

## **The Constitution of Finland**

### **Chapter XX On the fundamental rights of animals**

**Section 1** Protection of animals

**Section 2** Fundamental rights of wild animals

**Section 3** Fundamental rights of animals dependent on human care

**Section 4** Prohibition of animal breeding

**Section 5** Safeguarding fundamental animal rights

The rationales of the proposed sections have taken into account the current Finnish Animal Welfare Act as well as the new act that is in preparation.

#### **Section 1 Protection of animals**

*Animals are sentient beings whose fundamental rights and welfare requirements must be fully respected by humans.*

*The interests and individual needs of animals must be taken into account in all private and public activities that have a significant impact on their living conditions or chances of survival.*

*Animals have legal standing. The legal representation of animals is further specified by law.*

*Ensuring the rights, welfare and protection of animals is the responsibility of everyone.*

#### **RATIONALE:**

##### **Section 1**

According to *subsection 1* of Section 1, animals are individual, sentient beings. A similar provision is included in Article 13 of the Treaty on the Functioning of the European Union, where animals are legally recognised as sentient beings.

Sentient animals are individuals. A sentient being has intrinsic value. Sentience is defined as a capability for experiencing positive and negative emotions. The respect for sentient beings entails that the self-understanding or cognitive capacities, or incapacities, of animals are irrelevant with regard to the protection of animals. Rather, humans must protect a sentient being for animal's own sake. However, the capacities of an animal affect the intensity and variety of animal's experiences, which is of relevance when assessing the best interests of the animal and which must be taken into account according to the best scientific understanding and knowledge.

Animal research has demonstrated that sentience is widespread among various animal species. However, given the current state of research, it is impossible to make a precise distinction between sentient and insentient species. There is some uncertainty especially in assessing the sentience of invertebrate species. The delimitation of sentient and insentient species is constantly changing and thus, when determining individual sentience in practice, the

precautionary principle has to be applied for the benefit of the animal. According to the precautionary principle, all animals are considered to be sentient unless there is evidence to the contrary. Due to the scientific uncertainty, the provision assumes the sentience of animals. Thus, lack of scientific certainty cannot be used as an excuse for neglecting the animal rights provided by law.

The individual status of an animal means there is an obligation to take into account animal's individual qualities in decision-making under Section 1, *subsection 2*. For example, to meet the requirements of animal protection legislation, the fulfilment of species-specific needs alone does not suffice, and each situation needs to be examined individually. Hence, the acceptability of a procedure cannot be based solely on the fact that it does not cause suffering to most members of the species if an individual member will still suffer from that procedure due to a weakened condition, shyness or a similar reason.

The individuality of an animal must also be taken into account in ownership disputes. Ensuring the animal's rights and welfare must, in cases of doubt, be one of the considerations when establishing an animal's ownership. For example, the attachment of the animal to one of the parties is a point that needs to be considered.

The requirement laid down in Section 80 of the Constitution, that the principles governing the rights and obligations of private individuals shall be governed by Acts, applies also to animal individuals as laid down in Section 1, subsection 1 of Chapter 2a. The respect for the fundamental rights of animals entails the duty to interpret statutes in a way that secures the fundamental rights of animals in the best possible manner. Furthermore, courts must, in accordance with Section 106 of the Constitution, give primacy to the fundamental rights of animals if they are in conflict with the fundamental rights of humans, as specified in Section 2 of this proposal.

*Subsection 2* of the article provides that the interests and individual needs of animals must be taken into account in all decision-making processes that will substantially affect their living conditions or possibilities of survival. Living conditions pertain to animals dependent on human care and possibilities of survival to wild animals. The resolution of matters concerning an animal must be based on the available scientific information on animal welfare and also, if possible, the available information on the animal's individual needs and habits.

A decision-making process will substantially affect the living conditions of an animal if it affects the fulfilment of the animal's basic rights granted under Sections 2–3. Negligible effects on the animal's interests are not considered to be substantial within the meaning of the article. A negligible effect, for example, may be a reduction in size of a wild animal's habitat in a way that still ensures animal's survival.

