a whole, the offender shall be sentenced to a fine for a *petty animal welfare offence*.

A good example of a petty animal welfare offence was a case where person S had deliberately physically abused the cross-bred dog of Y by punching it on the top of its head. After this act, the dog became hostile towards people. S was convicted of a petty animal welfare offence and sentenced to 15 day fines.<sup>39</sup>

In another case person T had deliberately or in gross negligence neglected to provide the necessary nutrition, water supplies and exercise for his three horses and one pony. Moreover, T had failed to clean the stall and the hoofs of the pony, which resulted in hypertrophy of the hoofs. T was convicted of a

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<sup>36</sup> District Court of Western Uusimaa 30.9.2016 R 15/1686 No 16/140166.

<sup>37</sup> Government bill (HE) 97/2010 vp, 25.

<sup>38</sup> Vaasa Court of Appeal 4.12.2018 R 17/1007 No 18/153596.

<sup>39</sup> District Court of Central Finland 18.12.2012 R 12/1137 No 12/3858.

petty animal welfare offence, sentenced to 30 day fines and issued a ban on the keeping of horses for the next five years.<sup>40</sup>

## 4.4 Animal welfare infringement

Animal welfare infringement is regulated in the Animal Welfare Act Section 54 as follows:

A person who intentionally or through negligence

- 1) treats an animal against the regulations of the AWA or provisions or regulations issued under it, or
- 2) uses an implement, piece of equipment or substance referred to in section 12 (AWA) whose use is prohibited, or
- 3) performs a procedure referred to in sections 7 (AWA, procedures performed on animals) or 9–11 (AWA, influencing the performance and the productivity of animals and forced feeding of animals) in a way that violates these sections, or
- 4) imports or tries to import an animal in a way that violates the prohibition referred to in section 28 (AWA),

must be sentenced to a fine for animal welfare infringement, unless the deed is to be punished under Chapter 17, sections 14 (animal welfare offence), 14a (aggravated animal welfare offence) or 15 (petty animal welfare offence) of the Penal Code or a more severe punishment is set down elsewhere in law.

A sentence for animal welfare infringement may also be imposed on a person who intentionally or through negligence violates a ban on the keeping of animals or acts as an agent in evading such ban.

Few example cases are given below.

Person U had kept his dog outside strapped on a short leash and had not provided the dog with any water and other necessary care. When the dog was found it was extremely thin and a-pathetic and it had most likely been bleeding. The dog had given birth to puppies and U had neglected its welfare during the time of labour. U had also kept the dog outside in freezing cold conditions. U was convicted of an animal welfare infringement and sentenced to 6 day fines.<sup>41</sup>

In another case, person V had deliberately or through negligence violated his permanent ban on the keeping of animals. According to the ban, V was allowed to keep a maximum of 18 bovines and two horses. An inspection revealed that V had 25 bovines/cattle and six horses. Furthermore, V had performed his duties inadequately. V was convicted of an animal welfare infringement and an animal welfare offence and sentenced to a joint conditional imprisonment of 30 days.<sup>42</sup>

## 5 Criminal sanctions as a result of an animal crime

### 5.1 A ban on the keeping of animals and its legal content

A ban on the keeping of animals is prescribed in the Criminal Code, Chapter 17 Section 23. Such a ban is ordered by the court if requested by the prosecutor. When someone is convicted of an aggravated animal welfare offence, a ban on the keeping of animals should be ordered as well. However, the court

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<sup>40</sup> District Court of Päijät-Häme 1.2.2012 R 11/2445 No 12/187.

<sup>41</sup> District Court of Central Finland 4.11.2014 R 14/2082 No 14/147559.

<sup>42</sup> District Court of Southern Carelia 21.2.2013 R 12/1607 No 13/353.

can refrain from ordering the ban if there are strong reasons against it. A ban can also be ordered as a consequence of an animal welfare offence or petty animal welfare offence or imposed on a person who is convicted of an animal welfare infringement or animal transport violation and deemed unfit to take care of animals. A ban on the keeping of animals may also be imposed on a person for whom a punishment is waived on the basis of the Criminal Code (for example, if the perpetrator is not criminally responsible, the punishment is deemed unreasonable or pointless in the circumstances, or the punishment would have no effect on the total sentence due to the provisions on sentencing to a joint punishment).

