

The Roles of the Finnish Authorities Specialising in Animal Welfare Offences

Tarja Koskela*

1	Introduction	130
2	How Animal Welfare Offences Are Noticed	135
3	The Role of the Police in Respect of Animal Welfare Issues	137
	3.1 The Role of the Police as an Animal Welfare Authority	137
	3.2 The Role of the Police as a Criminal Investigation Authority	139
4	Specialist Animal Welfare Police	143
	4.1 Animal Welfare Police in Finland.....	143
	4.2 Animal Welfare Police in Sweden	147
	4.3 Animal Welfare Police in Denmark.....	148
5	Cooperation Between Animal Welfare Authorities in Respect of Animal Welfare Cases in Finland	150
6	The Role of the Prosecutor and the Judge in Relation to Animal Welfare Cases Heard in Court	153
	6.1 The Duties of the Prosecutor.....	153
	6.2 The Role of the Judge in Safeguarding Animal Welfare	156
7	Conclusion	160

1 Introduction

In the late Middle Ages, in certain regions, it was customary for animals to be tried in court. During this period, some believed that animals as well as human beings should comply with the laws created by humans.¹ Animals tried in this way were defended by counsel in court, the proceedings were conducted in the same manner as the trial of a human being, and the judge ultimately handed down a judgment, which was then executed. Pigs, often deemed to be possessed by the devil or by demons, were the animals most commonly put on trial in this way.²

One of the most famous animal trials took place in France in 1522. Rats from Burgundy were tried for destroying grain stocks in the region. They were represented in court by Bartholomé Chassennée, a young barrister. On the first day of the hearing, Chassennée argued that the summons had been delivered to too small an area and because the charges applied to all rats within the diocese, all the rats in that area should appear in court to respond to the charges. He accordingly insisted that the matter be adjourned until the summons was brought to the attention of all the rats in the district. Chassennée's argument was accepted, and the judge adjourned the hearing to a later date. However, the rats also failed to attend the new hearing. Chassennée explained that his clients did not dare attend court because they were afraid of the cats, their natural enemies, that frequented the area. Accordingly, Chassennée requested that the defendants be guaranteed safe passage to the court, so the claimants in the case were ordered to post bail for the good behaviour of their cats. The claimants then gave up and the case was dismissed.³

Human perceptions of animals slowly changed and the first law in Europe explicitly aimed at the protection of animals, Martin's Act, was enacted in Great Britain in 1822. This act was especially intended to prevent cruelty and made it an offence for any person, including the owner of the animal, wantonly and cruelly to beat, abuse, or ill-treat any horse, mare, gelding, mule, donkey, ox, cow, heifer, steer, sheep, or cattle. The prosecutor had a duty to refer the case to the court. Judges, in turn, were required to impose a fine, amounting to a minimum of ten shillings and a maximum of five pounds, on anyone convicted

* Tarja Koskela, LL.D., Senior Lecturer, Post-doctoral Researcher, UEF Law School, University of Eastern Finland. Email: tarja.s.koskela@uef.fi.

¹ Gerald Carson, *Men, Beasts, and Gods: A History of Cruelty and Kindness to Animals* (Scribners 1972) 25. For discussion of trials of animals in the Middle Ages, see Tomas G. Kelch, 'A Short History of (Mostly) Western Animal Law: Part I' (2013) 19 *Animal L.* 347, 45–54, <https://www.animallaw.info/sites/default/files/lralvol19_1_23.pdf> accessed 2 April 2020.

² Carson (1972) 29; Gary L. Francione, *Animals, Property, and the Law* (Temple University Press 1995) 93.

³ Carson (1972) 31–32.

of such an act.⁴ This law is regarded as the origin of the laws on animal welfare now extant.⁵

In Finland, the issue of animal welfare began to be discussed in the first half of the 19th century.⁶ Finland's first animal welfare association was established in Turku in 1871. Its activities were aimed at improving the treatment of cattle, horses and other animals used for human benefit.⁷ Shortly thereafter, in 1874, the Helsinki Animal Protection Society⁸ was established.⁹

For its first year of operation, the Helsinki Animal Protection Society employed its own prosecutor, who remained in post until the end of 1886. The role of the prosecutor was to bring criminal charges against any individual suspected of committing an offence against an animal. The right of the Animal Protection Society to hire its own prosecutor was requested by the procurator fiscal. Later, the Animal Protection Society had a special animal protection police officer at its service.¹⁰ The police officer was tasked with carrying out inquiries and taking the necessary measures based on notices received by the Animal Welfare Protection Society.¹¹

The right of certain animals to live without being needlessly maltreated was first laid down in Finnish law in His Imperial Majesty's Merciful Decree of 1864, which provided for a fine of ten to two hundred marks for intentional maltreatment of an animal. If a person was unable to pay the fine, they would be sent to jail with only bread and water for sustenance. The shortcoming of this decree was that it provided protection only for animals that someone owned. Moreover, its application was hampered by the fact that it contained no specific provisions. The content of the decree was transferred into the Penal Code of Finland in 1889 and at the same time the threat of punishment was intensified so that a maximum sentence of three months in prison could be imposed for the offence. In 1914, the provision was extended to protect all animals, whether someone owned them or not.¹²

The protection of animals in Finland is now primarily provided for under the Animal Welfare Act (hereinafter the 'AWA'), which is a framework law applicable to all animals. Decrees and other lower level provisions contain more detailed provisions on the keeping and treatment of animals and provide additional protection for them.

⁴ Mike Radford, *Animal Welfare Laws in Britain: Regulation and Responsibility* (OUP 2001) 38–39. See also David Favre and Vivien Tsang, 'The Development of Anti-Cruelty Laws during the 1800s' (1993) *Detroit College of Law Review* 1, 3; Steven M. Wise, *Rattling the Cage: Toward Legal Rights for Animals* (Perseus Publishing 2000) 43–45.

⁵ Hannu Nieminen, *Sata vuotta eläinten puolesta. Kertomus Suomen Eläinsuojeluyhdistyksen toiminnasta 1901–2001* (SEY 2001) 8.

⁶ Nieminen (2001) 9.

⁷ Nieminen (2001) 12.

⁸ *Djurskyddsforeningen i Helsingfors* in Swedish.

⁹ Hannele Luukkainen and Taina Uimonen, *HESY 145 vuotta Eläinten äänenä* (Helsingin eläinsuojeluyhdistys HESY ry 2019) 10; Nieminen (2001) 12.

¹⁰ Luukkainen and Uimonen (2019) 12.

¹¹ Nieminen (2001) 41.

¹² Nieminen (2001) 13.

The first comprehensive Finnish animal welfare law entered into force in 1934 in the form of the first AWA (163/1934), section 1 of which states that an animal must be treated in such a way as not to cause it unnecessary suffering. The police force was the only authority that could enforce the act by law. The police had the right to carry out an inspection if the animal was in such a state that keeping it alive amounted to cruelty to the animal or a difficult incident had been discovered or reported. The right to receive assistance from a veterinarian or other person with knowledge of the care of farm animals enabled the police to perform the task effectively. In 1971, an amended AWA (91/1971) entered into force. The management of animal welfare control was transferred to the Veterinary Division of the Ministry of Agriculture, the county veterinarian, the municipal veterinarian, the authority responsible for municipal health protection control and the police. The AWA (247/1996)¹³ currently in force¹⁴ confers the duty to act as an animal welfare authority on several authorities,¹⁵ one of which being the police. The renewal of the law in this area has been on the cards since 2010. The previous government presented a government bill to the Finnish Parliament on 27 September 2018, but it expired because another draft related to the new AWA lapsed.¹⁶ According to the Ministry of Agriculture and Forestry, a government proposal for a new AWA¹⁷ will be put before the Parliament in August of 2021.¹⁸

The criminal process is, from the legislature's perspective, a tool intended to achieve a variety of goals and its functions have been designed to that end.¹⁹

¹³ *Djursyddslag* in Swedish.

¹⁴ The AWA entered into force on 1 July 1996.

¹⁵ Authorities are provided for in Chapter 3. The Ministry of Agriculture and Forestry is the supreme authority in steering and controlling the enforcement of and compliance with this Act and provisions issued under it (section 34). The Finnish Food Safety Authority is the central government authority in steering and controlling the enforcement of and compliance with this Act and provisions issued under it (section 34 a). The State Provincial Office sees to the enforcement of and compliance with this Act and the regulations issued under it within the territory of a particular province (section 35). Local authorities comprise the municipal veterinarian, the authority responsibility for municipal health protection control and the police. The local authorities administer compliance with the AWA and provisions and regulations issued under it within the territory of the municipality (Section 36).

¹⁶ Parliament, the processing data in respect of Government Bill (HE) 154/2018 vp Hallituksen esitys eduskunnalle laiksi eläinten hyvinvoinnista ja eräksi siihen liittyviksi laeiksi (Regeringens proposition till riksdagen med förslag till lag om djurvälstånd och till vissa lagar som har samband med den) ('the Government Bill to Parliament for an Act on Animal Welfare and some related laws').

¹⁷ The new AWA will be called *laki eläinten hyvinvoinnista (lag om djurvälstånd)* ('The Law on Animal Wellbeing').

¹⁸ Personal communication, Ministry of Agriculture and Forestry of Finland/Susanna Ahlström (21 January 2021). According to Finnish Prime Minister Sanna Marin's government programme, one of the government's tasks during its term of office is to improve legislation on animal welfare inspections and video monitoring in slaughterhouses. Platform of the Finnish Prime Minister Sanna Marin's Government, 47, <https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/161931/VN_2019_31.pdf?sequence=1&isAllowed=y> accessed 14 February 2020.

¹⁹ Mika Launiala, *Esitutkinnasta tuomioon. Esitutkinta osana rikosprosessia ja rikosprosessin funktiot* (2010) Edilex 2010/3 32.

However, there is no common agreement among legal scholars as to the functions of the criminal process.²⁰ Put simply, a criminal process can be defined by law as a regulated procedure designed to enforce punitive liability in individual cases.²¹ The attribution of criminal responsibility in any given case requires the establishment of material truth, which must follow, among other things, the principles of a fair trial.²² The criminal process can be divided into four main stages: (1) criminal investigation, (2) the consideration of charges, (3) trial in court, and (4) the enforcement of sanctions.²³

Criminalisation of the maltreatment of an animal sends a social message and strengthens the idea that cruelty towards animals is wrong and immoral.²⁴ Furthermore, the imposition of a ban on the keeping of animals is intended to ensure that animals do not become victims of people who are criminally negligent because they are unable to take care of their animals.²⁵ The criminalisation of animal maltreatment is intended to protect animals.²⁶ However, a legal norm alone is not enough to prevent unlawful acts. Therefore, the case must go through the criminal process where an authority imposes a sanction for the unlawful act.²⁷

In Finland, crimes against animals are primarily provided for in the Criminal Code²⁸ (39/1889) (hereinafter the ‘CC’). The Criminal Code provides for an

²⁰ For the various views on this topic, see Tarja Koskela, *Optimaalinen eläinsuojelu rikosprosessissa ja julkishallinnossa* (‘Optimal protection of animals in the criminal procedure and the public administration’) (Publications of Eastern Finland 2017) 54–56.

²¹ Markku Fredman and Janne Kanerva and Matti Tolvanen and Marko Viitanen, *Esitutkinta ja pakkokeinot* (Alma Talent 2020) 10, 15; Jyrki Virolainen, *Rikosprosessioikeus I* (Pandecta 1998) 2; Tapio Lappi-Seppälä, *Rikosten seuraamukset* (Werner Söderström Lakitieto Oy 2000) 41.

²² Fredman and others (2020) 10.

²³ Antti Jokela, *Rikosprosessi* (Talentum 2008) 5; Dan Frände, *Finsk straffprocessrätt* (Forum Iuris 1999) 11; Jussi Tapani and Matti Tolvanen and Tatu Hyttinen, *Rikosoikeuden yleinen osa – vastuuoppi* (Alma Talent 2019) 22; Virolainen (1998) 2.

²⁴ Tapani and Tolvanen and Hyttinen (2019) 47–52.