According to *subsection 3* of the article, animals have legal standing before the authorities and in the courts. A legal representative is authorised to speak on the animal's behalf. Such a representative shall be heard in legal proceedings that concern the animal's rights or interests, and he or she may appeal the decision on the animal's behalf. The representative of an animal may also file matters with authorities on behalf of the animal. The animal's owner may represent the animal if the interests of the animal and the owner do not conflict. The law also provides for the right of other entities to represent animals. For example, certain registered associations or foundations already have the right to lodge a complaint in the circumstances

specified under the Nature Conservation Act (1096/1996), Environmental Protection Act (527/2014), Water Act (587/2011) and the Waste Act (646/2011).

According to *subsection 4*, ensuring the basic rights, welfare and protection of animals is the responsibility of everyone. Similarly to subsection 1 of Section 20 of the Finnish Constitution, which states that nature is the responsibility of everyone, this responsibility lies with both public authorities as well as private natural persons and artificial persons. According to the proposal for Animal Welfare Act (2070/01.01/2017), everyone has the duty to treat animals in accordance with animal welfare regulations. This proposal extends the same duty to cover the fundamental rights of animals as well. The duty applies to both animals dependent on human care as well as wild animals, and does not depend on who the owner of the animal is or whether the animal is owned by anyone. By providing that this responsibility belongs to all, it is emphasised that the animal protection pursuant to Section 1 calls for extensive cooperation between various authorities and other parties. It is also stressed that there are values associated with ensuring animal rights and animal protection that cannot be disregarded in favour of human rights. Although animal rights and the rights of human beings are not the same, they are equivalent in principle when weighed against each other. The aim is a balanced assessment of the interests of humans and animals. The responsibility for animals includes caring for the common living environment and respecting all sentient individuals that live there, with due regard for their fundamental rights.

This responsibility includes both the promotion of animal welfare and the elimination and prevention of suffering. The contribution of an individual person to the protection of animals and the ensuring of animal rights may take the form of an active pursuit or a passive refraining from actions that infringe upon animal rights. The responsibility concerns, first and foremost, the activities of legislators and other issuers of normative acts.

## **Section 2 Safeguarding fundamental animal rights**

*Public authorities must safeguard the fulfilment of fundamental animal rights.*

*Fundamental animal rights may only be limited if it is necessary for the survival of a human being, an individual animal or an animal species. The enactment of a limitation must respect the central content of said rights.*

### **RATIONALE:**

#### **Section 2**

Section 2, subsection 1 stipulates that the public authorities must safeguard the rights granted by the chapter on animal fundamental rights to every animal within their jurisdiction. This corresponds to the obligation of the public authorities to safeguard the fundamental rights and basic human rights stipulated in Section 22 of the Finnish Constitution.

The safeguarding includes the responsibility of the public authorities to develop the society in a way that allows for the mutually respectful coexistence of humans and animals, while also safeguarding animal rights. The impact of fundamental animal rights must be reflected in the whole of the society.

The subsection includes the responsibility of public authorities to develop the society in a manner that realizes the mutually respectful coexistence of humans and animals, while at the same time securing the fundamental rights of animals. This responsibility entails obligations for the legislator to actively develop the legislation and the society.

The duty of the public authorities is to create such conditions where those rights are also protected against private violations. The objective of the obligations to safeguard and promote is to clarify the relations between private parties with regard to fundamental animal rights. The obligations also specify the position of human beings with regard to the nature and, on the other hand, the position of animals with regard to human beings. The obligations to safeguard and promote establish a framework for legislative work that affects the fundamental of rights human beings and animals. They offer the possibility so resolve conflicts of interests in a manner that ensures the societal consideration of the interests of sentient beings other than human beings.

Public authorities must refrain from infringing upon basic animal rights. Wherever a provision in an Act or a decree can be given a meaning that is consistent with the fundamental animal rights, that meaning shall be preferred to any other meaning. Such safeguarding means a constitutional mandate to develop legislation concerning animals and other initiatives to truly bring animal rights and interests to the attention of the public and to work towards actualising them. Animal-rights-friendly interpretation shall also be employed in situations where a statute is not applied to an individual case. Animal-rights-friendly interpretation entails, contrariwise, the prohibition to engage in activities or perform actions whose purpose is to annul some recognized fundamental animal right or to restrict it further than what is deemed acceptable in this section.