If a ban on the keeping of animals is ordered, the subject of the ban is not allowed to own, keep or look after animals or to be responsible for their welfare. The ban can concern certain animal species or animals in general. On certain grounds the court may, however, order that the convicted person can continue to own certain animal if that animal was not the object of the offence and he or she had owned it at the time that the decision was made - if it is possible to identify these factors in the decision.

The prohibition can be ordered for a minimum of one year or permanent. A permanent ban can be ordered if:

- 1) the person on whom the ban is imposed is guilty of an aggravated animal welfare offence,
- 2) an earlier ban on the keeping of animals had been imposed on the person in question for a fixed period and said ban had become legally final,
- 3) the state of health of the person on whom the ban is imposed is poor, and the person is considered permanently unfit or unable to own, keep or care for animals or otherwise be responsible for their welfare (Criminal Code, Chapter 17 Section 23(3)).

When a court considers that a ban on owning an animal would be unjust, it can rule that the keeping of a certain animal is allowed. The subject of the ban cannot, however, be responsible for that animal's daily care. This kind of derogation enables a person who is otherwise prohibited from keeping animals to own, for example, a valuable racehorse abroad or a valuable breeding animal. In this case, it is naturally required that these animals have not been the subject of the crime and that they were already owned by the person during the crime. The owner can also be a company or corporation in which the convicted is a stakeholder. In such situations, it is deemed sufficient that the person who has the ban imposed will not, in practice, keep, look after or otherwise be accountable for the welfare of the animals of the company.<sup>43</sup>

The ban on the keeping of animals must be complied with even if there is a petition for appeal. However, the Court of Appeal can decide to forbid the enforcement of the ban until the judgement becomes final.

## **5.2 Different variations on a ban on the keeping of animals**

As pointed out earlier, a ban on the keeping of animals can concern either all animals or just certain species. If the ban concerns, for example, dogs, the person is not allowed to keep dogs but may keep other animals. If the ban concerns all animals, the person is not allowed to keep any animals. The content and duration of these prohibitions entail many variations.

Some examples are given below.

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<sup>43</sup> Government bill (HE) 97/2010 vp, 16.

*A fixed period ban:*

Person A had neglected the treatment of his horses. The ribs and the spinous processes of the horses were clearly visible, and their muscles were atrophied. The nutrition of the horses had been insufficiently frequent of poor quality and partly mouldy. The stalls were dirty and wet and there was equipment lying around causing a risk of injury. The horses had also been left without proper medical treatment for a long time. A was banned from keeping *horses for one year*.<sup>44</sup>

Person B had left his dog without proper medical care, although the dog had (1) fractures in its hip and thigh bone, (2) inflammation in the bladder and kidneys, and (3) a bruise on the front leg and tenosynovitis. B was banned from keeping *dogs, cats and other household pets for two years*.<sup>45</sup>

Person C had killed his (20-weeks old) puppy by violently pushing its head into the toilet bowl while the puppy was trying to struggle. Eventually the puppy died. C was given a ban on the keeping of *all animals for five years*.<sup>46</sup>

*A permanent ban:*

Person D had neglected the treatment of his bovine animals. For example, D had failed to feed, water or take care of cloven hoofs. D was given a *permanent ban* on the keeping of *bovine animals*.<sup>47</sup>

Person E had left four of his kittens without proper medical care and nutrition, so that all of them died. Moreover, E had earlier been given a ban on the keeping of animals (dogs), but he had disobeyed this order. E was given a *permanent ban* on the keeping of *all animals*.<sup>48</sup>

*A ban with exceptions:*

Person F was accused of dereliction of his dogs and convicted of an animal welfare offence. At the same time, he was *permanently banned from the keeping of any animals*, but he was nonetheless *allowed to keep his two cats and to take care of his son's dogs* every now and then.<sup>49</sup> The verdict of the court regarding the ban could be criticized because the possibility of a derogation requires that the person will not be responsible for the daily care of an animal.

