

Uncovering the Legal Vulnerability of Hunting Dogs in France and Spain

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Abstract

Hunting has deep historical roots as a means of subsistence and recreation, evolving over time to encompass various social, cultural, and economic dimensions. A crucial aspect of hunting is the use of dogs, which have been bred and trained for millennia to aid hunters in tracking and capturing prey. This paper delves into the legal safeguards extended to hunting dogs in France and Spain, focusing on their unique role in the hunting tradition. Both France and Spain recognize the sentience of domestic animals, including hunting dogs, which grants them some level of legal protection. Nevertheless, the absence of dedicated provisions for hunting dogs leaves them vulnerable. The legal landscape concerning domestic animals is extensive and fragmented in both countries, with laws spreading across multiple texts. Spain's recent move towards a national animal protection law presented an opportunity for reform. However, a controversial amendment that excludes hunting dogs raises questions about equality before the law, potentially granting preferential treatment to hunters. This argument claims enhanced legal protections for hunting dogs in France and Spain. The contention underscores the role that the European Union (EU) can play in ensuring compliance from Member States with European values and, in particular, with Article 13 of the Treaty on the Functioning of the European Union (TFEU). As the EU has been at the forefront of animal welfare improvements, it holds the potential to influence change in Member States, ultimately fostering greater compassion and fairness in the treatment of hunting dogs.

Keywords

Hunting; hunting dogs; European Union; France; Spain; animal abuse

I. Introduction

With the development of agriculture and the domestication of animals, hunting became a recreational activity shortly after the fall of the Roman Empire and was not a subsistence activity, meaning it was primarily used for leisure rather than to obtain food. At that time, this sport was reserved for the upper classes.¹ It was much later that hunting acquired its current role as leisure in an industrialized urban society. This led to the development of new technologies, notably more effective weapons, which made deadlier hunting techniques

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¹ See Christine Orobítz, 'Chasse et construction identitaire de la noblesse: la place de la chasse dans l'éducation noble' (2023) 44 e-Spania. *Revue interdisciplinaire d'études hispaniques médiévales et modernes* <<https://journals.openedition.org/e-spania/46294>> accessed 15 March 2024.

possible. Despite the use of powerful weapons, hunters continue to use dogs to hunt because they have a great ability to follow scents and track prey.

France and Spain stand out in Europe as hunting giants, with a combined population of nearly 2 million hunters.² However, this activity, although regulated, arouses persistent controversy. Beyond debates about safety and concerns about biodiversity loss, hunting dogs represent an overlooked aspect. These animals are used extensively during hunting, but too often they are neglected and even subjected to mistreatment and cruelty. Often relegated to kennels, out of sight, for long periods, these canine companions are confronted with poor living and working conditions.³ There are also concerns about the training of hunting dogs as sometimes this is carried out using electric collars, a device banned in many countries because of the pain it inflicts. Add to this the risks of injuries during hunting, a lack of adequate veterinary monitoring (sometimes hunters replace animal health professionals by stitching up the dogs themselves) and the lack of effective control over these practices.

Faced with this picture, the following question arises: does the legislation governing hunting dogs in Spain and France offer sufficient protection for these particularly vulnerable animals, or are improvements necessary to guarantee their well-being and safety? In this study on the situation of hunting dogs in France and Spain, I will address the factual situation and legal status of these animals, emphasizing their vulnerability within hunting practices. As such, I will propose a discussion on the potential role of hunting dogs and the role of the European Union in the harmonization and strengthening of the protection of hunting dogs beyond national borders.

II. The Hunting Dog

1. Genetic Modifications

The dog (*canis lupus familiaris*)⁴ is a domestic mammal of the Canidae family, closely related to the wolf.⁵ The domestic animal corresponds to a species which has undergone

² See Ministerio para la Transición Ecológica y el Reto Demográfico, *Estadística Anual de Caza* (2019) <https://www.miteco.gob.es/content/dam/miteco/es/biodiversidad/estadisticas/aef2019_10_caza_tcm30-529162.pdf> accessed 15 March 2024; Ministère de la Transition écologique et de la Cohésion des territoires, *Chasse en France* (2024) <<https://www.ecologie.gouv.fr/chasse-en-france#:~:text=La%20France%20compte%20pr%C3%A8s%20d,multiple%2C%20souvent%20difficile%20%C3%A0%20appr%C3%A9hender>> accessed 15 March 2024; C Sánchez-García, M Delgado and LF Villanueva, *Preguntas y respuestas sobre la caza en España (Questions and Answers of Hunting in Spain)* (Fundación Artemisan 2020) <<https://fundacionartemisan.com/wp-content/uploads/2021/12/50-preguntas-y-respuestas-sobre-la-caza.pdf>> accessed 15 March 2024.