²⁵ Government Bill (HE) 97/2010 vp, Hallituksen esitys eduskunnalle laeiksi rikoslain 17 luvun muuttamisesta ja eläintenpitokieltorekisteristä sekä eräiden niihin liittyvien lakien muuttamisesta (Regeringens proposition till Riksdagen med förslag till lag om ändring av 17 kap. i strafflagen, till lag om registret över djurhållningsförbud samt vissa lagar som har samband med dem) (‘The Government Bill to Parliament for laws amending Chapter 17 of the Criminal Code and the law of Register of persons banned from keeping animals and amending related laws’) 5; Tarja Koskela, ‘Ankaroittiko rikoslain muutos oikeuskäytäntöä eläinsuojelurikoksissa?’ (‘Did the amendment of the Criminal Code damage the legal praxis in animal welfare offences?’) (2018) *Defensor Legis* 5/2018 764, 768.

²⁶ On the importance of morality and values in the criminal process, see Koskela (2017) 22–26.

²⁷ Tapio Lappi-Seppälä, *Seuraamusjärjestelmän pääpiirteet*, Rangaistukset in Tapio Lappi-Seppälä and Kaarlo Hakamies and Pekka Koskinen and Martti Majanen and Sakari Melander and Kimmo Nuotio and Ari-Matti Nuutila and Timo Ojala and Ilkka Rautio, *Rikosoikeus* (Alma Talent Fokus).

²⁸ *Strafflag* in Swedish.

animal welfare offence,²⁹ an aggravated animal welfare offence³⁰ and a petty animal welfare offence.³¹ The mildest offence against an animal is an animal welfare infringement as provided for under the AWA.³²

The purpose of this article is to analyse the work of police, prosecutors and judges specialising in animal welfare cases and their role in the criminal process. None of these authorities have a specific mandate to specialise in animal welfare cases. However, in the Helsinki Police Department, the Animal Welfare Police Team, which was set up in the autumn of 2018, focuses on crimes against animals.³³ The criminal investigation is a very important step for the success of the entire criminal process. Therefore, the article's main focus is on the police.

The article consists of seven sections. After the introduction, section 2 explains how an animal welfare offence comes to the attention of the relevant authorities. Section 3 assesses the dual role of the police in animal welfare cases. Section 4 reports on the results of my interviews with police officers specialising

²⁹ CC, Chapter 17, section 14: 'A person who intentionally or through gross negligence, by violence, excessive burdening, failure to provide the necessary care or food or otherwise in violation of (1) the Animal Welfare Act (274/1996) 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 at most two years.'

³⁰ CC, Chapter 17, section 14a: 'If the animal welfare offence (1) is committed in an exceptionally brutal or cruel manner, (2) 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.'

³¹ CC, Chapter 17, section 15: '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 pay a fine for a petty animal welfare offence.'

³² AWA, section 54(1): 'A person who intentionally or through negligence 1) treats an animal in a way that violates sections 3-6, 8, 32 or 33 or provisions or regulations issued under them; 2) uses an implement, piece of equipment or substance whose use is prohibited as referred to in section 12; 3) performs a procedure referred to in sections 7 or 9-11 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, must be sentenced to a fine for animal welfare infringement, unless the deed is to be punished under Chapter 17, sections 14 or 15 of the Penal Code or a more severe punishment is set down in other law.' (2) A sentence for animal welfare infringement may also be imposed on a person who intentionally or through negligence 1) violates a prohibition concerning manufacture, import, sale or provision referred to in section 12 or a prohibition referred to in section 7(3), section 13(1) section 16(3) or sections 18, 19, 22, 25 or 27 or under these provisions; 2) violates a prohibition concerning keeping of animals or acts as an agent in evading such prohibition; or 3) fails to comply with an obligation referred to in section 13(2), section 14, section 16(1), section 17, section 20(2), section 20a(2), section 21(2 or 3), sections 23, 24 or 26 or section 64 or issued under these provisions.'

³³ Police Bulletin, 27 September 2018, <https://www.poliisi.fi/helsinki/tiedotteet/1/0/helsingissa_aloittaa_suomen_ensimmainen_e_laimiin_liittyviin_rikoksiin_keskittynyt_tutkintaryhma_74543> accessed 27 September 2018.

in animal welfare cases in Finland, Sweden, and Denmark. Section 5 assesses the cooperation between different authorities in relation to animal welfare cases, while section 6 looks at the roles of prosecutors and judges in this regard. Section 7 sets out my conclusions from a *de lege ferenda* perspective.

2 How Animal Welfare Offences Are Noticed

In Finland, most instances of animal maltreatment come to light through someone reporting them to the animal welfare authorities.³⁴ After that a local animal welfare authority, generally represented by a municipal veterinarian whose task it is to supervise animal welfare, carries out an animal welfare inspection. Most animal welfare inspections based on suspicion that a violation has taken place are conducted in this way.³⁵ Because the position of the municipal veterinarian as an inspector often involves a conflict of interest in cases where that veterinarian also has a client relationship with the farm to be inspected, municipalities have been encouraged to employ official veterinarians focusing exclusively on control activities in their respective regions. The Veterinary Care Act³⁶ (765/2009), which came into force on 1 November 2009, provides for the separation of animal welfare control from the other activities of veterinarians. Section 15 of this law obliges municipalities to set up posts for those veterinarians whose role it is to work as supervisors (hereinafter 'surveillance veterinarians'). This Act resolved the problem of conflicting

³⁴ In Finland there are six Regional State Administrative Agencies, which section 35 of the AWA specifies as being responsible for the regional supervision of environmental health issues, including animal welfare. The Regional State Administrative Agencies directs and evaluates the activities of municipal units supervising animals and acts in a supervisory role. At local level, there are several animal welfare authorities. Section 36 of the AWA provides that the municipal veterinarian authority responsible for municipal health protection control and police controls compliance with the AWA and with provisions and regulations issued under it within the territory of the municipality. At every slaughterhouse there is a veterinary officer responsible for meat inspection who administers compliance with the AWA and the regulations issued under it (section 37(1)). At border crossings, exit points and veterinary border control points there are veterinary officers who control compliance with the AWA and the relevant regulations issued under it (section 37(2)).

³⁵ The Finnish Food Authority considers it important that this model, whereby the animal welfare authorities focus solely on animal welfare control, continues to be followed in the future. Specialisation in supervisory tasks has increased the competence of veterinarians responsible for monitoring compliance and has improved the coherence, efficiency and quality of control. Opportunities for networking and knowledge-sharing and peer support are important elements in maintaining the quality of animal welfare control. The Finnish Food Authority, the Finnish Food Authority's statement on the findings of the official veterinary surgeon survey on animal welfare control by SEY on 10 January 2020 Dnro 8776/00.00.04/2019 (2020) 1. <https://sey.fi/wp-content/uploads/2020/02/LIITE-3-Ruokaviraston_kannanotto_SEYn_selvitys-1.pdf> accessed 17 February 2020. Under section 15 of the Veterinary Care Act (765/2009), new provincial veterinary officers posts were established in the Regional State Administrative Agencies. Provincial veterinary officers carry out animal welfare inspections, especially in respect of unusually demanding cases.

³⁶ *Veterinärvårdslag* in Swedish.

interests among veterinarians, who no longer have to act as a supervisor for their own customers.³⁷

When the subject of animal maltreatment is a pet, in approximately 30 percent of cases the animal welfare inspection is carried out prior to the criminal investigation.³⁸ This figure rises to 98 percentage in respect of farm animals.³⁹

Animal welfare cases can be handled by way of either administrative or criminal proceedings, or both at the same time. If a person or authority suspects the maltreatment of an animal, this is reported to the animal welfare authorities, which may carry out an animal welfare inspection. Following, such inspection, the authority makes a judicial administrative decision, which can be appealed to the Administrative Court. The making of such an appeal initiates the legal proceedings that determines the lawfulness or otherwise of the administrative decision taken by the relevant animal welfare authority.⁴⁰

Section 63 of the AWA provides that if the animal welfare authority carrying out the inspection establishes that there is reason to suspect that the AWA or the provisions or regulations adopted under it have been violated, it must notify the police without delay. The criminal procedure for an animal welfare offence begins when the police initiate a criminal investigation on the basis of such notification, or otherwise based on their own observations of compliance with the law. After that, the criminal procedure proceeds to the laying of charges and possibly to a hearing before the District Court. In the context of criminal proceedings, maltreatment of animals can result in punishment, possibly a ban on the keeping of animals and the removal of any animals in the care of a person convicted of such offences.

If both administrative and criminal procedures are in progress, it is possible for the administrative procedure to result in the nullification of the administrative decision and for the criminal procedure to continue by means of the prosecution of the accused party, or vice versa.⁴¹ The documentary material accumulated in the administrative procedure can be used in either process.⁴² The imposition of both an administrative order and a criminal conviction does not violate the *ne bis in idem* prohibition.⁴³

³⁷ In Finland, there are 75 permanent posts for surveillance veterinarians. Email from Tiina-Mari Aro of the Finnish Food Authority (27 May 2020).

³⁸ Tarja Koskela, 'Eläinsuojelutarkastus ja eläinsuojelurikosepäilyistä ilmoittaminen – kansalaisaktiivisuutta vai viranomaisvalvontaa?' ('Animal welfare inspection and reporting suspicion of an animal welfare crime - civic activity or supervision of authorities?') (2013) *Edilex* 2013/22 8.

³⁹ Sofia Väärikkälä, Tarja Koskela, Laura Hänninen and Mari Nevas, 'Evaluation of Criminal Sanctions Concerning Violations of Cattle and Pig Welfare' (2010) *Animals* 10 714, 715, <https://www.mdpi.com/2076-2615/10/4/715/htm> accessed 19 April 2020.

⁴⁰ Koskela (2017) 50–62.

⁴¹ Tarja Koskela, 'Implementation of Animal Welfare Legislation and Animal Welfare Offences in Finland' (2019) *Global Journal of Animal Law* 3–5; Tarja Koskela and Satu Rantaeskola, *Eläin rikoksen kohteena* ('Animal as a subject of an offence')(Warelia 2020) 31–37.

⁴² Koskela and Rantaeskola (2020) 201–202.

⁴³ 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 in criminal proceedings under the jurisdiction again of the same State for an offence

3 The Role of the Police in Respect of Animal Welfare Issues

3.1 *The Role of the Police as an Animal Welfare Authority*

The police have two roles in animal welfare cases. They act both as an animal welfare authority and as an authority responsible for criminal investigation. I explain below how the police function in their role as an animal welfare authority under Finnish legislation and discuss the provisions under which the police act as a criminal investigation authority.

Under the first AWA, the police force was the only animal welfare authority. Section 6(1) of the Act provided that if an animal was in such a state that keeping it alive was obviously cruel to the animal, a police officer had to carry out an inspection assisted by a licensed veterinarian or other person familiar with animal care. The police officer had the right to kill the animal or have it killed to save it from further suffering. If required for animal welfare reasons, the police had the right to acquire care for the animal or order the owner or keeper of the animal to provide care. If these measures failed, the police could sell the animal, or, if for some reason the measures were not implemented or such sale would incur excessive costs, the police had the right to put the animal down. Section 7(1) of the Act provided that the police had a duty to keep a record of incidents in which cruelty to animals was suspected or in which the AWA or regulations issued under it had been violated, and they were obliged to send this record to the prosecutor so that appropriate measures could be taken. In the context of these sections of the Act, it was also possible for a county governor to invest a licensed veterinarian or other natural person familiar with the AWA with the powers granted to the police. It may be asked why the police were made the animal welfare authority instead of a municipal veterinarian: the reason for this was that the law confirmed the recognised right of the police to confiscate a suffering animal and if necessary to kill it.⁴⁴

The first AWA was renewed and the second AWA (91/1971) entered into force on 15 February 1971. The animal welfare authorities were established under section 11 of the new AWA. This Act made the Department of Veterinary Treatment of the Ministry of Agriculture the leading authority in the sphere of animal welfare. Within the territory of each county, the county veterinarian comprised the animal welfare authority; while municipal veterinarians, municipal health authorities and the police comprised the local animal welfare authorities. The government bill mentions that local animal welfare authorities

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 should be comparable to criminal punishments. Several judgments have been handed down by the European Court of Human Rights and the Supreme Court of Finland based on the *ne bis in idem* prohibition. The prohibition was mentioned in a case concerning animal welfare in a judgment handed down 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 criminal procedure. Court of Appeal of Eastern Finland 3.10.2017 R 17/141 No 17/138869.