The obligation to safeguard also covers all animals that are brought to Finland, in addition to those that already live there. Exports of animal products from the countries that do not respect the rights guaranteed in this article may be prohibited. Thus, it must be ensured that the rights are not circumvented by the transporting of animals outside of the Finnish borders. Also, the enforcement of the rights cannot be circumvented by transporting an animal or animals abroad, e.g. for procedures that are illegal in Finland. The public authorities must take active measures to prevent any circumventing of the obligations arising in relation to animal rights.

According to the *second subsection*, fundamental animal rights may only be limited if this is necessary for the safeguarding of human or animal fundamental rights (*principle of necessity*). The limitations must be as limited as possible with regard to the purpose (*principle of proportionality*), and the limitations must respect the central content of the fundamental animal rights. When deciding on such limitations, the fundamental rights of humans and animals must be taken to be of equal value. Public authorities must also with regard to the limitations on fundamental animal rights develop the society in a manner that supports the respectful coexistence of human beings and other animals, and the actual realization of fundamental rights.

Limitations on fundamental animal rights shall be governed by Acts. This requirement entails the prohibition to delegate the power to limit fundamental rights to lower statutory level.

The principle of necessity also covers the right to life provided for in section 3, subsection 1, and section 4, subsection 1. An animal may only be killed if it is unavoidable and if there are no other feasible means to protect human beings, animals or some species or the environment.

Furthermore, the killing or euthanizing of an animal must be performed in a manner that is specified in a law and that does not inflict suffering upon the animal.

### **Section 3 Fundamental rights of wild animals**

*A wild animal has the right to life and the right to live in freedom, in the animal's natural habitat.*

*A wild animal has the right to receive help if the animal is sick, injured or otherwise incapacitated. If an animal is in a condition such that keeping the animal alive is obviously cruel, the animal has the right to be euthanized. Animals must be in such cases killed as laid down by law.*

#### **RATIONALE:**

##### Section 3

The rights provided in this section apply to wild animals. "A wild animal" means an animal that lives independently of humans in a natural habitat. The article also applies to animals that have adapted to life in a man-made environment, e.g. cities, but that are not dependent on human care.

It is forbidden to keep wild animals in a domestic setting. However, temporary capture is allowed to provide medical care to the animal or for other acceptable reasons. An animal kept for the purpose of providing temporary medical care or for some other acceptable temporary necessity must be released into the wild when the animal's condition allows for this, assuming the animal can re-adjust to life in the wild without any difficulties. If an animal requires permanent care and this can be arranged without infringing upon the animal's fundamental rights, the animal is considered as belonging to the category of animals listed in Section 3.

According to *subsection 1*, wild animals have the right to live in freedom and in their natural habitat. Three rights are guaranteed in this section: the right to life, the right to live in freedom and the right to natural habitat.

The right to life is closely connected to the other rights protected under the subsection, as the right to freedom and the right to natural habitat also protect life. The right to life protects the animal from the deprivation of life both by killing and by causing the destruction of the animal's living conditions. In addition, the right to life presupposes active measures to protect life, such as helping animals that are in mortal danger. In this regard, the right to life is closely connected to the right to assistance provided for in the second subsection.

The right to life must be weighed against the fundamental rights of human beings and other animals, and it may only be restricted for acceptable and sufficiently weighty reasons in accordance with the principle of necessity. For instance, animals are often killed as a result of agriculture or construction. Insofar as such activities are necessary for humans, they are not in violation of this subsection. However, the measures taken must be such that they protect the

life of the animal as extensively as possible and respect the animal's rights as a whole, especially regarding the sentience of the animal.

The right to freedom includes the right to freely engage in the animal's natural behaviour, the right of the animal to move freely and the right of the animal to choose location in the environment and the right to bodily integrity. Bodily integrity presumes the right of the animal to be secure against actions that could cause bodily harm. However, the right does not exclude the resettling of an animal to a more suitable environment if the co-existence of humans and animals in the same area is practically impossible.

The right to live in the animal's natural habitat protects the animal from such interferences with the habitat that will result in a marked decrease in the animal's chances of survival or will render those chances non-existent. This right takes precedence in situations where measures aimed at changing the environment would, if implemented, endanger the conditions for the welfare or life of an animal. The right to live in natural habitat must be examined in the context of the needs of the species and of the individual animal, because the habitat requirements of animals can vary greatly. Certain species require very specific living conditions, while others will thrive in a variety of habitats.