³ See AnimaNaturalis, 'El horror de la caza con perros 'a la española' al descubireto' (23 April 2023) <<https://www.animanaturalis.org/n/46470/el-horror-de-la-caza-con-perros-a-la-espanola-al-descubierto>> accessed 6 March 2024. The images, which were collected between 2021 and 2023, reveal the brutality of hunting with dogs in Spain.

⁴ The *Fédération Cynologique Internationale* (International Canine Federation) recognizes 356 breeds divided into 10 groups, some of which are particularly suited to hunting. See <<https://www.fci.be/en/>> accessed 15 March 2024: Group 1 Sheepdogs and Cattle dogs (except Swiss Cattle dogs); Group 2 Pinscher and Schnauzer – Molossoid and Swiss Mountain and Cattle dogs; Group 3 Terriers; Group 4 Dachshunds; Group 5 Spitz and primitive types; Group 6 Scent hounds and related breeds; Group 7 Pointing Dogs; Group 8 Retrievers – Flushing Dogs – Water Dogs; Group 9 Companion and Toy Dogs; Group 10 Sighthounds.

⁵ See Lindsay R Mehrkam and Clive DL Wynne, 'Behavioral Differences Among Breeds of Domestic Dogs (*Canis Lupus Familiaris*) Current Status of the Science' (2014) 155 *Applied Animal Behaviour Science* 12 <<https://doi.org/10.1016/j.applanim.2014.03.005>> accessed 15 March 2024.

modifications, by human selection and which has been raised from generation to generation under human supervision. Based on the rate of modification of DNA sequences, the separation between the wolf and the dog would have occurred around 135,000 years ago.⁶ Studies carried out by researchers at Harvard show that the modifications have shaped the very structure of the brains of different breeds of dogs. Hecht and others found neuroanatomical characteristics correlated with different behaviors such as hunting, guarding, herding and companionship.⁷

Like all domestic species, hunting dogs have been subjected to ongoing and consistent selection pressures. Genetically shaped and subsequently refined to align with human expectations, they now have adapted morphologies. Therefore, if the so-called 'hunting' dog proves effectively suitable for hunting, it is primarily because humans have sought to foster specific characteristics pertaining to certain breeds of dog. Desired qualities such as speed, endurance, keen eyesight, and a strong sense of smell enable them to efficiently track game.

2. The Status of the Hunting Dog

The question of whether a hunting dog is a dog like any other becomes a challenge when examining its legal status. From a biological standpoint, no significant differences occur between a hunting dog and other dogs. However, the law introduces complexities into their classification.

George Orwell expressed the idea that 'all animals are equal, but some animals are more equal than others',⁸ and while this statement was made in a different context, it can be applied quite literally to the case of hunting dogs. Indeed, dogs acquired for the purpose of assisting in hunting do not enjoy the same benefits as dogs adopted or purchased to be simple companions within a family. Their living conditions are sometimes very different. Hunting dogs are often kept in kennels, whereas purely companion animals more commonly live indoors, sheltered from the vagaries of weather, surrounded by their 'family'.⁹

In France, although there may be a difference in treatment, the law does not make a distinction. Dogs enjoy the status of a domestic animal, a recognition established by ministerial decree.¹⁰

In Spain, the legal framework related to dog welfare is notably intricate. The presence of diverse laws governing animal welfare, combined with the autonomy of each individual region to define its competencies in the realms of animal protection and hunting, presents a formidable obstacle to achieving comprehension and uniformity within this legal domain. The animal protection laws of each autonomous community offer a different definition for all the various categories of animals. In the midst of these complexities, the hunting dog occupies

⁶ See Carles Vil and others, 'Multiple and Ancient Origin of the Domestic Dog' (1997) 276 *Science* 687.

⁷ See Erin E Hecht and others, 'Significant Neuroanatomical Variation Among Domestic Dog Breeds' (2019) 39 *Journal of Neuroscience* 7748 <<https://doi.org/10.1523/JNEUROSCI.0303-19.2019>> accessed 15 March 2024.

⁸ George Orwell, *Animal Farm* (first published 1945, Penguin 2008) 112.

⁹ The family as a nucleus formed by different species is increasingly accepted by law. See Sáez-José Olmos, Carmen Caravaca-Llamas and Jerónimo Molina-Cano, 'La familia multiespecie: cuestión y reto multidisciplinar' (2003) 97 *Aposta, Revista de Ciencias Sociales* 8 <<http://www.apostadigital.com/revistav3/hemeroteca/jsaezol.pdf>> accessed 15 March 2024.

¹⁰ See Arrêté du 11 août 2006 fixant la liste des espèces, races ou variétés d'animaux domestiques [2006].

a unique position, straddling two distinct categories. It is very difficult to know where the hunting dog stands legally.