⁴⁴ Government Bill (HE) 23/1933 vp, Hallituksen esitys eduskunnalle eläinsuojelulaiksi (Regeringens proposition till riksdagen med förslag till lag om djurskydd) ('Government Bill to Parliament for the Animal Welfare Act') 1–2.

were organised in this way to carry out its duties more efficiently.⁴⁵ There is no further explanation in the legislative drafts as to why the animal welfare authorities were organised as they were. In the Animal Welfare Decree (333/1971),⁴⁶ the animal welfare authorities were not even mentioned.

Later the role of veterinarians as supervisory authorities became the subject of debate. It was noted that the role of the municipal veterinarian as a surveillance authority in the sphere of animal welfare was complicated by the fact that veterinarians had to insist that their clients complied with animal welfare rules. One solution presented in a government bill was that the veterinary organisation would be set up with an appropriate number, approximately 70, of veterinary posts for animal welfare supervision. The intention was that since the holders of these posts would not work as practitioners they would not be dependent on their clients or have divided loyalties. Another possible solution was to separate animal welfare surveillance from veterinary treatment within the institutional organisation of the police. This would have required the police to set up approximately 70 animal welfare police posts, for which the qualification would have been a licentiate degree in veterinary medicine. These proposals were abandoned as too expensive. It was also mentioned that, because of their education and training, municipal veterinarians can provide the best possible expertise at the local level in the field of animal welfare. It was considered that the municipal veterinarian, the municipal health protection supervisory authority and the police, who are available to the public at all times of the day, together provide the accepted operating conditions for animal welfare supervision at local level.⁴⁷

The next Finnish AWA (247/1996) entered into force on 1 July 1996. In the government bill, the inspection organisation was deemed to suffice. The police force remained the local animal welfare authority because the police can be summoned by citizens at any time.⁴⁸ In the new proposed AWA, the role of the police accordingly remains the same.⁴⁹ This means that every police officer is a local animal welfare authority. However, the AWA does not specifically provide for the appointment of police officers specialising in animal welfare. Police

⁴⁵ Government Bill (HE) 47/1970 vp, Hallituksen esitys eduskunnalle eläinsuojelulaiksi (Regeringens proposition till riksdagen med förslag till lag om djurskydd) ('Government Bill to Parliament for the Animal Welfare Act') 2.

⁴⁶ *Djurskydssförordning* in Swedish.

⁴⁷ Government Bill (HE) 263/1984 vp, Hallituksen esitys eduskunnalle eläinsuojelulain muuttamisesta (Regeringens förslag till riksdagen om ändring av djurskyddslagen) ('Government Bill to Parliament to amend the Animal Welfare Act') 4–5.

⁴⁸ Government Bill (HE) 36/1995 vp, Hallituksen esitys eduskunnalle eläinsuojelulaiksi (Regeringens proposition till riksdagen med förslag till lag om djurskydd) ('Government Bill to Parliament for the Animal Welfare Act') 15. This government bill referred to Government Bill (HE) 263/1984 vp, particularly to establish 70 animal welfare inspection positions for either veterinarians or within police forces. However, this idea was deemed too expensive and was therefore abandoned. The view was taken that municipal veterinarians, the municipal health protection supervisory authority and the police together provide acceptable operating conditions for animal protection supervision at local level. Government Bill (HE) 36/1995 vp 15.

⁴⁹ Government Bill (HE) 154/2018 vp 39, 155–156. Each police authority would act in the territory for which it was responsible.

training in Finland includes virtually nothing on animal welfare legislation or crimes against animals. A police officer's level of knowledge in respect of animal welfare matters is thus based almost exclusively on his or her own interest in the matter.

Apart from the AWA, Chapter 2, section 16 of the Police Act (872/2011)⁵⁰ provides that police officers have the right to capture and, as a last resort, to put down an animal that causes a danger to human life or health, or significant damage to property, or poses a serious danger to traffic. An animal may also be put down if keeping it alive would clearly be cruel to it.⁵¹

3.2 *The Role of the Police as a Criminal Investigation Authority*

Chapter 1, section 1 of the Police Act defines the duty of the police as follows: (1) to secure the legal and social order; (2) to maintain public order and security; (3) to prevent, detect and investigate crimes; and (4) to submit cases to prosecutors for the consideration of charges. Section 1 of Chapter 2 of the Criminal Investigation Act (805/2011)⁵² (hereinafter the 'CIA') describes the duty of the police to carry out criminal investigations. It also provides that, in addition to criminal investigation authorities, a prosecutor will be involved in the criminal investigation.

The criminal investigation is the first stage of the criminal process, as well as being a necessary part of it.⁵³ The alleged animal welfare offence comes to the prosecutor and court for consideration through a criminal investigation.⁵⁴ The primary purpose of the criminal investigation is to determine whether there are sufficient grounds on which to initiate the trial of a suspect, which would require the collection of court material to ensure that the trial is sufficiently rapid and the result as correct as possible.⁵⁵ The criminal investigation is thus the basis for prosecution of an animal abuse case and the preparation of a trial and plays a key role in the process being brought to a successful conclusion.⁵⁶ Mistakes made in

⁵⁰ *Polislag* in Swedish.

⁵¹ Government Bill (HE) 224/2010 vp, Hallituksen esitys eduskunnalle poliisilaiksi ja eräiksi siihen liittyviksi laeiksi (Regeringens proposition till riksdagen med förslag till polislag och vissa lagar i samband med den) ('Government Bill to Parliament as a Police Act and some related laws') 82. The legal provision in the Police Act about putting an animal down if keeping it alive would clearly be cruel to it is similar to that laid down in section 14 of the AWA and section 11 of the Animal Welfare Decree.

⁵² *Förundersökningslag* in Swedish.

⁵³ Fredman and others (2020) 27; Matti Tolvanen and Reima Kukkonen, *Esitutkinta- ja pakkokeino-oikeuden perusteet* (Talentum 2011) 1; Antti Jokela, *Oikeudenkäynnin asianosaiset ja valmistelu. Oikeudenkäynti II* (Talentum 2012) 167; Antti Jokela, *Rikosprosessi* (Talentum 2008) 147; Virolainen (1998) 244.

⁵⁴ Tolvanen and Kukkonen (2011) 53; Fredman and others (2020) 15, 28–29.

⁵⁵ Fredman and others (2020) 16; Jaakko Rautio and Dan Frände, *Todistelu. Oikeudenkäymiskaaren 17 luvun kommentaari* (Edita Publishing 2016) 17.

⁵⁶ Tolvanen and Kukkonen (2011) 53.

the course of a criminal investigation are difficult to redress later on during the trial.⁵⁷

Chapter 3, section 3 of the CIA provides that the police are to conduct a criminal investigation when, on the basis of a report made to them or otherwise, there is a reason to suspect that an offence has been committed. Before initiating the criminal investigation, the police will, if necessary, clarify the circumstances connected with the suspected offence, especially to ensure that no one is unjustifiably suspected of the offence. When the matter requires it, a decision to waive the criminal investigation can be made.

A criminal investigation may be waived or discontinued if the offence under investigation is only punishable by a fine and, when assessed as a whole, may be considered manifestly petty, provided that no human being is an injured party and has made representations on the matter (CIA Chapter 3, section 9). It is also possible, in accordance with CIA Chapter 3, section 10, to restrict a criminal investigation. The public prosecutor may, at the request of the head investigator, decide that no criminal investigation is to be conducted or that the criminal investigation is to be discontinued, if the prosecutor, on the basis of Chapter 1, section 7 or 8 of the Criminal Procedure Act (689/1997) or on the basis of another corresponding provision, should waive the prosecution and if there is no important public or private interest that would require the bringing of charges. The public prosecutor may, at the request of the chief investigator, also decide that the criminal investigation will be discontinued if the expense of continuing the investigation is deemed to be clearly disproportionate to the nature of the matter under investigation or the possible sanction, or if, on the basis of the criminal investigation measures already performed, it is very probable that the public prosecutor would waive prosecution. Whether the offence against the animal is considered to be manifestly petty is likely to depend on the investigated act itself, but also on the personal perception of the officer who decides the matter. The harmfulness, dangerousness, and repetitiveness of the act in question are the main criteria on which its gravity can be assessed.⁵⁸ However, it is arguable that these criteria are not well suited for crimes against animals. The maltreatment of an animal is always harmful to the animal and whether an act is repeated or not is not necessarily a valid measure of its severity.⁵⁹

For categorically minor offences, the police can decide to not initiate or to terminate a criminal investigation. In this context, a minor offence refers to an act which is minor in comparison with other similar types of incident.⁶⁰ However, it is difficult to determine what constitutes a typical case where animal welfare are concerned, as crimes against animals are highly heterogeneous in nature. The number of animals affected by the crime varies, as does the amount of suffering, pain, and anguish caused to the animal. The pettiness of an offence

⁵⁷ Laura Ervo, *Esitutinnan optimaalisuus oikeudellisessa viitekehysessä* (Poliisiammattikorkeakoulu 2000) 12.

⁵⁸ Government Bill (HE) 222/2010 vp, Hallituksen esitys eduskunnalle esitutkinta- ja pakkokeinolainsäädännön uudistamiseksi (Regeringens proposition till riksdagen med förslag till översyn av förundersöknings- och tvångsmedelslagstiftningen) ('Government Bill to Parliament to reform preliminary investigation and legislation on coercive measures') 185.

⁵⁹ Koskela (2017) 76.

⁶⁰ Tolvanen and Kukkonen (2011) 60.

is a rather vague criterion of assessment, and the assessment inevitably involves attributing relative values to the various criteria that apply: for instance, the suffering of the animal, the extent to which the perpetrator has contravened socially accepted conventions, and so on. Evaluating the maltreatment of an animal often requires special skills, which do not form part of police training.⁶¹

Chapter 1, section 6 of the Police Act provides that the police are to perform their duties with all due efficiency and expediency. If circumstances so require, these duties are to be tackled in order of importance. However, this provision does not excuse failure to perform tasks.⁶² It simply entitles the police to postpone tasks which, on the basis of their nature or the importance of the interest to be protected, can only be performed after the main tasks.⁶³ Chapter 3, section 12 of the CIA provides that the police can, if necessary, postpone criminal investigation measures. This can be done if such postponement is necessary in order to clarify the offence in question or another related offence, and if such postponement does not endanger the life, health, or liberty of a person or give rise to considerable danger to the environment, property, or assets.

The police officer may first perform an animal welfare inspection as an animal welfare authority, after which their role may be to act as a criminal investigation official. So, is there a danger that the dual role of the police officer causes them to become legally disqualified to conduct a criminal investigation into an animal welfare case? Section 8 of Chapter 2 of the CIA addresses a police officer's potential lack of impartiality as follows:

- (1) he or she or a person close to him or her is a party in the criminal investigation;
- (2) he or she or a person who is close to him or her serves as counsel or represents a party or a person who may expect particular benefit or loss from the decision in the matter;
- (3) he or she or a person close to him or her as referred to in subsection 3 may expect particular benefit or loss from the decision in the matter;
- (4) he or she is employed by or works, in the matter under consideration, on the commission of a party or a person who may expect particular benefit or loss from the decision in the matter;

⁶¹ Koskela (2017) 76.

⁶² Government Bill (HE) 222/2010 vp 177; Government Bill (HE) 224/2010 vp 73; Tolvanen and Kukkonen (2011) 15.

