

An Introduction to the Finnish Legal Order and the Legal Status of Nonhuman Animals from a Public Law Point of View

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Finland has been an independent and sovereign republic since 1917. For more than 650 years (1150-1809) Finland belonged to the Kingdom of Sweden and from 1809 until the achievement of full political independence Finland had an autonomous position in Russia. During this period Finland received its own parliament, currency, basic education system and legal institutions. However, the old Swedish laws were still followed in the Grand Duchy of Finland. As a consequence of this history, Finnish legal culture has been deeply and profoundly influenced by Sweden and later also by Germany. The membership accession to the European Union (EU) in 1995 did not require radical changes in the central principles of law in Finland.

Finland has a statutory law system. The legislative powers are exercised by the Parliament and the governmental powers by the President of the Republic and the Government (whose members shall have the confidence of the Parliament). The judicial powers are exercised by independent courts of law.

The general courts are divided into lower courts of general jurisdiction (the district courts), the courts of appeal and the Supreme Court. The district courts deal with criminal and civil cases. The decision of a district court can normally be appealed in a court of appeal. The decisions of the courts of appeal, then, can be appealed in the Supreme Court, provided that the Supreme Court grants the appeal process.

The administrative courts review the decisions of the authorities. The decisions of the administrative courts can be appealed in the Supreme Administrative Court. Furthermore, there are certain special courts. These are the Market Court, the Labor Court, the Insurance Court and the High Court of Impeachment.

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According to the Constitution, the President of the Republic, the Government and a Ministry may issue Decrees on the basis of authorization given to them in the Constitution or in another Act. Either a statute or a decree may empower a lower authority to enact by-laws binding the administrative sector in question or by-laws binding a local area. Statutes enacted in this manner are sources of law. The hierarchy of national statutes is as follows: 1) EU-law and the Finnish Constitution, 2) Acts (Government Bills), 3) Decrees, 4) other authoritative instructions made by law, 5) the Supreme Court decisions (precedents) and 6) other court decisions.

The exercise of public powers shall be based on an Act and in all public activity; the law shall be strictly observed. If a provision in a Decree or another statute on a lower level finds that an Act is in conflict with the Constitution or another Act, it shall not be applied by a court of law or by any other public authority. Additionally, if in a matter being tried in a court of law, the application of an Act would be in evident conflict with the Constitution, the court of law shall give primacy to the provision in the Constitution. If there is a conflict between a national statute and an EU statute, the latter prevails due to Finland's membership in the EU.

In accordance with Article 4 in the Treaty on the Functioning of the EU the competence is shared between the Union and the Member States in areas such as agriculture and fisheries (excluding the conservation of marine biological resources), the environment, consumer protection and transport. Title III, Article 38 in the Treaty provides that the Union shall define and implement a common agricultural and fishery policy. Referred to in the list in Annex I of Article 38, live animals are 'products' of this policy. Article 13 provides and defines 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, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage.

In the Finnish Constitution there are no direct provisions concerning animals. Nevertheless, in the preamble to Chapter 2 on basic rights and liberties, Section 20, on the responsibility for the environment, nature is defined as part of the environment and wild animals as part of nature. Furthermore, there is a note that nature has an intrinsic value which goes beyond its value for humans. In the Animal Protection (Welfare) Act (AWA 247/1996) Chapter 1, Section 1 the objective of the Act is defined to protect animals from distress, pain and suffering in the best possible way and to promote the welfare and humane treatment of animals. The general principles (Section 3) for the keeping of animals are that they must be treated well and no undue

distress may be caused to them. Inflicting undue pain and distress on animals is prohibited and the physiological and behavioral needs of the animals must be taken into account. In other words, the Finnish AWA has clearly a 'protectionist' and 'welfarist' point of view on the legal status of animals.

Concerning control, if the Act (or any provisions or regulations issued under it) have been violated, the authority has to address the administrative actions to the owner or possessor of the animal (Section 39-43). If urgent measures are needed to ensure the welfare of an animal, the authority has the right to take immediate actions (Section 44). According to the Section 14, if a domestic animal is sick, injured or otherwise in a helpless state, it must be helped or the owner or attendant of the animal or the authorities must be notified of the state of the animal. If reaching the person is unreasonably difficult and if the state of the animal is such that keeping it alive would represent obvious cruelty to it, the animal may be killed. Concerning wild animals every effort must be made to help one which is sick, injured or otherwise in a helpless state. Furthermore wild animals may be killed if it would represent cruelty to keep the animal alive.

As a summary, in addition to the Treaty on the Functioning of the European Union there are ten (10) regulations, nine (9) directives, and three (3) decisions as legislative acts in EU. As for other acts, there are three (3) recommendations, three (3) resolutions, three (3) agreements, three (3) implementations of decisions and three (3) action programs (welfare, health, and environment). Some of these cover all animals, some specifically farm animals, slaughter animals, protection during transport, wild animals in zoos, cats and dogs, protection of animals used in experiments and trade in seal products. In addition, there are three (3) conventions by The Council of Europe concerning farming, slaughter and experimental use of animals. These are implemented both in the EU-law and in the Finnish legislation concerning animals.

In Finland there are in total three (3) Acts concerning animals (AWA, protection during transport and experimental use of animals) and twenty-one (21) Decrees of which some concern all animals and some specifically sheep, goats, pigs, cattle, buffalo, chickens, broilers, turkeys, ducks and geese, ostriches, fish kept for farming, dogs and cats, horses, fur animals, deer, animals for competitions, zoos, experiments, and slaughter. Furthermore there are two (2) decisions made about the slaughter of animals and animals at circuses.

The animal laws in many countries, including the entirety of the EU, recognize the sentience of non-human animals. Yet, we use more animals and cause them more

suffering today than at any other time in human history. Importantly, we need to change our perception of non-human animals and our behavior towards them. Thus, we need to clarify the status of non-humans, in legal terms, and to deepen the discussion of their use for human purposes. For this the Master in Animal Law & Society program provides an excellent opportunity.

Links:

Ministry of Agriculture and Forestry; Animal Health and Welfare
http://www.mmm.fi/en/index/frontpage/animal_health_welfare.html

Finlex (online database of up-to-date legislative and other judicial information of Finland); <http://www.finlex.fi/en/>

Global Journal of Animal law; <http://www.gjal.abo.fi/>