This analysis will use definitions provided by the animal protection laws of different autonomous communities in Spain. Taking Act 11/2003 on the protection of animals in Andalusia as an example,¹¹ companion animals are defined as those 'hosted by human beings, generally in their homes' (*'albergados por los seres humanos, generalmente en sus hogares'*) and are primarily intended to provide companionship, with profit not being the essential element determining their ownership. Conversely, animals that do not live with humans but are kept by humans for the purpose of producing food or other benefits are classified as livestock. This legal distinction underscores the significance of the relationship between humans and animals in legal classification. However, for hunting dogs, whose purpose encompasses both companionship and the performance of specific functions in hunting, the application of these categories can be ambiguous.

Another example, Act 7/2020, dated August 31, 2020, on the well-being, protection, and defense of animals in Castilla-La Mancha,¹² provides insightful definitions on this matter. 'Livestock' refers to animals intended for production, reproduction, fattening, or slaughter, such as those used in fur farming or hunting activities. As for the definition of a 'companion animal', it is an animal in the possession of a human, provided it is not kept for consumption, for the use of its products, or for commercial or lucrative purposes. This category encompasses all dogs, regardless of their initial purpose or the place they inhabit, helping to clarify the legal classification of these animals.

The animal protection laws of different autonomous communities are not uniform in their definitions, making it challenging to determine the legal status of hunting dogs clearly. The variability in animal protection laws across different autonomous communities has led to uncertainties. This lack of consistency has prompted the creation of a national statute on animal protection, dated 28 March 2023, addressing the need to establish a unified regulatory framework covering the entire national territory.

The very recent Spanish law on animal welfare, aiming to create protection at the national level and not just at the level of autonomous communities, resolves this semantic issue. The statute provides a definition of animals used, particularly in hunting, specifying that they are 'animals used in specific activities'. Hunting dogs are considered 'dedicated companion animals for a specific activity or task, such as birds for falconry, shepherd and livestock guardian dogs, or dogs and ferrets used in hunting activities'. In the legal realm, definitions play a crucial role, but in this case, 'animals used in specific activities' has been defined with the purpose of excluding them from animal protection rights.

¹¹ Ley 11/2003, de 24 de noviembre, de protección de los animales [2003].

¹² Ley 7/2020, de 31 de agosto, de Bienestar, Protección y Defensa de los Animales de Castilla-La Mancha [2020].

III. The Vulnerability of Hunting Dogs: A Call for Strengthened Legal Protection

1. The Exclusion of Hunting Dogs in Spanish Animal Welfare Law

Until now, in Spain, only the autonomous communities have been able to regulate animal protection. However, this approach created different rules depending on the region, which resulted in unequal protection of animals. This is why Spain promulgated a new law aimed at strengthening animal protection. At first glance, this seems like good news, but it does not account for the exclusion of dogs used in specific activities.

To understand this exclusion, we must return to the origins of the law. In 2020, the Directorate of Animal Rights was created in Spain. This institution, which reports to the Ministry of Social Rights, promised to put in place a national animal protection law. In October 2021, the first version of the bill was published. Although imperfect, this text was innovative and promising because it ensured good protection for all dogs no matter their use.

The revised draft submitted to Parliament is a step backward in comparison to the initial version. While the law was still under parliamentary procedure, it was possible for political parties to propose amendments to the initial text. In January 2022, the Ministry of Agriculture discussed possible exclusion of the law on hunting dogs from national law. A few months later, the political group PSOE¹³ introduced an amendment to this effect.¹⁴

The suggested text was formulated as follows:

‘It is proposed to add a new letter e) to paragraph 3 of Article 1, with the following wording:

“e) Animals used in specific activities (sports animals recognized by the Superior Sports Council, falconry birds, shepherd and livestock guardian dogs) as well as those used in professional activities (dedicated to a specific activity or task carried out jointly with their handler in a professional or work environment, such as rescue dogs, pets used in assisted interventions or animals of the Security Forces and Corps or the Armed Forces). [...] Likewise, hunting dogs, rehalas and auxiliary hunting animals will be excluded, which will have their own legislation as established in the National Hunting Management Strategy’.¹⁵

¹³ The Spanish Socialist Workers’ Party is a social-democratic political party in Spain, the party in power at the time of this writing.

¹⁴ See Congreso de los diputados. Boletín oficial de las cortes generales. Proyecto de Ley de protección, derechos y bienestar de los animales <https://www.congreso.es/public_oficiales/L14/CONG/BOCG/A/BOCG-14-A-117-3.PDF> accessed 15 March 2023.