⁶³ Government Bill (HE) 224/2010 vp 73; Klaus Helminen and Matti Kuusimäki and Satu Rantaeskola, *Poliisilaki* (Talentum 2012) 75; Eero Koljonen, *Poliisin ja syyttäjän yhteistyön kehittäminen esitutkinnan johtamisen ja laadun näkökulmasta* (Tampereen yliopisto 2010) 43–44.

(5) he or she or a person close to him or her as referred to in subsection 3, paragraph 1 is a member of the board of directors, board of administration or a comparable body or managing directors or in a comparable position in such a society, foundation, state enterprise or institution that is a party or that which may expect particular benefit or loss from the decision in the matter;

(6) he or she or a person close to him or her as referred to in subsection 3, paragraph 1 is a member of the board of directors or comparable body of an agency or public service and the matter in question is subject to the guidance or supervision of said agency or public service; or

(7) confidence in his or her objectiveness may be endangered for another particular reason.

The term “person close to” in subsection 3 is defined as follows: “(1) the spouse and child, grandchild, sibling, parent, grandparent and a person who is otherwise particularly close to him or her as well as the spouse of such a person; (2) a sibling of a parent and his or her spouse, a child of a sibling of the public official and a former spouse of the public official; and (3) a child, grandchild, sibling, parent and grandparent of the spouse as well as the spouse of such a person and a child of a sibling of the spouse of the public official.”

Unless the above criteria for lack of competence to act due to the likelihood of bias are met, the police officer cannot be disqualified from conducting a criminal investigation, even if that officer has acted as an animal welfare official in the same case.⁶⁴

Several hundred reports of suspected abuse of animals come to the attention of the police each year. The most common suspected crime is the basic form of animal welfare offence, which is provided for in Chapter 17, section 14 of the CC. In 2019, for example, 451 notifications of suspected animal welfare offences were made to the police. In relation to 14 of these notifications, no criminal investigation was carried out and in relation to 15 the investigation was closed without further action being taken. Overall, in 2019, a total of 456 cases involving suspected animal cruelty were investigated and submitted to the prosecutor for the consideration of charges.⁶⁵

⁶⁴ For further discussion of potential bias on the part of police officers, see Kirsi Kuusikko, *Esteellisyys hallinnossa* (Alma Talent 2018) 234–240.

⁶⁵ Polstat 18 May 2020.

Table 1: Suspected animal welfare cases that came to the attention of the police.

		2011	2012	2013	2014	2015	2016	2017	2018	2019
Animal welfare offence	Notified	321	267	368	349	386	387	438	398	451
	Solved	220	188	216	240	209	237	217	253	259
	No investigation	2	3	5	4	3	16	19	15	14
	Investigation terminated	6	5	2	7	8	10	13	7	15
Aggravated animal welfare offence	Notified	5	15	15	23	19	22	22	40	26
	Solved	0	16	12	18	23	23	16	23	22
	No investigation	0	0	0	0	0	0	0	1	1
	Investigation terminated	0	0	0	0	0	0	0	1	0
Petty animal welfare offence	Notified	48	29	37	36	39	56	56	51	57
	Solved	35	24	33	24	27	42	42	48	43
	No investigation	1	2	2	1	3	3	3	2	4
	Investigation terminated	0	3	2	0	1	2	0	2	2
Animal welfare infringement	Notified	167	134	133	166	165	163	204	177	205
	Solved	141	116	83	127	136	124	108	114	132
	No investigation	6	1	5	5	1	6	3	14	17
	Investigation terminated	1	1	4	2	6	3	6	5	3
Total	Notified	541	445	553	574	609	628	720	666	739
	Solved	396	344	344	409	395	426	383	438	456
	No investigation	9	6	12	10	7	25	25	32	36
	Investigation terminated	7	9	8	9	15	15	19	15	20

4 Specialist Animal Welfare Police

4.1 Animal Welfare Police in Finland

In Finland, there is only one police team that specialises in animal welfare cases. The Animal Welfare Police Team was set as a part of the Helsinki police force on 27 September 2018. The purpose of the team is to prevent and investigate cases of suspected animal cruelty and act as a local animal welfare authority. The team's activities are not established at legal level but by the Helsinki police force's internal regulations. The team is established on a permanent basis.⁶⁶

The Animal Welfare Police Team consists of two police officers and a team leader. It performs on average 50 to 60 animal welfare inspections per year together with the surveillance veterinarians.⁶⁷ The police officer performs an inspection as a local animal welfare authority. If there is a reason to make an administrative decision such decision is made by the surveillance veterinarian

⁶⁶ Interview with Anne Hietala, Head of the Helsinki Police Department Animal Police Group (Helsinki 23 January 2020).

⁶⁷ There are three surveillance veterinarians in the municipality of Helsinki.

and not by the police. However, an animal welfare police officer may decide to seize animals if necessary and this measure can be performed only by the police.⁶⁸

Roughly 60% of cases handled by the Animal Welfare Police Team are dealt with by means of a fine procedure, which entails an out-of-court written process.⁶⁹ Chapter 1, section 3 of the Act on the Imposition of Fines and Fixed Fines (754/2010)⁷⁰ provides that, depending on the offence and the case, the police or the prosecutor imposes a fixed petty fine or a fine. The fine procedure may be used (1) when there is no provision for a harsher penalty than a fine or up to six months in prison; (2) when there is a fixed fine for infringement that is separately provided for by law; (3) when a forfeiture of up to 1,000 euros may be made, alongside the fixed fine referred to in points 1 or 2 (section 1). In cases handled by the Animal Welfare Police Team, neglect of animals has been more common than obvious assault.⁷¹

When carrying out inspections, an animal welfare police officer may not be dressed in a police uniform, but is more likely to wear a vest with police symbols and to carry equipment facilitating the use of force.⁷² The animal welfare police officer's identifying insignia may calm the owner or keeper of the animal in a threatening situation. If there is prior knowledge of a potentially threatening situation, the animal welfare police officer will involve a field patrol to ensure that the inspection is carried out.⁷³

In a situation where an animal welfare offence is suspected, the animal welfare police will begin criminal investigation measures during the animal welfare inspection. At that point, the role of the animal welfare police officer as an animal welfare official changes to that of a criminal investigation official. As previously stated, this change of role does not imply lack of impartiality.

The Animal Welfare Police Team has handled cases relating to smuggling, disciplinary infraction (e.g. dog bites), neglect, and assaults. They also consult other Finnish police officers in relation to animal welfare issues. The most difficult case the team has handled was one that involved wolves. The

⁶⁸ The provisions governing such seizure are set out in section 47 of the Animal Welfare Act as follows: 'The provisions of the Coercive Measures Act (450/1987) apply to the seizure of an animal and an implement, piece of equipment and substance referred to in section 12. Notwithstanding the provisions of Chapter 4, section 10 of the Coercive Measures Act concerning the keeping of a seized object, an animal which has been seized may be killed, sold or otherwise given away immediately if it is of small value or if arranging for its care is not possible or feasible.'

⁶⁹ Interview with Emmi Miesvirta, Investigator in the Helsinki Police Department Animal Police Group (Helsinki 23 January 2020).

⁷⁰ *Lag om föreläggande av böter och ordningsbot* in Swedish.

⁷¹ Miesvirta (2020).

⁷² Chapter 1, section 10(1) of the Police Act (*Polislag* in Swedish) specifies that police officers shall wear a uniform when performing their official duties if this is required by the nature or type of the duty. The head of the unit concerned decides whether or not a uniform may be worn in other situations. Section 8 of the same Act specifies that, if necessary, a police officer shall declare to the person targeted by the action that he or she is a police officer and, on request, present his or her badge if such a declaration or presentation is possible without jeopardising completion of the action involved.

⁷³ Hietala (2020).

establishment of the team has made criminal investigation of animal abuse cases easier because police officers have been able to focus solely on crimes against animals and thus establish a routine for the investigation of such crimes. The course of action is clear and sets a path in which investigation of animal welfare cases will no longer be of secondary importance to other offences.⁷⁴

The Animal Welfare Police Team collaborates with prosecutors who are appointed to handle animal welfare cases. The same prosecutor will participate in the criminal investigation of the animal welfare offence from the beginning.⁷⁵ The police also consult a surveillance veterinarian as an expert during the criminal investigation and, if necessary, other specialists. In the case concerning wolves, the police consulted authorities from the Luonnonvarakeskus⁷⁶ and Suomen Ympäristökeskus⁷⁷. Of the cases investigated by the Animal Welfare Police Team, just under 40 have been referred to the prosecutor for the consideration of charges, but none of them has yet come before a district court.⁷⁸

The head of the Animal Welfare Police Team, Anne Hietala, states that the experience of working with the team has been good. The team has handled a large number of cases but due to a lack of resources, it has had to make decisions as to which types of case are to be dealt with by way of criminal investigation (e.g. disciplinary infractions, such as a dog biting other dog). However, a lack of resources precludes the setting up of similar animal welfare police teams elsewhere in Finland. Small police departments do not have the same opportunities to specialise in animal welfare cases as do bigger departments. Still, every police department could employ an officer who specialises in animal welfare cases. This would be a move towards standardisation of the handling of criminal proceedings throughout Finland.⁷⁹ A report prepared for the animal welfare organisation SEY Animal Welfare Finland indicated that establishment of the animal welfare police team model would be possible within the framework of existing legislation since its implementation would require only internal regulation.⁸⁰

According to the National Police Board, animal welfare offences are not concentrated in the hands of certain officers in the Finnish police departments.⁸¹

⁷⁴ Hietala (2020). Chapter 3, section 11(3) of the CIA specifies that when the circumstances so require, criminal investigation measures may be applied by reference to order of priority.

⁷⁵ Hietala (2020). In addition to the criminal investigation authorities, the prosecutor participates in the criminal investigation (CIA, Chapter 2, section 1(3)).

⁷⁶ Naturresurssinstitutet in Swedish ('the Natural Resources Institute').

⁷⁷ Finlands miljöcentral in Swedish ('the Finnish Environment Institute').

⁷⁸ Hietala (2020). After my interview with the head of the Helsinki Animal Welfare Police Team, charges were laid in a case concerning wolves.

⁷⁹ Hietala (2020). Hietala would like to secure further training on animal crimes from the Police University College.

⁸⁰ Toni Lahtinen, *Selvitys eläinsuojelupoliisin tarpeesta – Virkaeläinlääkäreiden näkökulmasta* (SEY 2020) 19, https://sey.fi/wp-content/uploads/2020/02/RAPORTTI-FINAL-10.2.2020_Edit-13.2-2.pdf accessed 17 February 2020.

⁸¹ Vesa Pihajoki, Police Inspector of the National Police Board of Finland, telephone conversation on 24 January 2019.

The Finnish police consist of ten police departments.⁸² In addition to the Helsinki Police Department, only the Western Uusimaa Police Department places crimes against animals in the hands of certain police officers.⁸³ In the Eastern Finland Police Department, some crimes against animals are handled by certain police officers.⁸⁴ In the Oulu Police Department, crimes against animals were formerly handled by a select group of officers but this has ceased because the duties of police officers have changed. However, the Oulu Police Department plans to restore the former arrangement in the future.⁸⁵

In the police territory of Eastern Finland, cooperation between authorities has developed in such a way that the handling of animal welfare inspection reports and requests for criminal investigation sent to the police by supervisory veterinarians has been centralised by means of specific pre-processing. A pre-treatment is performed by one police officer, a tactical investigator, who examines the documents sent to the police and selects the cases that are to be pursued by way of criminal investigation. The police officer him or herself conducts a criminal investigation in cases that are punishable by fines. Surveillance veterinarians in Eastern Finland benefit most from such a centralised procedure, as they have a known and reliable police officer as a collaborator. The next step would be to set up a special investigation team in Eastern Finland to investigate all suspected offences against animals, as is the case in Helsinki.⁸⁶ In the Southeastern Police Department, the criminal investigation of animal welfare offences is not confined to certain officers, but cruelty to animals is investigated by either a short or long-term investigation team, depending on the police station.⁸⁷

Every year 37 to 74 cases of suspected animal welfare cases come to the attention of the Helsinki Police Department. The number of suspected animal welfare cases increased significantly after the launch of the Animal Welfare Police Team in 2018. The increase is mainly reflected in the basic form of animal cruelty, animal welfare offences (CC Chapter 17, section 14). The average number of reports of suspected animal welfare offences before the start of the Animal Welfare Police Team was 28 cases per year. The number of such reports increased by more than 60% in 2018.⁸⁸ This underlines the need for teams specialising in animal welfare offences within the police force.