Person G had kept as many as 26 dogs and 17 cats. The animals were malnourished and in poor condition. The dogs were held inside and outside the house. G had been keeping the animals in small cages against regulations. Some of the dogs outside did not have any shelter from weather conditions. The available water had been dirty and some of the animals had no water at all. The premises had been a target of animal welfare inspections several times. G was given a ban on the keeping of *cats and dogs for five years*, but he was nonetheless *allowed to keep* a maximum of four dogs and three cats.<sup>50</sup>

Person H had around one hundred sheep whose treatment had been neglected. The sheep had not been sheared, their supply of food was inadequate, sick animals had not been treated appropriately and the

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<sup>44</sup> District Court of Southern Carelia 14.9.2015 R 15/975 No 15/134972.

<sup>45</sup> District Court of Pirkanmaa 7.9.2016 R 16/2794 No 16/135866.

<sup>46</sup> District Court of Helsinki 20.4.2016 R 15/8897 No 16/117066.

<sup>47</sup> District Court of Pirkanmaa 11.4.2017 R 16/7347 No 17/115022.

<sup>48</sup> District Court of Pirkanmaa 11.3.2015 R 15/510 No 15/111292.

<sup>49</sup> District Court of Northern Carelia 20.12.2016 R 16/1339 No 16/153648. The Court of Appeal of Eastern Finland rejected the defendant's complaint with a ruling R 17/141 No 17/138869.

<sup>50</sup> District Court of Pirkanmaa 16.6.2011 R 11/1708 No 11/3670.

living conditions they were in were filthy and dangerous. H was given a *permanent ban* on the keeping of *farm animals*. However, he was *allowed to keep* five same-sex sheep.<sup>51</sup>

Person J worked as a farmer's substitute. Several animal welfare inspections had been made to J's own animal premises and he had been given instructed several times to correct shortcomings. J had neglected to provide his animals with sufficient nutrition and water. Additionally, the environment of the animals was unsuitable for them and J had not obtained medical treatment for the animals. The shortages were long-lasting and animals were put down for animal welfare reasons. J had earlier been convicted of a similar crime. The district court ordered *a ban on the keeping of animals for five years*. However, the ban *did not include the work as a farmer's substitute*.<sup>52</sup> This kind of ban seems very peculiar. The ban on the keeping of animals means that its subject is not allowed to own, keep or care for animals, nor to be responsible for their welfare.<sup>53</sup> The issued ban on the keeping of the animals does not fulfil the object of the regulation.

*No ban:*

Persons K and L had owned almost a hundred cattle whose treatment they had been neglecting for a long time. The stalls were filled with faeces and the floor was partly broken. There was no weather shelter for the animals in the pasture. The cloven hoofs were not appropriately handled and the pallets for the calves were wet. The air quality in the stalls was poor and the water system did not function properly. K and L had neglected to treat or obtain treatment for sick animals and a dead animal was left in the stalls with the other animals. The district court *did not order a ban on the keeping of animals*. The district court justified this verdict by declaring that K and L had reduced the number of their animals and that it was likely that they were going to look after their animals more appropriately in the future.<sup>54</sup>

### **5.3 The register on a ban on the keeping of animals and supervision of a ban on the keeping of animals**

The Legal Register Centre maintains a national register of the bans on the keeping of animals ordered by the courts. A law concerning the register (21/2011) came into force on June 1, 2011. The purpose of the register is, according to the law, to supervise the compliance of the bans. The information in the register is classified.

The information in the register comprises the name of the person, their social security number, contact information and the specifics of the ban, meaning the duration and the objects of the ban. The ban is registered even when it does not yet have legal force because it must be obeyed despite the possibility of an appeal.<sup>55</sup>

The information from the register may be handed out regardless of its confidentiality if (1) authorities need it to supervise the compliance of the ban, (2) preliminary investigation authorities require it for their investigations, (3) a prosecutor needs it for the consideration of charges and for presenting a ban on the keeping of animals, (4) the information is required in the court where animal crimes and

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<sup>51</sup> District Court of Southwest Finland 14.10.2014 R 14/3078 No 14/142735.

<sup>52</sup> District Court of Eastern Uusimaa 29.11.2011 R 11/782 No 11/1323.

<sup>53</sup> Government bill (HE) 97/2010 vp, 16.

<sup>54</sup> District Court of Pirkanmaa 20.8.2013 R 13/2944 No 13/110604.