¹⁵ The original Spanish version reads as follows: ‘*Se propone adicionar una nueva letra e) al apartado 3 del artículo 1, con el siguiente tenor: “e) Los animales utilizados en actividades específicas (las deportivas reconocidas por el Consejo Superior de Deportes, las aves de cetrería, los perros pastores y de guarda del ganado) así como los utilizados en actividades profesionales (dedicados a una actividad o cometido concreto realizado conjuntamente con su responsable en un entorno profesional o laboral, como los perros de rescate, animales de compañía utilizados en intervenciones asistidas o los animales de las Fuerzas y Cuerpos de Seguridad o de las Fuerzas Armadas) [...] Igualmente quedarán excluidos los perros de caza, rehalas y*

This amendment was passed and thus it 'gutted' the content of the bill, leaving hunting dogs outside the protection of the animal welfare law.

2. The Lack of Protection for Hunting Dogs in Hunting Laws

In Spain, Article 148.1.11 of the Constitution specifies that the autonomous communities can create their own laws regarding hunting. By virtue of their statutes of autonomy, almost all the autonomous communities have adopted and promulgated their own hunting laws. Act 1/1970, of 4 April 1970, on hunting,¹⁶ initially in force throughout Spain, has become a complementary law in regions that do not have their own law, such as Catalonia and Madrid. In any case, the government cannot regulate these matters, which fall within the exclusive competence of the autonomous regions.¹⁷ This statute makes reference to hunting dogs in Article 28, establishing that the use of dogs for hunting and their free presence in hunting grounds must comply with the rules to be determined by regulations, and that the Ministry of Agriculture undertakes to support the conservation and promotion of hunting dog breeds present in the country through the creation of genealogical registers for Spanish hunting dogs.

In summary, in Spain, the national law in force mentions hunting dogs in Article 28, but it does not overtly guarantee the protection and physical and moral integrity of these animals. It simply encourages the conservation and promotion of hunting dog breeds by establishing for this purpose the books of origin of Spanish hunting dogs and the corresponding genealogical books.

The situation in Spain presents a complex challenge, as evidenced by the need to consult the hunting laws specific to each autonomous community to assess the level of protection afforded to hunting dogs. Some laws, such as Act 8/2022 of 24 June 2022 on hunting and game management in La Rioja,¹⁸ provide a legal definition for a hunting dog, defining a hunting dog as an animal 'which, due to its breed, category or education, is specially qualified and/or trained for hunting.' Other laws regulate the 'use of dogs'¹⁹ in hunting practice, but no hunting law in Spain explicitly provides for the protection of hunting dogs, so no offence will be prosecuted on this basis. Hunting laws merely refer to the basic obligations of dog owners, such as Act 8/2022 on hunting and game management in La Rioja, which in Article 51 states that owners of hunting dogs are required to comply with the general regulations on the keeping and registration of dogs.

In France, the privilege of hunting was among the very first feudal privileges abolished by the French Revolution. From then on, the legislator intervened in favor of hunting for all, while increasingly regulating its practice. It was not until 3 May 1844 with the Hunting Police Act that the legal framework really took shape.²⁰ This law still constitutes today the foundation of the organization of French popular hunting. Unlike its Hispanic neighbor, France

animales auxiliares de caza que contarán con una legislación propia según lo establecido en la Estrategia Nacional de Gestión Cinegética'.

¹⁶ Ley 1/1970, de 4 de abril, de caza [1970].

¹⁷ See Miguel Ángel Garaulet Rodríguez, Government Response, no 184/353576 (2017) <https://www.congreso.es/entradap/l12p/e9/e_0099786_n_000.pdf> accessed 15 March 2024.

¹⁸ Ley 8/2022, de 24 de junio, de caza y gestión cinegética de La Rioja [2022].

¹⁹ For example, art 35. Use of dogs. Ley 4/2021, de 1 de julio, de Caza y de Gestión Sostenible de los Recursos Cinegéticos de Castilla y León.

²⁰ Loi du 3 mai 1844 sur la police de la chasse [1844].

regulates hunting activity at the national level, notably through its provisions of the environmental code, although certain regions or departments may have their own rules and decrees concerning hunting. For example, the prefect can, in the annual order opening hunting, regulate or prohibit the use of dogs.²¹

On the other hand, the protection of dogs used for hunting is not taken into account by the Environmental Code as such. Thus, the incriminations concerning the field of hunting relate to the hunting license, the hunting territories, the modes and means of hunting, the transport, the management and the marketing of game, but in no case to the protection of animals helping to hunt. It should, therefore, be noted that there is no specific incrimination relating to the protection of dogs. Hunting dogs seem to fall under other provisions.

3. The Protection of Hunting Dogs Through the Civil Code and the Penal Code

Given that the legislation specific to hunting in France and Spain does not provide in any way for the protection of hunting dogs, it is necessary to refer to the relevant civil and criminal provisions.

3.1. Animals in the Spanish Civil Code

Act 17/2021, which amends the Civil Code, the mortgage law, and the civil procedure law, brings forth significant changes in the legal treatment of animals.²² Notably, it revises the legal status of animals by establishing a principle that distinguishes them from inanimate things or goods. This groundbreaking shift is rooted in the acknowledgment that animals are sentient beings, described as 'living beings endowed with sensibility' (*'seres vivos dotados de sensibilidad'*). Since then, animals are recognized in the Civil Code as beings capable of feeling emotions, pain, well-being and of subjectively perceiving their environment and their life experiences.