⁸² Helsinki Police Department, Häme Police Department, Eastern Finland Police Department, Eastern Uusimaa Police Department, Southeastern Finland Police Department, Lapland Police Department, Southwestern Finland Police Department, Western Uusimaa Police Department, Oulu Police Department and Ostrobothnia Police Department. Police of Finland. <https://www.poliisi.fi/en>.

⁸³ Enquiry to Finnish Police departments 2020. All except the Ostrobothnia Police Department answered between 5 and 10 February 2020.

⁸⁴ Email from Harri-Pekka Pohjolainen, Superintendent of the Eastern Finland Police Department (6 February 2020).

⁸⁵ Email from Hanne Lisakka, Oulu Police Department (6 February 2020).

⁸⁶ Pohjolainen (2020). The above-mentioned activity will be piloted in spring 2021. Email from Pohjolainen (25 January 2021).

⁸⁷ Email from Heli Jämsén-Turkki, police sergeant in the Southeastern Police Department (6 February 2019).

⁸⁸ Hietala (2020).

Table 2. Suspected animal welfare cases that came to the attention of the Helsinki Animal Welfare Police.

Notified	2014	2015	2016	2017	2018	2019
Animal welfare offence	29	19	33	29	45	42
Petty animal welfare offence	4	6	7	2	5	9
Aggravated animal welfare offence	0	0	0	1	2	2
Animal transport infringement	0	2	0	6	1	2
Animal welfare infringement	9	10	13	17	20	11
Total	44	37	55	56	74	69

The following issues have been found challenging by the police in animal abuse cases: (1) animal welfare offences require a special level of knowledge that few tactical investigators currently have; (2) for the above reason, there are qualitative challenges in criminal investigations, which has an impact, among other things, on the establishment of criminal liability, and (3) interaction during criminal investigation between the police, the supervisory veterinarians and the prosecutor is currently too limited.

4.2 Animal Welfare Police in Sweden

An Animal Welfare Police Unit was created in Stockholm in April 2011 and is Sweden's only such unit. The unit consists of eight police officers and two civilian workers. According to the head of the unit, Pernilla Markström, the size of the unit is sufficient. The operation of the unit is not provided for by law, but it is based on an internal police regulation. The Animal Welfare Police Unit has been made permanent. It investigates only crimes suspected on the basis of the Swedish AWA, such as animal cruelty or neglect or abuse. Disciplinary infractions (dog bites etc.), have been dealt with by the authorities at county level since 1 June 2018, prior to which the Animal Welfare Police Unit also handled such cases. Regarding incidents in which there is no suspicion that a crime has occurred, the county authorities deal with cases of animal neglect in accordance with the AWA. The sphere of operations of the Animal Welfare Police Unit is restricted to the counties of Stockholm and Gotland and therefore excludes the rest of Sweden. The Animal Welfare Police Unit does not perform animal welfare inspections at all.⁸⁹

In 2019, the Animal Welfare Police Unit handled 790 criminal investigations. It consults experts in the context of criminal investigations. Sometimes a person in charge of inquiries or a prosecutor requests the Animal Welfare Police Unit to consult a veterinarian who has performed animal welfare inspections as an expert in the criminal investigation. The Animal Welfare Police unit might also consult other experts, such as ethologists.⁹⁰

There are a few prosecutors in Stockholm who have concentrated on animal welfare offences investigated by the Animal Welfare Police unit. Sometimes a

⁸⁹ Email from Pernilla Markström, Head of Stockholm Animal Police Group (13 March 2020).

⁹⁰ Markström (2020).

prosecutor is already involved when conducting a criminal investigation. In other parts of Sweden, police officers do not specialise in animal welfare cases and so do not have the same knowledge of crimes against animals as the Animal Welfare Police Unit. Because they do not investigate animal welfare cases as frequently, they have no similar established routine for performing a criminal investigation. For this reason, the Animal Welfare Police Unit acts as a consultancy service for other police officers in Sweden who investigate animal welfare cases.⁹¹

4.3 Animal Welfare Police in Denmark

The Danish Police Act contains no particular provisions on the police handling of animal abuse cases: it is just part of the regular work of the Danish police. However, the Danish AWA entrusts a special task to the police, as the only organisation with the authority to access any animal facility to ensure that animals are treated properly. Section 24 of the AWA provides that the police have access to the animal facility without a warrant at any time after presenting appropriate identification, and can bring an expert with them if necessary.⁹²

In Denmark, animal welfare police are part of the normal Danish police force. All officers working in this area receive the basic training given to all police officers, which includes animal welfare and handling of animals, after which it is possible to specialise in specific areas. While all police officers have basic knowledge of how to handle animal abuse cases, animal protection and welfare is nonetheless a task that requires specialist skills. Consequently, additional education is available for officers working in special units. The Danish police have been dealing with animal welfare matters since the enactment of the first Animal Protection Act in 1916 and have inspected animal transports since the enactment of the Animal Transport Act in 1934. The first group organised for the purpose of animal welfare was created in 2000 in the National Transport Unit. Personnel specially trained to handle animal welfare cases in Denmark began their work in 2007 in 12 police districts. In 2014, three regional transport units were organised to monitor animal transports. In 2016, 12 police districts had a permanent team specialising in animal welfare issues.⁹³

In addition to the 12 police districts mentioned above, animal welfare groups work within the regional police units and there is an animal welfare group in the national police. Every police department has its own animal welfare police group and three regional transport groups carry out animal transport inspections. Three regional animal welfare police groups carry out proactive investigations concerning illicit trade – i.e. the import and export of animals – especially illicit trafficking in dogs and illicit trade in live endangered species (CITES⁹⁴). The animal welfare police group, which operates within the National Police Board, is responsible for police training, international cooperation, steering and supervision. The various animal welfare police groups vary in size but have a

⁹¹ Markström (2020).

⁹² Email from Niels Arberg, Police inspector of the Danish National Police (17 April 2020).

⁹³ Arberg (2020).

⁹⁴ The Convention on International Trade in Endangered Species of Wild Fauna and Flora.

minimum of two members, depending on their district. Police officers specialising in animal cases can also investigate matters other than animal abuse. Each animal welfare police group works in its own district. The traffic units work regionally but cooperate in respect of larger operations, sharing 'nice to know' information. The traffic units inspect between 1000 to 1200 animal transports every year, 900 to 1000 of which are subject to Council Regulation (EC) No 1/2005.⁹⁵ There are no available statistics on inspections carried out by other entities.⁹⁶

In Denmark, the police have the right to perform an animal welfare investigation themselves, usually involving two police officers. However, in many cases the animal welfare inspection involves a veterinarian as an expert. Notification of suspected maltreatment of an animal usually comes from citizens, animal welfare organisations or veterinarians. The animal welfare police officer involved may also initiate an investigation on their own. The police may also make administrative decisions in cases where an animal has not been properly cared for. However, these decisions are invariably based on the veterinarian's opinion unless the animal is in such a condition that it needs to be put down immediately to avoid further suffering. The administrative decision always includes the imposition of an obligation on the owner or keeper of the animal to treat the animal properly. This might involve, for example, sufficient feeding, access to drinking water, veterinary treatment for disease or injury, clean and dry premises and shelter from bad weather.⁹⁷

The police officer who carries out the animal welfare inspection conducts a criminal investigation if necessary and follows the progress of the case in the criminal process. As with the criminal investigation of other offences, it is an advantage for the investigation to be conducted by someone who has special knowledge related to the matter in hand. It is also an advantage in conducting a criminal investigation that crimes against animals are investigated by particular officers, allowing them to gain more experience. This has in turn led to criminal investigations being carried out to a higher standard and to cases being processed more rapidly. The animal welfare police consult a veterinarian as an expert whenever necessary during criminal investigations necessary. The prosecutor may also request an expert opinion from the Veterinarian Health Council, which is a nationally appointed council.⁹⁸

Denmark has legally appointed prosecutors specialising in animal welfare offences in every police district. Prosecutors are sometimes involved in the criminal investigation of the case, especially if it may result in disqualification from keeping animals. Niels Arberg of the Danish National Police states that it is necessary to have in place police officers and prosecutors who are specially educated to handle animal welfare cases. Education and the formal establishment of dedicated units have raised the quality of case handling. Close cooperation

⁹⁵ Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97 OJ L 3/1, 5.1.2005.

⁹⁶ Arberg (2020).

⁹⁷ Arberg (2020).

⁹⁸ Arberg (2020).

between the police and the veterinary authority as well as animal welfare organisations is also a prerequisite for the optimal handling of such cases.⁹⁹

5 Cooperation Between Animal Welfare Authorities in Respect of Animal Welfare Cases in Finland

The Finnish AWA makes it a duty of the police to give executive assistance to other authorities and for other authorities to give executive assistance to the police. Section 50 of the AWA provides that where necessary the police must provide executive assistance to the control authority and animal protection supervisor if they are hindered from performing their inspection duty and removing the obstacle calls for the exercise of the authority of the police. The municipal veterinarian must also provide executive assistance to the executing officer in cases of forfeiture concerning one or more animals.

Section 1 of Chapter 9 of the Police Act also regulates official assistance by the police. The Act provides that on request the police give executive assistance to other public authorities if provisions to this effect are separately laid down in law. The police also give executive assistance to other public authorities to fulfil a statutory supervisory obligation if the authority requesting executive assistance is prevented from performing its official duties. Section 2 of Chapter 9 regulates the duty of others to provide official assistance to the police. It specifies that public authorities are to provide any necessary executive assistance for the performance of any police duty that they have the power to perform.¹⁰⁰

Cooperation between authorities is also provided for in section 10 of the Administrative Procedure Act (434/2003)¹⁰¹, which specifies that authorities are to, within the scope of their competence and the extent required by the matter in hand, assist other authorities in carrying out administrative duties and will otherwise seek to promote cooperation between authorities. In order to obtain another authority's assistance, an authority simply needs to submit a request to it stating the need for assistance.

According to research done by animal welfare organisation SEY, Animal Welfare Finland 97 percent of surveillance veterinarians and all county veterinarians thought that the establishment of an animal welfare police team such as that established in Helsinki would improve cooperation between authorities and improve animal welfare.¹⁰² A little under 37 percent of surveillance veterinarians thought that the police in their own territory are well aware of the legislation on animal welfare. Among county veterinarians this figure rose to 47 percent.¹⁰³ Over 97 percent of surveillance veterinarians and just over 94 percent of county veterinarians believed that the presence of police officers in an animal welfare inspection assisted in ensuring the welfare of the

⁹⁹ Arberg (2020).

¹⁰⁰ For further information on official assistance by the police, see Klaus Helminen, Matti Kuusimäki and Satu Rantaeskola, *Poliisilaki* (Talentum 2012) 442–477.

¹⁰¹ *Förvaltningslag* in Swedish.

¹⁰² Lahtinen (2020) 9, 11.