<sup>55</sup> Government bill (HE) 97/2010 vp, 33.



prohibitions are in process, and (5) rural district authorities need it for intensification of animal welfare supervision and supervision of terms of farming subsidies.<sup>56</sup>

The register can also give out information to private individuals if it is deemed necessary for an acceptable reason. One such reason is the selling and buying of an animal. Additionally, breeding associations – like the Finnish Kennel Club (Kennelliitto) and The Finnish trotting and breeding association (Hippos) – can require a person who wants to register an animal to present an excerpt from the register. That kind of use of the register has been very limited.<sup>57</sup>

The animal welfare inspection is regulated in the AWA, but the supervision of the ban on the keeping of animals is not regulated either in the AWA or in the law concerning the register of the bans. In the absence of specific regulation on the supervision, the supervision can only be based on information of a suspected violation of a ban that the animal welfare authorities receive.

The supervision of the ban on the keeping of animals is the responsibility of every animal welfare authority that is allowed to get information from the register to supervise the compliance of the prohibitions. These authorities include the Ministry for Agriculture and Forestry, the Finnish Food Authority, the Regional State Administrative Agencies, local animal welfare authorities, inspection veterinarians and border veterinarians. Thus, supervision is the responsibility of several authorities. In practice, the task of supervision falls to veterinarians and the police. However, official supervision alone is not enough - notifications from active citizens are also required.<sup>58</sup>

It is possible that the subject of the ban on the keeping of animals lives together with someone else. In this case, other people in the household are allowed to keep animals. This includes the animals that the convicted person is not allowed to look after. For example, there can be a situation where a couple breed dogs but only one of the spouses is found guilty of an animal crime and is given a ban on the keeping of animals. This means that the person subject to the ban is not allowed to take care of the dogs nor is he/she allowed to look after their welfare. Nevertheless, it is more than likely that the couple keep on looking after the dogs together and any control of a possible violation of the ban is almost impossible.

#### **5.4 A forfeiture in connection with an animal welfare offence**

A forfeiture in connection with an animal welfare offence is prescribed in the Criminal Code, Chapter 17 Section 23a. A forfeiture is always ordered at the request of the prosecutor in the court. A person who is given a ban on the keeping of animals is also ordered to forfeit the animals that are subjects of the ban to the state.

A forfeiture can be imposed regardless of whose property the animals are. Thus, the animals can belong entirely or partly to the perpetrator or to someone else. In practice, if the subjects of the forfeiture belong to someone other than the defendant, the animals will be retrieved by their real owner during the process. This is especially the case if the defendant is accused of an aggravated animal welfare offence. Additionally, a chance for the real owner to retrieve the animal before the enforcement of the forfeiture can be provided.

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<sup>56</sup> Government bill (HE) 97/2010 vp, 18.

<sup>57</sup> Tarja Koskela, 'Eläintenpitokieltorekisteri valvonnan välineenä – Toteutuuko eläintenpitokieltorekisterilain tarkoitus ja tavoitteet?' 2015/40 Edilex 1, 20–32.

<sup>58</sup> Koskela, 'Eläinsuojelutarkastus ja eläinsuojelurikoksesta ilmoittaminen (n 13) 20–21.

The court can also reserve for the perpetrator a possibility to sell or otherwise sign away the ownership of the animals that are subject to the forfeiture before it is enforced. If this happens before the time limit given by the court, the forfeiture will expire. The sale is made by the perpetrator and he or she gets the income.<sup>59</sup>

It is worth noting that the forfeiture can be executed regardless of a petition for appeal. If the court has ordered a certain time limit for the sale or if there are other strong reasons, the court can delay the enforcement of the forfeiture. The provisions relating to the confiscation of the value can also be applied when considering the forfeiture in consequence of a violation of the ban on the keeping of animals.<sup>60</sup>

## 6 Legal praxis in animal welfare offences and aggravated animal welfare offences

Trials for crimes committed against animals are like any other criminal case, even though the target of the crime is an animal. In these cases, the evaluation of evidence is also performed just as in any other criminal case. How petty or aggravated the crime is deemed to be depends not only on the actual act but also on the personal attitude of the official handling the case. There is no ready answer for how many days a given animal species must be without food or water for the act to be considered petty or serious. The main criteria for assessing severity are the malignancy, dangerousness and repetitiveness of the act.<sup>61</sup> However, these criteria do not fit the assessment of crimes against animals particularly well. Mistreatment of animals is always harmful to them and repeated carrying out of a certain act does not necessarily make either the behaviour of the perpetrator or the suffering of the animal more serious than it would be were the act performed fewer times.