This reform of the Civil Code was introduced after many countries had already passed this reform.²³ As society evolves and scientific understanding of animal cognition advances, more nations have revised their legislation to ensure better protection.

Hunting dogs are therefore also affected by this legal provision. Recognition of their sensitivity means that societies and accordingly their legislation must take into account their well-being and their specific needs. This includes ensuring appropriate living conditions, adequate veterinary care, and ensuring that they do not suffer mistreatment or neglect, whether during or outside the hunting season.

The sentience of hunting dogs should also be taken into account in hunting regulations. Hunting practices must comply with ethical and legal standards to ensure that hunting dogs do not suffer.

²¹ See Code de l'environnement, art R429-4.

²² Ley 17/2021, de 15 de diciembre, de modificación del Código Civil, la Ley Hipotecaria y la Ley de Enjuiciamiento Civil, sobre el régimen jurídico de los animales [2021].

²³ See Marita Giménez-Candela, 'Descosificación de los animales en el Cc. Español' (2018) 9 dA. Derecho Animal (Forum of Animal Law Studies) 7 <<https://raco.cat/index.php/da/article/view/349334>> accessed 15 March 2024.

3.2. Animals in the French Civil Code

The French Civil Code recognized animals as sentient beings on 6 February 2015 through the introduction of Article 515-14, which states that ‘animals are living beings endowed with sensibility’ (*‘être(s) vivant(s) doué(s) de sensibilité’*).²⁴ This article, subject to the laws protecting them, also places animals under the property regime. The scope of this article gave rise to contrasting assessments. Thus, during the parliamentary debates, we witnessed exchanges between those who voted for the ‘Glavany amendment’²⁵ and those who were not in favor of its adoption. Philippe Gosselin, deputy, said during the third session of the National Assembly on 15 April 2014 that the new text would open Pandora’s box and thus pose a great danger to hunting. This points at the complex and passionate debates surrounding regulations aimed at protecting animals from the hunting sector. The concern of the hunting sector is unfounded, because unlike in Spain, the sensitivity of animals, before being recognized in French civil law, had already been recognized in the Rural Code since 1976.²⁶ Hunting dogs are and were already subject to the provisions of Article L. 214. The latter states that ‘[a]ny animal being a sentient being must be placed by its owner in conditions compatible with the biological imperatives of its species’. Until now, however, this specific recognition of animals has not called into question the practice of hunting.

3.3. Animals in the Spanish Penal Code

Animal abuse was integrated into the Penal Code as a fault in 1995 and recognized as a crime in 2003. Since then, this offense has been reformed several times and the latest reform took place recently in March 2023.²⁷ The main objectives of the reform are to strengthen the criminal protection of animals, so as to allow a more effective penal response to various forms of violence against them, while adapting the penal code to the new legal status of animals, recognizing them as ‘living beings endowed with sentience’ (*‘seres vivos dotados de sensibilidad’*), in accordance with Article 333 bis, paragraph 1 of the Civil Code.

Since this reform, the Spanish Penal Code has a new title XVI bis ‘Crimes against animals’. Article 340 bis provides for prison sentences, fines and a ban on practicing in the event of animal mistreatment; the penalties vary depending on whether veterinary treatment is necessary or not. On the other hand, Article 340 ter establishes that the offense of animal abandonment will be punishable by a fine and adds as an option the penalty of work for the benefit of the community.

The most important novelty brought about by this reform lies in the change made to the prison sentence provided for in the existing penal code, thus opening the door to a potential replacement of the prison sentence with a fine, for all forms of animal abuse crimes. The fine could be the punishment favored by prosecutors, a likely worrying trend. It is therefore foreseeable that this alternative penalty of fine will be widely used, including in serious cases of animal mistreatment, which, far from strengthening the protection of animals against

²⁴ Loi no 2015-177 du 16 février 2015 relative à la modernisation et à la simplification du droit et des procédures dans les domaines de la justice et des affaires intérieures [2015] art 2.

²⁵ Amendment no 59 to the ‘Loi de modernisation et de simplification du droit dans les domaines de la justice et des affaires intérieures’ <<http://www.assemblee-nationale.fr>> accessed 15 March 2023.

²⁶ Loi no 76-629 du 10 juillet 1976 relative à la protection de la nature [1976] art 9.

²⁷ Ley Orgánica 3/2023, de 28 de marzo, de modificación de la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal, en materia de maltrato animal [2023].

mistreatment, risks leading to greater impunity, because fines are mainly intended for minor infractions.