¹⁰³ Lahtinen (2020) 12.

animals. Over 97 percent of surveillance veterinarians and 88 percent of county veterinarians thought that cooperation in respect of animal welfare cases would intensify if veterinarians and police officers began to perform animal welfare inspections together more frequently without the need for official letters of request.¹⁰⁴ The Finnish Veterinary Association has the long-term objective of creating a network comprising surveillance veterinarians, police, prosecutors and judges. The Association supports the extension of the Animal Welfare Police Team's work across the entire country.¹⁰⁵

The Finnish Food Authority considers that cooperation with surveillance veterinarians and the police has improved in recent years but that regional variations still exist. They also emphasised the importance of the participation of police officers in animal welfare inspections from the beginning when needed. The Finnish Food Authority does not take a position on the extension of the Animal Welfare Police Team's work across the entire country, but its view is that adequate resources for animal welfare control will be needed in order to ensure the quality and efficiency of controls in the future.¹⁰⁶

The Regional State Administrative Agency of Western and Inland Finland believes that there is a need for animal welfare teams, comprising a veterinarian, the police, and prosecutors. These teams enable support functions through low-threshold assistance, such as legal assistance. This allows animal welfare authorities to concentrate on essential animal welfare protection work. Such specialisation is likely to be advantageous where larger spheres of operation are concerned.¹⁰⁷ The Regional State Administrative Agency of Southern Finland states that cooperation between veterinarians and police is important, but the role of the prosecutor should not be forgotten. In order for the welfare of animals to be secured effectively, the whole network needs to function fluently, which presupposes that the prosecutor has expertise in animal welfare offences and the motivation to pursue them.¹⁰⁸

The public prosecutor also has a role in the criminal investigation. Chapter 5, section 2 of the CIA provides that on the request of the public prosecutor, the criminal investigation authority will conduct a criminal investigation or carry out a criminal investigation measure. Otherwise the criminal investigation authority

¹⁰⁴ Lahtinen (2020) 13.

¹⁰⁵ Finnish Veterinary Association, Statement on the SEY survey summary for animal welfare inspection veterinary surgeons in Finland on 30 December 2019, 1, <<https://sey.fi/wp-content/uploads/2020/02/LIITE-8-Suomen-Ei%C3%A4in%C3%A4%C3%A4k%C3%A4riliiton-lausunto-30.12.2019-1.pdf>> accessed 17 February 2020.

¹⁰⁶ The Finnish Food Authority 2020 2–3, <https://sey.fi/wp-content/uploads/2020/02/LIITE-3-Ruokaviraston_kannanotto_SEYn_selvitys-1.pdf> accessed 17 February 2020.

¹⁰⁷ Regional State Administrative Agency of Western and Inland Finland, Statement on SEY's report results on 18 December 2019, LSSAVI/19716/2019, 3, <<https://sey.fi/wp-content/uploads/2020/02/LIITE-4-L%C3%A4nsi-ja-Sis%C3%A4-Suomen-Aluehallintoviraston-lausunto-18.12.2019.pdf>> accessed 17 February 2020.

¹⁰⁸ Regional State Administrative Agency of Southern Finland, Statement. The SEY online survey's 2019 results of questions presented to the official veterinarians of Finland and questions to the Regional Administration agencies on 20 December 2019. ESAVI/42256/2019, 1. <<https://sey.fi/wp-content/uploads/2020/02/LIITE-5-Etel%C3%A4-Suomen-Aluehallintoviraston-lausunto-20.12.2019-1.pdf>> accessed 17 February 2020.

will comply with orders given by the public prosecutor intended to ensure the clarification of the matter. After a matter has been transferred to the public prosecutor following the conclusion of an investigation, the public prosecutor decides on criminal investigation measures. The police have no discretion in this matter, as the procedure requested by the prosecutor must be carried out.¹⁰⁹

The duty of cooperation between the police and the prosecutor is provided for in the CIA, Chapter 5, section 3 of which specifies that the criminal investigation authority shall, in the manner required by nature or scope of the matter, notify the public prosecutor of the conduct of a criminal investigation and of the circumstances connected with criminal investigation measures and otherwise of progress in the investigation. If the criminal investigation authority has notified the public prosecutor of the opening of a criminal investigation into an offence, the head investigator, before concluding the criminal investigation, must consult the public prosecutor on whether the matter has been sufficiently clarified.

The public prosecutor participates to the extent necessary in the criminal investigation in order to ensure that the matter is clarified (CIA, Chapter 5, section 3). In respect of the consideration of charges and trial, the prosecutor is responsible for ensuring that the matter is thoroughly investigated. Therefore, the prosecutor must not make a decision whether to submit the matter to the court on the basis of an incomplete criminal investigation.¹¹⁰

The above provisions mean that the prosecutor is partially responsible for the appropriateness of the conduct of the criminal investigation, though the initial decision on this matter is taken by other bodies, primarily the police. The prosecutor does not preside over a criminal investigation, but has a duty to monitor, supervise and direct the investigation. Accordingly, the prosecutor handles the task of carrying out the criminal investigation in cooperation with the police.¹¹¹

A cooperation network between prosecutors, supervisory veterinarians and the Eastern Finland Police Department has been in operation for around eight years. This network has been utilised to discuss issues relating to the criminal investigation of animal welfare offences, among other things, and to provide training for police officers in the carrying out of animal welfare inspections. The network is active and convenes meetings three or four times per year to discuss current issues.¹¹²

¹⁰⁹ Fredman and others (2020) 152–165.

¹¹⁰ Frände (1999) 199; Matti Tolvanen, 'Esitutkinan uusi työnjako: poliisi johtaa, syyttäjä ohjaa' (2004) *Oikeus* 1/2004 55, 64.

¹¹¹ Jyrki Virolainen and Pasi Pölönen, *Rikosprosessin osalliset. Rikosprosessioikeus II* (WSOY 2004) 43.

¹¹² Pohjolainen (2020).

6 The Role of the Prosecutor and the Judge in Relation to Animal Welfare Cases Heard in Court

6.1 *The Duties of the Prosecutor*

The charges laid by the prosecutor form a cornerstone of criminal law proceedings. The Act on the National Prosecution Authority (32/2019)¹¹³ governs prosecutors' duties. Prosecutors have the task of ensuring that criminal liability is established in cases handled by them in an equitable and prompt manner, and without excessive expense to ensure the legal protection of the parties concerned and to serve the public interest (section 9). Prosecutors make decisions on the criminal cases they handle, within the ambit of their decision-making powers and concerning the establishment of criminal liability, independently and autonomously (section 10). The prosecutor must ensure that the burden of proof is satisfied and has primary responsibility for preparing the case for trial.

The prosecutor has a dual role in the criminal process. First, the prosecutor acts as the engine of the criminal process and deals with the establishment of criminal responsibility. Second, the prosecutor is responsible for the rational allocation of resources in the criminal process.¹¹⁴ The court does not hear a criminal case unless charges are laid before it by a body legally entitled to do so. Under section 2 of the Criminal Procedure Act,¹¹⁵ it is the duty of the prosecutor to bring charges in respect of an offence and to prosecute the case.

Section 6 of the Criminal Procedure Act provides that the prosecutor is to bring charges for a suspected offence if (1) the act is punishable by law, (2) the right for its prosecution is not time-barred, and (3) probable grounds exist to substantiate the guilt of the suspected. In prosecuting animal welfare cases, the prosecutor exercises discretion in applying the law. When considering whether to bring charges in respect of an animal welfare offence, the prosecutor assesses whether the threshold for prosecution is met and whether there is any legal reason not to proceed (e.g. due to the triviality of the act involved).

Prosecutors make decisions to prosecute in animal welfare cases in 161 to 241 cases every year. As shown in Figure 1, most prosecutions concern animal welfare offences. The rarest category concerns petty welfare offences, in respect of which between two to seven charges were brought in each year, but none were brought in 2017.¹¹⁶

¹¹³ *Lag om Åklagarmyndigheten* in Swedish.

¹¹⁴ Virolainen and Pölönen (2004) 35.

¹¹⁵ *Lag om rättegång i brottmål* in Swedish.

¹¹⁶ Email from National Prosecution Authority Jukka-Pekka Sirviö (2 June 2020).

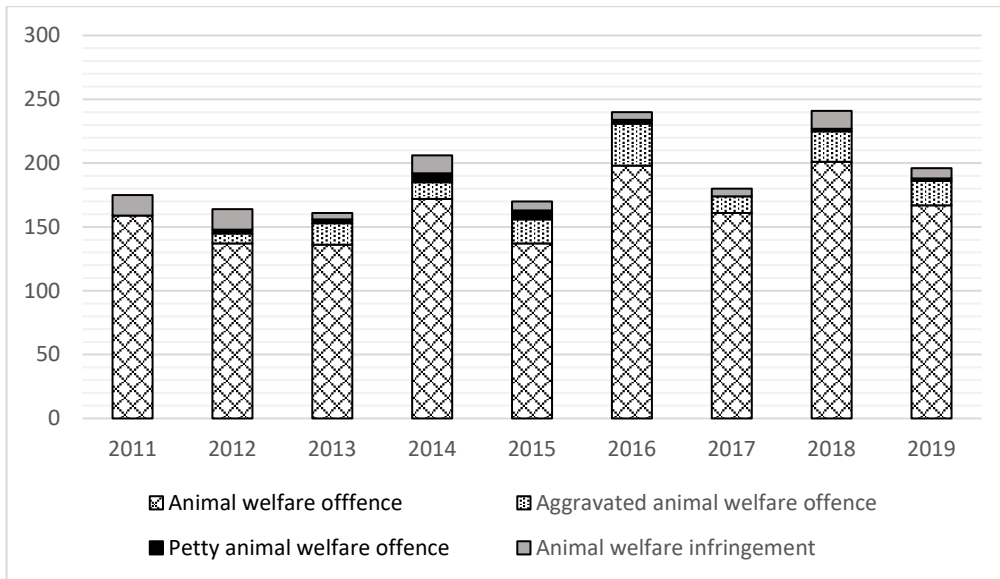


Figure 1. Number of charges in animal welfare cases by severity of the offence.

As noted, under Chapter 1, section 7 of the Criminal Procedure Act, the prosecutor may waive prosecution under certain conditions. This applies if no sentence more severe than a fine is to be anticipated for the offence, and in terms of its detrimental effects or the offender's degree of culpability in relation to it the offence may be deemed petty overall. A charge may be also waived if the suspect has not reached the age of 18 at the time of the suspected commission of the offence, no sentence more severe than a fine or imprisonment for at most six months is to be anticipated for this offence, and its commission is deemed to be more the result of lack of understanding or thoughtlessness as against intention to commit an offence or deliberate neglect. In addition, Section 8 of the Criminal Procedure Act lays down the conditions under which the prosecutor may decide to waive prosecution and provides that, unless otherwise required by important public or private interest, the prosecutor may waive prosecution (1) if criminal proceedings and punishment are to be deemed unreasonable or inappropriate in view of a settlement reached by the suspect in relation to the offence and the injured party, or if action is taken by the suspect in the offence to prevent or remove its effects, or because of the personal circumstances of the suspect in relation to the offence or other consequences of the act to him or her, or because of the welfare and health care measures undertaken and the other circumstances; (2) if, under the provisions on joint sanctions or in consideration of previous sanctions imposed by way of sentencing, the suspected offence would not have any significant effect altering the level of sanction; or (3) if the expense of continuing to consider the case would be manifestly disproportionate given the nature of the case and the potential sanction that might result.¹¹⁷

On average, prosecutors have elected not to proceed in respect of just over 20 and just under 50 animal welfare cases per year. Animal welfare offences, which constitute the basic form of crime against animals, are the most commonly

¹¹⁷ For further discussion of decisions not to prosecute, see Koskela (2017) 89–95.

excluded type of case and account for between 16 and 31 of the total in this regard.¹¹⁸

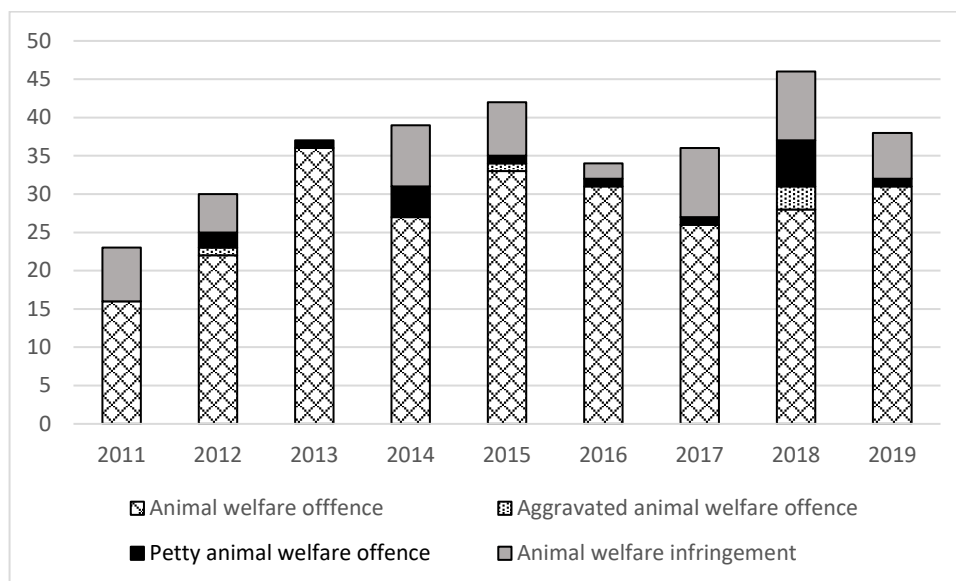


Figure 2. Number of waived prosecutions in animal welfare cases by reference to the severity of the offence.