It is impossible to identify a typical animal welfare offence. Animal crimes are a very heterogenic group of acts. The number of animals that are maltreated varies greatly, as does the suffering, pain and agony caused to the animal. Animal crimes can comprise a kick that causes no severe damage or long-lasting maltreatment that causes great pain to the animal. In any case, the petty nature of the act is a rather vague criterion for the evaluation of the crime, which leads us back to questions of value judgment. It is usually easier to evaluate when an act is cruel and brutal than it is to evaluate levels of mildness in acts of lesser severity. This evaluation usually demands special expertise.

Crimes against animals have been divided into levels of seriousness, as clarified earlier. The basic level, the animal welfare offence (Criminal Code, Chapter 17 Section 14), is the most common crime performed against animals. District courts convict on average 150 defendants a year of animal welfare offences.<sup>62</sup>

In 2011-2016, the perpetrator was sentenced to a fine in 80% of *animal welfare offense* cases, which on average resulted to 43 day fines. The number of day fines varied from 10 to 100, almost half of which landed between 26 to 45 day fines.<sup>63</sup> In approximately 18% of the cases the sentence was imprisonment. Most of these imprisonments have been conditional, only four sentences having been unconditional. The

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<sup>59</sup> Government bill (HE) 97/2010 vp, 18.

<sup>60</sup> Government bill (HE) 97/2010 vp, 17.

<sup>61</sup> Government bill (HE) 222/2010 vp, 185.

<sup>62</sup> Suomen virallinen tilasto (SVT), 'Syytetyt, tuomitut ja rangaistukset' <<http://www.stat.fi/til/syyttr/tau.html>> accessed 4 June 2019.

<sup>63</sup> Tarja Koskela, 'Ankaroittiko rikoslain muutos oikeuskäytäntöä eläinsuojelurikoksissa?' [2018] (5) Defensor Legis 764, 770–71. In 2006-2009, in 90% of all animal welfare cases the penalty was a fine. The average penalty was 39 day fines. Tarja Koskela-Laine, 'Onko eläimellä väliä? – Eläinsuojelurikoksen empiirinen tutkimus' 2012/3 Edilex 1, 18. Research has only analysed judgements in which a person has been convicted of only one animal welfare crime in order to enable valid comparison of punishments.

length of these unconditional imprisonments varied from 30 days to four months, and two of the unconditional imprisonments were changed to community service. The length of the conditional imprisonments varied from 25 days to 12 months with the average length being 78 days. Most conditional imprisonment sentences were between 2 to 4 months.<sup>64</sup>

In 2011–2016, district courts imposed a ban on the keeping of animals in 53% of all animal welfare offence cases.<sup>65</sup> Slightly over a half of these bans have been general bans, meaning a ban on the keeping of all kinds of animals. Of all bans on the keeping of animals, approximately 4% were permanent, which means that the person can never own an animal again. The lengths of temporary bans varied between one and 15 years, but the average length was 3.5 years. Bans over six years in length were rare.<sup>66</sup>

From 2011 to 2018, there were 64 convictions for *aggravated animal welfare offences*.<sup>67</sup> For aggravated animal welfare offences, the penalty was always imprisonment; a minimum of four months and a maximum of four years. Almost without exception, these sentences were conditional, and their lengths varied between four and 14 months. The average length of these prison sentences were approximately seven months. Almost half of the sentences were to a maximum of six months of imprisonment.<sup>68</sup>

When a person is convicted of an aggravated animal welfare offence, they must simultaneously be sentenced to a ban on the keeping of animals. In 2011–2018 approximately a third of the bans on keeping animals were permanent. The length of temporary bans varied between one to ten years, with the average ban being just over five years. Around three-quarters of temporary bans were five to six years and about a third of all temporary bans concerned all animals. Over half of the permanent bans concerned all animals.<sup>69</sup>