The first subsection of the section broadens the protection of wild fauna and their natural habitat as required by the Council directive on the conservation of natural habitats and of wild fauna and flora (1992/43/EEC) and the Directive of the European Parliament and Council on the conservation of wild birds (2009/147/EC). The subsection raises the individual animal as the subject of protection, whereas the directives concern animal species and different habitats and flora. In addition, all wild animals, irrespective of their threat and habitat, are subject to the right to life and to the natural habitat of animals. Also in this respect, the section deepens and broadens the level of protection afforded by the directive to all wild fauna.

The *second subsection* of Section 3, as in the current Finnish Animal Welfare Act (AWA 247/1996), Section 14, provides that efforts must be made to help a sick, injured or otherwise incapacitated wild animal. However, if an animal is in a condition such that keeping the animal alive is obviously cruel, the animal must be euthanized in compliance with law. In assessing obvious cruelty, the animal's overall condition and the animal's prospects for the future must be taken into account, in addition to the animal's suffering. The aim of protection from obvious cruelty is to avoid situations where an animal is kept alive even though the animal is physically or mentally subjected to ongoing or prolonged pain, distress or an illness that negatively affects the animal's chances of survival or of living a species-appropriate life.

#### **Section 4 Fundamental rights of animals dependent on human care**

*An animal has the right to life as well as the right to express natural behaviours and have the animal's basic needs fulfilled.*

*An animal has the right to experience and express positive emotions, and the right to be protected and free from fear, pain, distress and suffering caused by humans.*

*An animal has the right to food and drink that is suitable for maintaining the animal's welfare and health. Nutrition that is healthy, sufficient and natural to the animal species is considered to be suitable nutrition. An animal has the right to decide when to eat and drink.*

*An animal has the right to a suitable living environment, including shelter and a resting area.*

*An animal has the right to receive appropriate treatment without delay. If an animal is in a condition such that keeping the animal alive is obviously cruel, the animal has the right to be euthanized. Animals must be in such cases killed as laid down by law respecting the animal as an individual, sentient being.*

## **RATIONALE:**

### Section 4

The rights provided in this section apply to animals that are dependent on human care.

The owner or caretaker of an animal is not absolved of their responsibility towards the animal that is dependent on their care by releasing the animal into the wild, unless the release is a solution justified by its benefit to the animal. Such situations may for example occur in conjunction with animals released from zoos. The responsibility stipulated by Section 3 shall cease only when the animal is completely independent from human care.

*According to subsection 1, animals have the right to life and to express natural behaviours and to have their basic needs fulfilled. These rights are closely interlinked with the other rights stipulated by the section.*

The right to life has two dimensions. First, an animal has the right to not have the animal's life deprived intentionally or negligently. Second, the right to life entails the duty to secure, by active measures, for the animal the conditions for the animal's life. Such measures include preventive animal protection and healthcare, provided for in subsection 5.

Natural behaviour means the behaviour that the animal is strongly motivated to engage in and that gives the animal operant feedback, in other words, it reduces the motivation for said behaviour. Natural behaviours vary between different animal species but the main behavioural characteristics include, in all cases, movement and physical activity, grooming, exploration and feeding behaviours, playing, care and species-specific rest activities, e.g. sleeping on a perch.

In some animal species, like horses and sheep, social interactions with other members of the species, including living in herds and herd behaviours are strongly featured. Herd behaviours mean, for example, the needs of chickens to behave and act in unison, such as dust bathing at the same time. The right to exhibit natural behaviours also entails, depending on the animal species, the right to live alone or with other members of the species.

Care, as a behavioural need, involves both taking care of another and being cared for. Thus, it involves the right of an animal to care for the animal's young and the right of the offspring to be cared for. The right to natural behaviour also includes the behaviours that are necessary for the animal only in certain situations or stages of life, such as a calf's need to suckle or a sow's need to nest before farrowing.

Feeding behaviours mean, among others, the need to graze, to forage or to eat at the same time. The right to natural behaviour shall be evaluated both from the point of view of the species and the individual animal, as is also laid down in Section 1, subsections 1 and 2.