3.4. Animals in the French Penal Code

Abuse of hunting dogs and, in other words, animals, constitutes criminal offenses within the meaning of the French Penal Code. Every animal is a sentient being and must be placed by its owner in conditions compatible with the biological requirements of its species; it is therefore prohibited to mistreat a domestic animal. A reform on 30 November 2021 increased the penalties for perpetrators of mistreatment.²⁸ Serious abuse, acts of cruelty and abandonment saw their penalties increase, going from 2 years of imprisonment and a fine of 30,000 Euros to 3 years of imprisonment and a fine of 45,000 Euros.²⁹ In the event of the death of the animal, the penalties can reach 5 years of imprisonment and a fine of 75,000 Euros.³⁰ Aggravating circumstances have been created, such as committing these acts in the presence of a minor or abandoning the animal in the event of immediate or imminent risk of death. They carry penalties of up to 4 years in prison and a fine of 60,000 Euros. In addition, the penal code now punishes the intentional killing of a domestic animal – outside of legal activities – with 6 months in prison and a fine of 7,500 Euros.³¹

3.5. Taking into Account the Sensitivity/Sentience of Animals as Applied to Hunting Dogs

The recognition of the sentience of animals applies ipso facto to hunting dogs whether one relies on the Spanish and French civil code or the penal code. This allows judges to be able to crack down on notorious acts of mistreatment of hunting dogs. Thus, in 2022, Criminal Court 5 in Cordoba convicted two hunters of animal abuse for the so-called ‘farm of horrors’. The judge imposed the maximum penalty provided in the Penal Code for each of them,³² namely, 18 months of imprisonment and a four-year special disqualification for keeping and exercising any profession, trade or business related to animals, and a ban on hunting of 4 years for each of the accused for having mistreated 29 dogs, 2 of which died. The hunting dogs were on a farm without adequate sanitary conditions, tied with chains to olive trees, without water, without food, surrounded by dirt and bones of other deceased dogs and without shelter from the weather, relying only on cans and containers with sharp edges.³³ This case is one case among many others since there are numerous legal actions against hunting dog owners in Spain. According to the latest figures, 40% of dogs which are victims of abuse, abandonment or theft are hunting dogs.³⁴ Another recurring problem is that of cruelty towards *galgos*.³⁵ Very popular in Spain but banned in France for hunting,³⁶ Spanish

²⁸ See Loi No 2021-1539 du 30 novembre 2021 visant à lutter contre la maltraitance animale et conforter le lien entre les animaux et les hommes [2021].

²⁹ See Code Penal, art 521-1.

³⁰ See *ibid.*

³¹ See Code Penal, art 522-1.

³² That is the maximum prior to the last reform.

³³ Unpublished court decision. See Ángel Robles, ‘Sentencia pionera en Córdoba: Condenados a 18 meses de cárcel por maltrato animal los dos cazadores de la ‘finca de los horrores’ de Cabra’ *El Día de Córdoba* (Córdoba, 4 October 2022).

³⁴ According to statistics from the last five years of the Nature Protection Service of the Civil Guard (Seprona).

³⁵ See Marita Giménez-Candela, ‘Galgos’ (2014) 5 *dA. Derecho Animal* (Forum of Animal Law Studies) 1 <10.5565/rev/da.278> accessed 15 March 2024.

³⁶ Greyhound dogs, by their instinct and their conformation, are particularly suited to the destruction of game and therefore prohibited in France from hunting since the law of 1844.

greyhounds or *galgos* are used by hunters to chase hares. Traditionally, hunters evaluate whether or not the Spanish greyhound that accompanied them during the season is good for the following season. If the Spanish greyhound is '*sucio*',³⁷ that is to say it is not good enough to chase the hare, they get rid of it by cruel means such as hanging, abandonment or death in a well, acts which are in most cases not punished since the *galgos* found are not identified. Only a few criminal sentences were pronounced on the basis the offenses provided for in the Penal Code.³⁸

In France, cases of mistreatment of hunting dogs are also very worrying and numerous each year. To take just one example, in 2021, a video made the rounds on social networks showing hunting dogs locked in cages placed in a vehicle.³⁹ Ultimately, the court did not accept the confiscation of the 11 dogs requested by the animal protection associations, but the owner of the mistreated hunting dogs was sentenced to a fine of 2,200 Euros by the judicial court of Towers. He had to pay 11 fines of 200 Euros and a symbolic Euro to the various associations defending the animal cause that have filed civil suits.⁴⁰ This sentence shows that the mistreatment of hunting dogs is not taken seriously enough by the French courts. One should note that, like in Spain, French hunting dogs are often not identified.

With this in mind, it is perhaps time to consider harmonization at the European level for the protection of hunting dogs. Thus, it would be possible to create specific directives establishing minimum standards for the protection of hunting dogs in all member countries. This approach would ensure that the rights and welfare of these animals are taken into account in a coherent and uniform manner, regardless of the national legislative specificities. It would also help promote more ethical hunting practices.