## 7 Statistics

The annual number of animal welfare inspections on grounds of suspected<sup>70</sup> AWA violations is high. The notification is usually made by an outsider who has spotted a possible case of maltreatment.<sup>71</sup> Figure 2 shows that the number of inspections on grounds of suspicion has increased drastically from 2007 to 2018.<sup>72</sup> From 2011 to 2012, the number of inspections that concern pets increased significantly. A notable rise in inspections occurred between 2014 and 2015 when the number increased by 900.<sup>73</sup> Between 2007 and 2012, the number of suspected maltreatment cases of farm animals was higher than it was for pets, but since 2013 this ratio has been reversed. During the last few years, the number of prohibitions and urgent actions concerning farm animals has not increased, whereas those concerning

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<sup>64</sup> Koskela, 'Ankaroittiko rikoslain muutos oikeuskäytäntöä eläinsuojelurikoksissa?' (n 63) 771–72. In 2006–2009 the punishment for animal welfare crimes was imprisonment in only approximately 10% of all cases. Koskela-Laine (n 63) 19–20.

<sup>65</sup> Koskela, 'Ankaroittiko rikoslain muutos oikeuskäytäntöä eläinsuojelurikoksissa?' (n 63) 773.

<sup>66</sup> *ibid* 775–76.

<sup>67</sup> For years 2011–2017 Statistics Finland, for 2018 Legal Register Centre.

<sup>68</sup> Tarja Koskela, 'Törkeä eläinsuojelurikos – vai onko?' 2019/19 Edilex 1, 11–12. Research has only analysed such judgments in which the person has been convicted of one animal welfare crime.

<sup>69</sup> *ibid* 14–15.

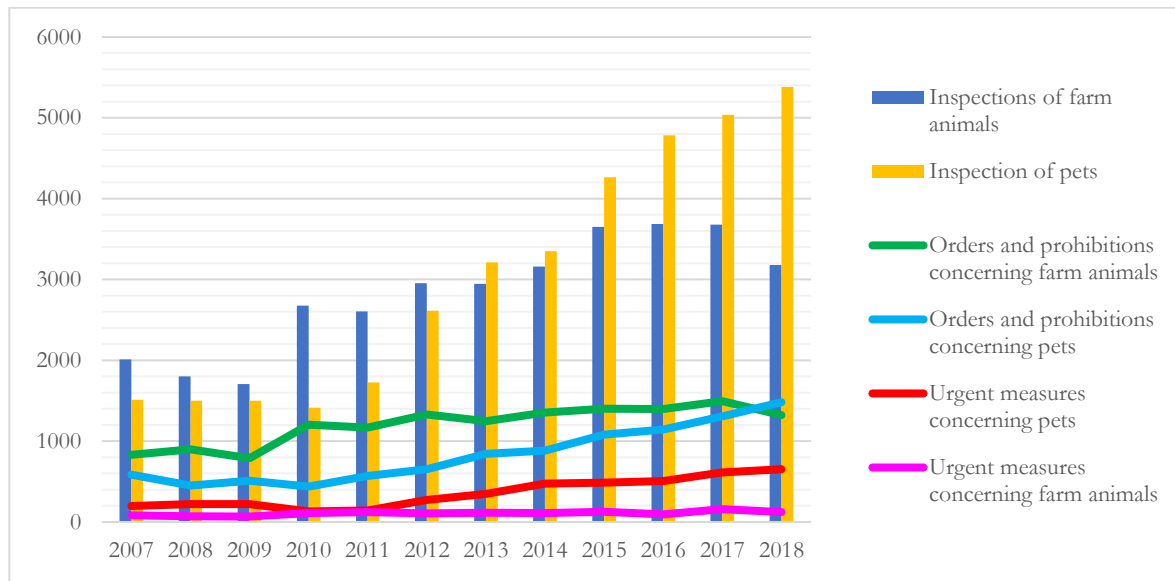
<sup>70</sup> In addition to the inspections based on suspicion, inspections based on designed sampling are also being carried out. This is based on the Council Directive 98/58/EC on concerning the protection of animals kept for farming purposes. The aim of the sampling is to secure uniformity of coverage, risk allocation and supervision in the country.

<sup>71</sup> Koskela, 'Eläinsuojelutarkastus ja eläinsuojelurikoksesta ilmoittaminen' (n 13) 21.

<sup>72</sup> Finnish Food Authority, 'Eläinten hyvinvoinnin valvonta 2018' (n 7) 16.