The prosecutor may therefore apply the principle of expediency when considering charges. Hence, the duty to prosecute depends on the purpose of consideration after the criminal procedural conditions for criminal prosecution have been fulfilled. Criminal and social aspects can then be taken into account. A prosecutor's decision involves delicate evaluation in respect of which objective principles matter, especially given that there is provision for the prosecutor to exercise discretion.¹¹⁹ The leeway for the prosecutor to act in the interests of expediency may result in protection being denied to the animals in animal welfare cases.¹²⁰ Animal welfare infringement and petty animal welfare offences can be punished only with a fine, and around 80 percent of animal welfare offences heard in court result in the imposition of a fine.¹²¹ In these cases, the prosecutor may decide not to prosecute on the basis that the offence is trivial in the light of its detrimental nature or the guilt of the suspect is of minor nature on an overall assessment.

Section 7 of the Act on the National Prosecution Authority lists the categories of prosecutors: (1) the Prosecutor General and the Deputy Prosecutor General, (2) State Prosecutors, (3) Chief District Prosecutors, (4) Senior Specialised Prosecutors, (5) District Prosecutors, and (6) Junior Prosecutors. The Chancellor of Justice and the Parliamentary Ombudsman are classed as special prosecutors under section 8, and section 14 provides for a further category of special

¹¹⁸ National Prosecution Authority (2020).

¹¹⁹ Virolainen (1998) 91.

¹²⁰ Koskela (2017) 80.

¹²¹ Koskela (2018) 764–785, 770.

prosecutor. Similarly, section 3 of the Government Decree on the Prosecutor's Office (798/2019)¹²² provides that special prosecutor posts may be established in the Prosecution District in question.

For organisational purposes, Finland's National Prosecution Authority is divided into five Prosecution Districts.¹²³ According to the National Prosecution Authority, there are 22 special prosecutors in the country. Their field of specialisation are (1) economy (economic offences), 2) persons (crimes that primarily infringe on the personal legal protection of a human being) and (3) safety (crimes primarily pertaining to the general, communal legal good, covering areas such as public policy and safety, the environment, safety at work, telecommunications, the appropriateness of actions of public authorities, or the status of a legal person).¹²⁴ Animal welfare offences do not, therefore, constitute a specific category within these fields. In the Prosecution District of Southern Finland, nine prosecutors focus on the environment, animals and food fraud.¹²⁵ In the Prosecution District of Eastern Finland, animal welfare offences are handled by a single prosecutor,¹²⁶ but in the Prosecution Districts of Northern and Western Finland animal welfare offences are not handled by any particular prosecutor.¹²⁷

6.2 *The Role of the Judge in Safeguarding Animal Welfare*

The pronouncement of a verdict of guilty requires the judge to be certain of the defendant's guilt.¹²⁸ Chapter 17, section 3(2) of the Code of Judicial Procedure (4/1734)¹²⁹ provides that a judgment in which the defendant is found guilty may be made only on condition that there is no reasonable doubt as to the defendant's guilt. However, in practice, the standard of proof varies somewhat: aside from other issues, the subjectivity of human evaluation alone may affect the result.¹³⁰

¹²² *Statsrådets förordning om Åklagarmyndigheten* in Swedish.

¹²³ The Prosecution Districts under the National Prosecution Authority comprise Southern Finland, Western Finland, Eastern Finland, Northern Finland and Swedish speaking Åland.

¹²⁴ Email from Maria Turkia, communications assistant in the National Prosecution Authority Finland (6 February 2020).

¹²⁵ Email from Johanna Hervonen, State Prosecutor for the Prosecution District of Southern Finland (6 February 2020).

¹²⁶ Email from Pia Lehtosaari, management assistant for the Prosecution District of Eastern Finland (10 February 2020).

¹²⁷ Email from Ilpo Virtanen, Leading Prosecutor for the Prosecution District of Northern Finland (6 February 2020) and email from Jari Kukko, Prosecutor for the Prosecution District of Western Finland (19 February 2020).

¹²⁸ Olavi Heinonen, 'Täysi näyttö ja tuomitsemiskynnys rikosasiassa' *Lakimies* n:o 4–5/1980 321.

¹²⁹ *Rättegångsbalk* in Swedish.

¹³⁰ Jaakko Jonkka, *Syytekynnys. Tutkimus syyteen nostamiseen vaadittavavan näytön arvioinnista*. (Suomalaisen Lakimiesyhdistyksen julkaisuja, A-sarja N:o 187 1991) 74, 104; Tauno Tirkkonen, *Suomen rikosprosessioikeus I* (Suomalaisen Lakimiesyhdistyksen julkaisuja B-sarja N:o 25. 1969) 138; Lars Heuman in Per Olof Ekelöf and Henrik Edelstam

Furthermore, the judge's personal evaluation of the relative significance of different elements of the evidence may be of significance.¹³¹ The principle of judicial discretion plays a role,¹³² and is enshrined in Chapter 17, section 1(2) of the Code of Judicial Procedure in the following terms:

The court, having considered the evidence presented and the other circumstances that have been shown in the proceedings, determines what has been proven and what has not been proven in the case. The court shall consider the probative value of the evidence and the other circumstances thoroughly and objectively on the basis of free consideration of the evidence, unless provided otherwise by law.

Thus, when assessing the evidence presented in an animal welfare case, the judge is free to decide what weight to place on different aspects of the evidence presented.

Legal certainty is an important value in the criminal process and therefore the threshold for sentencing must be set high. Sentencing requires the judge's assessment of the guilt of the accused person and full evidence.¹³³ In a court hearing, the decision-making takes place on the basis of evidence. The solution is arrived at when additional screening is no longer available.¹³⁴ The judge should consider whether the facts presented by the prosecutor substantiate the essential elements of accused animal welfare offence and the prosecutor has presented sufficient evidence to confirm that this offence was in fact committed.¹³⁵ Absolute certainty may not be achieved by evaluating the evidence, but instead one can talk about the certainty that can be practically achieved.¹³⁶ Judicial decision-making examines events by reference to their legal relevance and not from the standpoint of empirical reality. Identifying the relevant issues, in turn, calls for judicial evaluation. Often the essential elements of an offence require evaluation.¹³⁷ For example, the threshold applicable to the inflicting of unnecessary suffering that must be met in order for an animal welfare offence to be held to have been committed is a matter of appraisal. The methods by which evidence is evaluated are based on conformity with empirical science, logical reasoning, and the rules of experience.¹³⁸

and Lars Heuman, *Rättegång*. Fjärde häftet (Norstedts Juridik 2009) 82–83; Pasi Pölönen and Antti Tapanila, *Todistelu oikeudenkäynnissä* (Tietosanoma Oy 2015) 82–83, 134–135.

¹³¹ Jyrki Virolainen and Pasi Pölönen, *Rikosprosessin perusteet. Rikosprosessioikeus I* (WSOY 2003) 427; Mikko Vuorenpää, *Syyttäjän tehtävät. Erityisesti silmällä pitäen rikoslain yleisestävää vaikutusta* (Suomalainen Lakimiesyhdistys 2007) 52.

¹³² Tauno Tirkkonen, *Suomen prosessioikeus II* (Suomalaisen Lakimiesyhdistyksen julkaisuja B-sarja N:o 56. 1972) 117; Henrik Edelstam in Per Olof Ekelöf and Henrik Edelstam and Lars Heuman, *Rättegång*. Fjärde häftet (Norstedts Juridik 2009) 34–34.

¹³³ See Heinonen (1980) 321–326.

¹³⁴ Jonkka (1991) 40.

¹³⁵ Matti Tolvanen, 'Tosiseikat rikosprosessissa', in Ari-Matti Nuutinen and Elina Pirjatanniemi (eds), *Rikos, rangaistus ja prosessi. Juhlajulkaisu Eero Backman 1945–14/5-2005* (Turun yliopiston oikeustieteellisen tiedekunnan julkaisuja. A. Juhlajulkaisut N:o 15 2005) 317.

¹³⁶ Jonkka (1991) 7–8

¹³⁷ Jonkka (1991) 10–12.

¹³⁸ Pölönen and Tapanila (2015) 36.

The arrangement of the Finnish court system is specified in section 98 of the Finnish Constitution (731/1999)¹³⁹ and section 2 of the Courts Act (673/2016).¹⁴⁰ The Finnish court system comprises district courts, courts of appeal and the Supreme Court.¹⁴¹ Cases involving maritime law and land rights are dealt with respectively by the Maritime Rights Court and the Land Rights Court, which are not organisationally separate courts but in fact part of the general district court system. In addition, among other things, appeals in execution proceedings, corporate debt restriction cases and military cases are handled only in certain district courts. This centralisation was intended to ensure specific expertise in these matters.¹⁴² Chapter 1, section 4 of the Courts Act provides that the courts may organise themselves in accordance with their activities, while taking into consideration the provisions of the Courts Act and elsewhere in law. Animal welfare offences are heard in the general courts, with the district court acting as courts of first instance.

There are 20 district courts in Finland (including one in Åland). Officially, no judges in any of the courts specialise in animal welfare matters. However, in some district courts, animal welfare cases are handled only by certain district judges.¹⁴³ In the District Court of South Savo, animal welfare offences are handled by department number 1, which has six district judges and two notaries.¹⁴⁴ In the District Court of North Karelia, two judges¹⁴⁵ specialise in evaluating animal welfare cases; and in the District Court of North Savo three judges fulfil this role. In the District Court of Helsinki, certain judges handle animal welfare cases, but this is because crimes against animals are dealt with only by certain prosecutors and thus cases handled by certain prosecutors are assigned to certain judges.¹⁴⁶

The number of convictions by district courts in respect of crimes against animals is shown in Figure 3 below. This shows that the largest number of convictions have been secured for animal welfare offences, which constitute a basic form of animal welfare offence, and the number of such cases ranges from just under 100 cases to more than 150 cases per year. Overall, the number of convictions in animal welfare cases each year is minimal. Since just a few district court judges specialise in such cases, no clear routine has been established by which to assess them.

¹³⁹ *Finlands grundlag* in Swedish.

¹⁴⁰ *Domstolslag* in Swedish.

¹⁴¹ The general courts of administrative law are the regional administrative courts and the Supreme Administrative Court (Constitution of Finland, section 98(2), and the Courts Act, Chapter 1, section 2(2)). The special courts are the Market Court, the Labour Court and the Insurance Court (The Courts Act, Chapter 1, section 2(3)).

¹⁴² HE 270/2016 vp, Hallituksen esitys eduskunnalle laeiksi tuomioistuainlain ja eräiden muiden lakien muuttamisesta (Regeringens proposition till riksdagen med förslag till lagar om ändring av domstolslagen och vissa andra lagar) ('Government Bill to Parliament for laws amending the Courts Act and certain other laws') 9–10.

¹⁴³ An enquiry was sent to the courts (on the mainland) on 15 May 2020.

¹⁴⁴ Email from *Etelä-Savon käräjäoikeus* (District Court of South Savo) (15 May 2020).

¹⁴⁵ Email from *Pohjois-Karjalan käräjäoikeus* (District Court of North Karelia) (20 May 2020).

¹⁴⁶ Email from *Helsingin käräjäoikeus* (District Court of Helsinki) (15 May 2020).

