

Answers to the Questions of the MA class “Master in Animal Law and Society”

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1 What are the main progresses, which occurred in the development of animal welfare in the European Union?

Animals are defined in The Treaties as “sentient beings” (Art 13 TFEU) and since the European Animal Welfare Action Plan (2006-2010) a common European Animal Welfare Policy is existing.

2 What is the future of animal welfare in the European Union? Which approach should be adopted?

In my opinion the future of animal welfare in the European Union there will be a strategic change in cause of the new Animal Welfare Strategy: on the EU level there will be established a legal framework. This might switch the main lobby work and balance of interest on the national level. The attention of the stakeholders of Animal Welfare should focus in the next two years on the EU level to reach at least a strong framework law.

3 in your opinion what is the progress and inconvenient points of Art 13 of the Treaty on the Functioning of the European Union?

The progress is the structural ‘carrier’ of the definition of animals as sentient beings, now in the valid Treaties established directly in the text and content and fixed in Chapter I as a basic principle, and the fact that the definition is embracing all species.

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The inconvenient element is the formulation of the vast and finally almost non operational derogation with non legal definitions which are even overlapping and the formulation 'in particular' means the derogation is finally unlimited.

4 What is your opinion about the term “sensible” (translation of “sentient”) which can be found in the French and Spanish version of the article 13 Treaty on the Functioning of the European Union?

This is an incorrect translation, as to be “sensible” has a different meaning as “sentient”. The first term is used in a specific way and means that a living being feels easily inconvenient with regard to external influences such as noise or inadequate temperature, while “sentient” is based on the fact that this creature has feelings and can feel hunger, thirst, harm, stress, fear and joy and is able to suffer. This is another dimension. A linguists expertise could here be helpful.

The working group of the Enforcement Network, created in June 2012 in Brussels, is starting to work on the definitions, and the first part of it is the term “sentient being” and consistency of the Treaties’ translations of the article 13 TFEU in 12 Member States.

5 In the last seminar you conducted at the Universidad Autónoma de Barcelona you talked about the possibility of using the 3 R in order to restrict the activities permitted by the three derogations mentioned in the article 13 of the Treaty on the Functioning of the European Union? Could you develop on that idea?

Definitely it is the task of the European Court of Justice interpreting the meaning of animal welfare in consequence of Art 13 TFEU. If the European Court of Justice would interpret Art 13 TFEU compared to a goal of state, it would mean that Animal welfare would develop to a political field of the

Community and then the EU would have to support actively this field. If not, Art 13 TFEU would be an article with a general principle that has to be considered. A clarification of the unclear derogation terms within Art 13 TFEU can only be reached by case law – or changing the Treaty. If a Member State is arguing with Art. 13 TFEU second part of the sentence, when treating animals not as sentient beings, in cause of religious rites or cultural tradition or regional heritage, a court has to decide, if this is justified in the light of the general principle, the goal and meaning of Art 13 TFEU. One tool to consider or even to balance the interest of a Member State and the animal welfare principle could be the 3 R principle, developed for the animals in experiments, finding ways to phase out or to stop suffering by Refinement, Reduction and Replacement of such tests. This approach could also be used for strong traditions such as bullfights. However, the first court decisions on Art 13 TFEU have to wait for.

6 Nowadays, what is the main priority in animal welfare in the European Union?

The European Union has just started to work on the measures, announced on the Animal Welfare Strategy. The very first stakeholders meetings took place on the five main issues of the Animal welfare strategy in general and a first stakeholders meeting on a new animal welfare network, where there is already a pilot project working (EUWELNET).

7 Following the horsemeat scandal in the European Union, which legal tool is, in your opinion, the most efficient to prevent this situation from happening again?

The horse meat scandal has shown the vulnerability of the food market and the one of labeling products. It has shown that consumers finally cannot be

protected by any criminal action also in this field. The lesson learned is that the quality and quantity of inspections has to be strengthened.

8 Do you think it is possible for France and Spain to include animal protection in their constitutions, given their traditions (*foie gras* and bullfighting)?

In my opinion it is not excluded for the future, but to be realistic a change seems not be possible within the next years. Maybe one generation growing up with the opportunity for more reflection on animal welfare could develop an advanced human-animal relationship.

9 Germany is the first Member State to have introduced in its Constitution the protection of animals. What are the background and the consequences of this groundbreaking decision?

The reason why the German Parliament has voted on the change of the constitution for animal welfare in 2002, means to implement “...and the animals” as part of the responsibility of humans in Art 20a Grundgesetz was a Decision of the highest constitutional court. There slaughter without stunning had to be permitted as the freedom of religion is protected by the German constitution but animals not. This decision outraged the public and the political parties voted in the Parliament on the protection of animals within the constitution to have an equivalent to all other values such as freedom of religion and of art.

10 In which sense the Swiss Constitution is the most animal-friendly legislation? main priority

The concept of dignity is leading to another dimension of the human-animal relationship. It is a first step towards granting animals a qualified right of their own. And the requested respect in handling animals has a deeper dimension as

it is including the dignity of an animal, what is more than to look on the animals used and in this regards the absence of the harm, hunger, thirst, fear and stress and well behavior. Dignity brings out the animal as a creature with a value by its own. Please discuss this more in detail with the Foundation “Tier im Recht”, a Swiss animal welfare organization with only lawyers working in this country – they have worked out a lot on this issue.