<sup>73</sup> Finnish Food Authority, 'Eläinten hyvinvoinnin valvonta 2015' (n 14) 7–8.

pets have. According to research, pets have been the subject of more animal welfare crimes than farm animals. Most crimes are committed against dogs.<sup>74</sup>



**Figure 2.** Inspections made on grounds of suspicion 2007–2018.

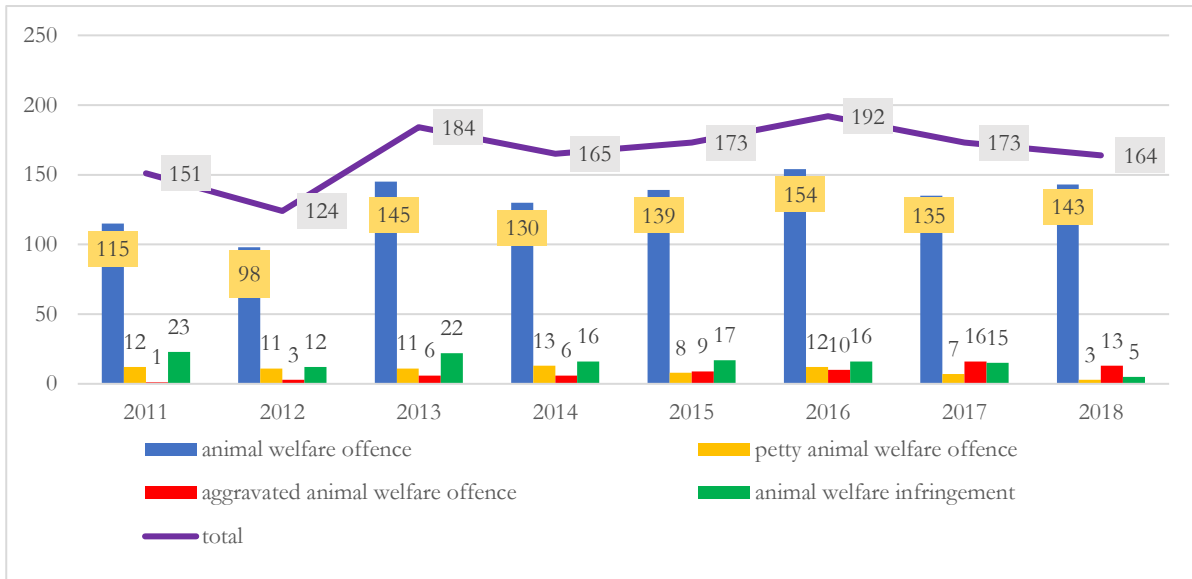
After the police have finished a preliminary investigation, the suspicion of an animal crime proceeds to the prosecutor for the consideration of charges. A criminal case shall not be taken up by the court for consideration unless a charge for the offence has been brought by a person who by law has the right to bring one. It is the duty of the prosecutor to bring a charge for an offence and to prosecute the case. The prosecutor shall bring a charge for a suspected animal crime if they deem that 1) the act is punishable according to law; 2) the right for its prosecution is not time-barred; and 3) there are probable grounds to support the guilt of the suspect.<sup>75</sup> Even when there are probable grounds to support the guilt of the suspected animal crime and the other prerequisites provided in the subsection exist, the prosecutor may still waive prosecution in certain cases provided for by the Criminal Procedure Act.

The court condemns a person for an animal crime if it is beyond reasonable doubt that the accused person is guilty (Code of Judicial Procedure (4/1734), Chapter 17 Section 3(2)). A conviction does not require one hundred percent proof of culpability, but other alternatives should be unlikely. It is the prosecutor’s duty to prove correct the evidence that demonstrates the defendant’s guilt of an animal crime. Figure 3 presents the number of district court judgements in animal crimes between years 2011–2018. The total number of animal crime judgements has varied between 124 (year 2012) and 192 (year 2016).<sup>76</sup>

<sup>74</sup> Koskela-Laine (n 63) 13–14; Koskela, ‘Törkeä eläinsuojelurikos – vai onko?’ (n 68) 13.

<sup>75</sup> Criminal Procedure Act (689/1997) Section 6.

<sup>76</sup> Years 2011–2017 Statistics Finland, year 2018 Legal Register Centre.



**Figure 3.** The number of district courts judgements in animal crimes from 2011 to 2018.