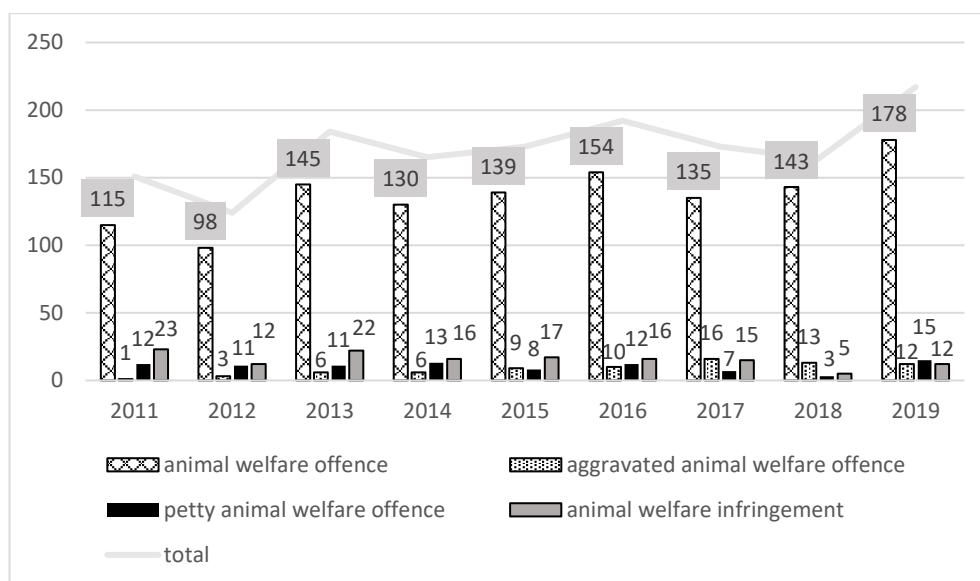


Figure 3. Judgments by district courts in respect of animal welfare offences.¹⁴⁷

A court can impose a sanction on a person found guilty of an animal welfare offence (any form of crime against animals), and it may also impose a ban on the keeping of animals.¹⁴⁸ On the basis of Chapter 17, section 23 of the CC, such a ban is imposed only at the prosecutor's request. A ban on the keeping of animals is a precautionary measure and explicitly a means by which the court can best protect animals. A person subject to a ban on the keeping of animals may not own, keep, or care for animals or otherwise be responsible for their welfare. The ban may pertain to certain animal species or to animals in general. The court may, however, on particular grounds order that the convicted person may continue to own animals, in full or in part, if these animals are not the objects of the offence, and he or she had owned them at the time of the decision, if it is possible to identify them in the decision. A ban may be imposed for a fixed period of at least one year or permanently.¹⁴⁹ The numbers and average

¹⁴⁷ Tilastokeskus (Statistics Finland).

¹⁴⁸ CC, Chapter 17, section 23 provides that when a court convicts a person of an aggravated animal welfare offence, it must at the same time impose on him or her a ban on the keeping of animals. When a person is convicted of an animal welfare offence or a petty animal welfare offence, a ban on the keeping of animals may at the same time be imposed on him or her. A ban on the keeping of animals may also be imposed on a person who, on the basis of section 54(1) of the AWA, is convicted of an animal welfare violation or, on the basis of section 39 of the Transport of Animals Act, is convicted of an animal transport violation, and he or she can be deemed unfit or unable to care for animals. A ban on the keeping of animals may also be imposed on a person for whom punishment is waived.

¹⁴⁹ A permanent ban on the keeping of animals may be imposed 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; or (3) the state of health of the person on whom the ban is imposed is poor and he or she is to be deemed permanently unfit or unable to own, keep or care for animals or otherwise to be responsible for their welfare (CC, Chapter 17, section 23(3)).

duration of bans on the keeping of animals imposed by the district courts is shown in Table 3. The table shows that the number of bans imposed has increased significantly during the period from 2011 to 2018. At the same time, the average length of the bans imposed has shortened. The number of permanent bans on the keeping of animals that are imposed is tiny, varying between four and 14 each year.

Table 3. Bans on the keeping of animals.¹⁵⁰

	2011	2012	2013	2014	2015	2016	2017	2018
Ban on the keeping of animals, quantity	67	62	90	82	95	102	82	120
Average duration of a fixed ban, years	5.1	3.9	3.4	3.5	3.1	3.2	3.8	3.4
Permanent ban, quantity	6	5	4	6	6	9	14	8

7 Conclusion

Cruelty towards animals is criminalised under the CC and the AWA. The intention of making cruelty towards animals an act punishable by law is to reinforce the notion of the wrongness and immorality of such acts.¹⁵¹ The criminalisation of cruelty towards animals restricts people's freedom of action in the interests of protecting the greater good through legal means.¹⁵² Therefore, when it comes to light that someone is maltreating an animal or animals, the animal welfare authorities take measures which can lead to a conviction and a ban on the keeping of animals. Usually, it is the surveillance veterinarian who first performs an animal welfare inspection.¹⁵³ A veterinarian who establishes that the owner or keeper of an animal has violated the AWA or regulations laid down pursuant to it must inform the police without delay. Thereafter, the police will conduct a criminal investigation on the basis of a report submitted to them, or if there is another reason to suspect that an offence has been committed. The criminal investigation starts the criminal process. The other stages of the criminal process comprise the consideration of charges, trial at court and finally the enforcement of the punishment.

Crimes against animals differ from many other crimes in that an animal is legally considered as personal property,¹⁵⁴ even though it cannot be treated like

¹⁵⁰ *Tilastokeskus* (Statistics Finland).

¹⁵¹ Inkeri Anttila and Olavi Heinonen, *Rikosoikeus ja kriminaalipolitiikka* (Kustannusosakeyhtiö Tammi 1977) 80–81.

¹⁵² Jussi Tapani, 'Rikoslainoppi ja teleologia', in *Oikeuden tavoitteet ja menettelyt. Muistokirja Hannu Tapani Klamille* (Turun yliopiston oikeustieteellisen tiedekunnan julkaisuja (Publicering av Åbo Universitet) ('Publications of the University of Turku'). A Juhlajulkaisut N:o 12 2003) 134.

¹⁵³ Koskela (2013) 8.

¹⁵⁴ This is explicitly stated, for example, in the Government Bill for a new Animal Welfare Act (HE) 154/2018 vp 84. For further discussion of the legal status of animals, see Birgitta Wahlberg, 'Eläinoikeustieteestä ja eläinten perusoikeuksista', in Elisa Aaltola and Birgitta Wahlberg (eds), *Me & Muut eläimet* (Vastapaino 2020).

an object. For example, you cannot put an animal into storage to await a later court ruling. The assessment of what constitutes unnecessary pain or suffering inflicted on an animal also requires specific skills, training for which is not included in the basic education given to the officials involved in the criminal process. All jurisprudence is more or less a technique, but it is also more or less openly moral. It is in the area of criminal law that morality has the most obvious importance.¹⁵⁵ For this reason the conduct of animal welfare cases should be placed in the hands of officials who specialise in crimes against animals.

The establishment of specialised public servants working within police departments, public prosecution offices and courts would represent the ideal situation in respect of the handling of animal welfare cases.¹⁵⁶ The role of police officers and prosecutors specialising in animal protection offences is vital from the very beginning of a criminal process, as is their close and active cooperation. The success of a criminal process is largely based on a successful criminal investigation. In the absence of a thorough criminal investigation, it is difficult for the prosecutor to properly consider and prepare the charges. Mistakes made during the criminal investigation are difficult to correct at trial.

Since it is a prosecutor's duty to bring charges and present evidence at court, the prosecution cannot succeed without an expertly conducted criminal investigation. Furthermore, assessing animal welfare often calls for specialist expertise on the part of the judge. However, it is up to the judge to evaluate the severity of the unnecessary suffering or pain experienced by the animal and, by extension, the blameworthiness of the act, which in turn impacts on assessment of the appropriate punishment.

If crimes against animals in the criminal process were considered by officers who specialise in those crimes, many benefits would accrue from this. First, the conduct of criminal investigations would become more efficient and take less time as officers gained experience and no longer had to deal with other crimes that were deemed more important. Likewise, for prosecutors, the assessment of the crime would become easier as they accumulated knowledge and experience. In the courts, were certain judges to specialise in animal welfare offences, the legal praxis would also become more uniform. This would result in better implementation of the principle governing the imposition of sanctions laid down in Chapter 6, section 3(1) of the CC: in sentencing, all grounds according to law affecting the amount and type of punishment, as well as the uniformity of sentencing practice, are taken into account.

In certain prosecution districts, some prosecutors willingly prosecute more animal welfare cases than others, but they are not officially special prosecutors. The situation is the same with the police: in a few police departments, some police officers concentrate on animal welfare cases. Finland, Sweden and Denmark respectively each have at least one police unit that specialises in animal welfare matters. The experience gained by these units has been found to have improved both animal welfare and the quality of criminal investigations. In Finland there are no judges that specialise in crimes against animals. However, some judges handle more animal welfare cases than others, but the reason for

¹⁵⁵ Nils Jareborg, *Allmän kriminalrätt* (Iustus Forlag 2001) 94.

¹⁵⁶ Koskela (2017) 110–114.

this is that they work with certain prosecutors who prosecute the animal welfare offences that take place in their district.

The activities of police officers specialising in animal protection should be extended throughout the country. At the same time, animal protection matters should be included in police education. Specific skills are needed to carry out criminal investigations into crimes against animals, but it should not be forgotten that the police force is also an animal welfare authority that can carry out animal welfare inspections and use administrative coercion if necessary.

In the criminal process, police specialisation in the criminal investigation of cruelty to animals alone is not sufficient; an effective criminal process also calls for similar specialisation on the part of prosecutors. In some Finnish Prosecution Districts, animal protection offences have tended to be handled by certain prosecutors. This is a good start but not enough. Just as the Animal Welfare Police Team has been set up in the Helsinki Police Department, a unit for animal welfare could be established in every prosecution district. This is what has been done in New York City. The Animal Cruelty Prosecutions Unit in the Investigations Divisions of the Queens County District Attorney's Office was created in January 2016. It was the first of its kind in New York City. The Animal Cruelty Prosecutions Unit is tasked with investigating and, if necessary, prosecuting allegations of animal cruelty, including the intentional killing, torture, and injuring of animals, organising dogfights and cockfights, and the abandonment, starvation and neglect of household pets. In addition, the Unit educates citizens to prevent animal abuse. The Animal Cruelty Prosecutions Unit works closely with the New York Police Department Animal Cruelty Investigation Squad, Queens County police precincts, and the American Society for the Prevention of Cruelty to Animals (ASPCA).¹⁵⁷

Specialisation is also required in court. Special skills are required to evaluate the evidence presented to the court in respect of alleged animal welfare offences. Assessment of suffering inflicted on animals does not form part of a judge's education. Studies have highlighted variable outcomes of animal protection offences heard by the courts.¹⁵⁸ For example, in relation to an aggravated animal welfare offence under Chapter 17, section 14a of the CC, special brutality and cruelty by reason of action or neglect must be involved, or a significant number of animals must be victims of the offence. However, legal praxis varies in the evaluation of these criteria.¹⁵⁹ Legal praxis could be harmonised at national level if each court established units to adjudicate on all animal welfare cases in their area. Similarly, judges required to pass judgment on alleged animal welfare offences could obtain specialised training on the assessment of such offences.

¹⁵⁷ Queens District Attorney's Office. Special Proceedings Bureau. <<http://www.queensda.org/specialproceedings.html>> accessed 14 May 2020.

¹⁵⁸ Tarja Koskela-Laine, 'Onko eläimellä väliä? Eläinsuojelurikosten empiirinen tutkimus' ('Does the animal matter? Empirical research on animal crimes') (2012) *Edilex* 2012/3; Koskela 2018; Tarja Koskela, 'Törkeä eläinsuojelurikos – vai onko?' ('Aggravated animal welfare offence – or is it?') (2019) *Edilex* 2019/19.

¹⁵⁹ Koskela (2019) 15–19.