IV. The Hypothetical Protection of Hunting Dogs through the European Union

The European Union (EU) only has the powers conferred on it by the treaties. These powers are defined in Articles 2 through 6 of the Treaty on the Functioning of the European Union (TFEU). The powers not conferred on the EU by the treaties therefore remain in the hands of the Member States.⁴¹ Although the EU does not have complete authority to regulate laws relating to animal protection, it plays a central role, particularly because of its competence in the areas of the environment and agriculture.

³⁷ According to tradition, when hunting the hare, greyhounds are supposed to follow exactly the same trajectories as the hare, to follow the same path. When a greyhound realizes that, by cutting diagonally, he gains ground, the grace is lost, he is considered a 'dirty galgo' and must be punished. The same goes for those who are not fast enough. See Santiago M Cruzada, Pablo Palenzuela Chamorro, Helena Pérez Gamuz, *La caza de liebres con galgos en Andalucía. Informe para registro en el Atlas del Patrimonio Inmaterial de Andalucía* (Federación Andaluza de Galgos e Instituto Andaluz de Patrimonio Histórico 2021).

³⁸ See the comment by Sergio García-Valle, 'Caso de los galgos ahorcados en Fuensalida, de nombre Iniestay Bola, de 5 años y 22 meses. Sentencia 389/2013 de 15/10/2013, Juzgado de lo Penal nº 1 de Toledo, Procedimiento abreviado nº 9/2012. Magistrado: Ilmo. D Carmelo Ordoñez Fernández' (2013) 4 dA. *Derecho Animal* (Forum of Animal Law Studies) 6 <<https://doi.org/10.5565/rev/da.162>> accessed 15 March 2024.

³⁹ See Kreezy R Official, '*Animal Abuse: Dogs Locked in Wrecks in Reugny (37) The Investigation*' (YouTube, April 2021) <<https://www.youtube.com/watch?v=i0b2wxct1BY>> accessed 15 March 2024.

⁴⁰ Unpublished court decision. See Yohan Nicolas, 'Indre-et-Loire: le propriétaire de chiens de chasse condamné à 2.200 euros d'amende pour maltraitance' (2021) France Bleu Touraine <<https://www.francebleu.fr/info/faits-divers-justice/indre-et-loire-le-propretaire-de-chiens-de-chasse-condamne-a-2-200-euros-d-amende-pour-maltraitance-1634216809>> accessed 15 March 2024.

⁴¹ Consolidated Version of the Treaty on European Union [2008] OJ C115/13, art 5.

The EU also has one of the most comprehensive sets of rules in the world regarding animal welfare, and its Article 13 TFEU states that the requirements in terms of welfare of animals as sentient beings must be fully taken into account in European policies.⁴² This article does not explicitly mention hunting dogs, although it seems possible to interpret it as covering hunting dogs as well, given that they are sentient beings. Moreover, the Intergroup for Animal Welfare and Conservation denounced the fact that ‘the treatment of Spanish greyhounds is in contradiction with European values’ in March 2021. In a letter sent to the government and the 17 Spanish autonomous communities, they denounce the fact that the treatment of Spanish greyhounds and other hunting dogs is contrary to European values and, in particular, to the condition of ‘sentient beings’, recognized in Article 13 TFEU.⁴³

There have been other interventions throughout the history of the EU, notably the intervention of Michèle Striffler, a former member of Parliament who tried to defend greyhounds during her mandate, but her efforts were in vain. She drafted an initiative asking the European Parliament to adopt the written declaration DC933037 ‘on the immediate cessation of torture and ill-treatment of greyhounds in Europe’ and to implement it as a normative transposition in all Member States of the EU.⁴⁴

To provide another example, Laura Huhtasaari, member of Parliament from Finland, recorded a Priority question for written answer P-000675/2020 to the Commission in 2020⁴⁵ and the answer given by Stella Kyriakides on behalf of the European Commission says that:

The Commission is aware that the welfare situation of dogs — which lies under the responsibility of the Member States — may be problematic in some Member States and reminds that the Article 13 of the Treaty on the Functioning of the European Union states that, in ‘formulating and implementing the Union’s agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals’.⁴⁶

All these examples show that the EU is aware of the problems linked to cruelty towards hunting dogs. The *galgo* is often used as the symbol to advance the cause of hunting dogs and find better protection and a better legal arsenal. Although the EU is not directly competent in matters relating to pets and hunting dogs, it can play an important role in putting pressure on Member States and the Commission to do everything in its power to ensure

⁴² ‘In formulating and implementing the Union’s agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage’.

⁴³ See Intergroup on the Welfare and Conservation of Animals, ‘MEPs Call on Spanish Authorities to Better Protect Hunting Dogs’ (12 March 2021) <<https://www.animalwelfareintergroup.eu/news/meps-call-spanish-authorities-better-protect-hunting-dogs>> accessed 15 March 2024.

⁴⁴ See Michèle Striffler and others, ‘Written Declaration, Submitted Under Rule 123 of the Rules of Procedure of the European Parliament, on Putting an Immediate Stop to the Torture and Mistreatment of Greyhounds in Europe’ (15 April 2013) <https://www.europarl.europa.eu/doceo/document/DCL-7-2013-0006_EN.pdf?redirect> accessed 15 March 2024.

⁴⁵ Parliamentary question – P-000675/2020.

⁴⁶ Answer given by Stella Kyriakides on behalf of the European Commission (23 March 2023) <https://www.europarl.europa.eu/doceo/document/P-9-fe2020-000675-ASW_EN.html> accessed 15 March 2024.

that EU animal welfare legislation is properly applied, and to recommend concrete measures so as to ensure that acts of cruelty inflicted on greyhounds in Europe stop immediately.

A recent illustrative example underscores the pivotal role that the European Union (EU) can play in advocating for and shaping animal welfare standards. This example comes to light through the actions of the European Food Safety Authority (EFSA), a prominent agency within the EU. On 14 September 2023, the EFSA released a comprehensive scientific report dedicated to enhancing the welfare of cats and dogs within commercial breeding establishments.⁴⁷ This report, intended to support potential legislative measures for the protection of cats and dogs kept in commercial breeding for sport, hunting, or companionship, which highlights the fact that the living conditions of dogs and in particular hunting dogs must be good and that these dogs should not be kept permanently in boxes, cages, and crates. The EFSA assessed certain cosmetic and convenience surgery practices such as ear cropping, tail docking and vocal cord resection and concluded that they should not be carried out unless absolutely necessary for the health of the animal. Moreover, the EFSA assures that tail docking in hunting dogs is effective in preventing the possible occurrence of future injuries.⁴⁸ Tail dock surgeries are traditionally performed on dogs living in packs and with a tendency to bite their tails, or on dogs living in bushy terrain, where the tail is easily scratched because it is poorly vascularized and this part of the body heals poorly. The European Convention for the protection of companion animals of 13 November 1987, prohibits, in its Article 10, among other things, the removal of the tails of dogs for non-medical reasons.⁴⁹ France and Spain are signatories to this convention. The observation of the EFSA scientific report on tail docking raises questions. Tail docking can be very painful, but it also deprives dogs of an organ of communication with their peers since dogs express fear, joy, stress, and excitement through tail movements.⁵⁰ Once again, it is important to note that hunting dogs make the object of an exemption, which illustrates their lower level of protection compared to other dogs.

V. Conclusion

In the Western world, hunting is a leisure activity which makes obvious the suffering of the hunted animals, but we rarely think about the other victims of hunting, namely the hunting animals.

Hunting law, whether in France or Spain, does not have as its direct object the animal and its protection but the proper functioning of the activity by providing for hunting methods, huntable species and hunting periods. In the event of mistreatment of hunting dogs, the judge must rely on animal protection laws, the Civil Code which recognizes the animal as sensitive or even the Penal Code. Just as hunting laws provide for the regulation and proper

⁴⁷ See EFSA, 'Scientific and Technical Assistance on Welfare Aspects Related to Housing and Health of Cats and Dogs in Commercial Breeding Establishments' (2023) 21(9) EFSA Journal <<https://doi.org/10.2903/j.efsa.2023.8213>> accessed 15 March 2024.

⁴⁸ See *ibid* 5.2.3.3.

⁴⁹ The European Convention for the Protection of Pet Animals is an international treaty of the Council of Europe, leading signatory states to improve the protection due to companion animals <<https://rm.coe.int/168007a67d>> accessed 15 March 2024.

⁵⁰ See Annika Bruner, 'Question for Written Answer E-003650/2021 to the Commission' (19 July 2021) <https://www.europarl.europa.eu/doceo/document/E-9-2021-003650_FR.html> accessed 15 March 2024.

use of hunting dogs, it is equally important that they include specific provisions to guarantee the protection of these animals. Hunting dogs play a crucial role in this activity, and their welfare should be a priority. This means not only regulating their use more strictly to avoid mistreatment and cruelty, but also establishing clear standards for their housing, health care, and general treatment. Including provisions for the protection of hunting dogs in hunting laws would help ensure that these animals, which often work in demanding conditions, receive adequate legal protection and that their rights as sentient animals are respected. It would also strengthen the ethics of hunting by ensuring that all participants, including dogs, are treated with dignity and compassion.

This implies the need to develop stricter regulations and ensure that the rights and welfare of these animals are protected. In this perspective, the EU can play a crucial role in encouraging Member States to adopt higher standards for the protection of hunting dogs.