Fulfilling the animal's basic needs means ensuring the rights stipulated in the section, so that the animal may fulfil the animal's needs independently or with the help of human activity. Human activity means, for example, walking a dog so that the animal can engage in exercise and relieve itself outside. Fulfilling the rights stipulated in the section also means the measures designed to prevent disordered behaviour and suffering in animals. Those measures shall be specified in an Act.

According to *subsection 2*, an animal has the right to experience and express positive emotions, as well as the right to be protected free from fear, pain, distress and suffering caused by humans. This subsection mainly stipulates the rights relating to the animal's range of experiences. The section also aims to protect the animals from physical pain and mental distress, suffering and fear.

Suffering is defined as a mental or physical sensation that negatively affects the animal's welfare or health, while pain refers to physical pain experienced by the animal and distress means mental suffering, anxiety, fear or some other similar strong sensation that is highly unpleasant or that negatively affects the survival chances of the animal. As the government bill (36/1995) for the current Finnish AWA has concluded, pain and distress are closely interlinked in practice and cannot necessarily be distinguished as separate sensations. In the light of the current scientific understanding, the welfare of an animal does not simply mean the absence of disease or negative emotions, but also the chance to experience and express positive emotions. It is not sufficient to merely fulfil the animal's physiological needs, but the life experienced by the animal also has to be adequately good. In assessing the animal's experience of a good life, the current scientific information on the behavioural needs of animals, their ways of expressing positive emotions and their significance to the animal must be taken into account. In addition, the assessment must take into account the existing information about the animal's individual habits and needs, as well as animal's ways of expressing those needs.

This subsection stipulates both negative and positive obligations. A person shall refrain from measures that cause suffering or other negative emotions to an animal. At the same time, active attention shall be paid to the fulfilment of the right to natural behaviour stipulated in subsection 1, by allowing the animal to experience and express positive emotions.

According to *subsection 3*, an animal has the right to suitable food and drink in the sufficient amounts that are necessary for the animal's welfare and for preserving the animal's health. An animal has the right to receive the nutrients necessary for meeting the animal's energy requirements, as well as the vitamins and other substances that are vital for animal's welfare and for maintaining good health. The energy and food requirements of individual animals depend on the species, age, animal premises, air temperature, physical condition of the animal and the energy expenditure of the animal at a given time. Sufficient amount of food also means that the animal can experience satiety.

As is stated in the government bill for the current Finnish AWA, the food given to animals shall be of a good quality, its composition shall be such that it is suitable for the individual animal in question and that the animal can eat it without difficulty. The food may not contain toxins, impurities or other substances that are detrimental to the animal's health and welfare.

The caretaker of the animal is responsible for meeting the animal's nutritional needs and for the suitability of the food provided to promote the health and welfare of the animal in question. For example, if the animal is allergic to a nutrient, the person responsible for the care of that animal must provide food that is suitable for the animal in question. In the case of qualitative or quantitative changes in the animal's food requirements, the person responsible for the animal's care must provide suitable food in the appropriate amounts. The food shall be provided in a manner that enables the animal to eat in a natural posture. An animal has the right to decide, according to the animal's individual needs, when to eat.

The animal must not be overfed, on purpose or due to negligence, so that the animal's welfare or health is adversely affected by excess weight. An animal species must also not be bred in such a manner that the animal's need to eat detrimentally affects the animal's wellbeing or health, leading for instance to obesity or constant hunger. If a such breed has already been produced, the breed may not be sustained by producing new members. Animal breeding and the prohibition of breeding are regulated in Section 4.

Access to water is a fundamental physiological need of an animal. The water provided for the animal must be of a good quality, sufficient in quantity and made accessible so that the animal can drink without difficulty. The animal has the right to decide when to drink, according to the animal's individual needs. Insufficient hydration leads to a deterioration of the welfare of the animal. Therefore, water must be constantly available. Supplying the animal with frozen water is not in compliance with the right to drink provided in this section.

According to *subsection 4*, an animal has the right to an appropriate living environment, including shelter and a rest area. The living environment must be sufficiently spacious, shielded from the elements, well lit, clean, safe and also appropriate with regard to the needs of the animal and the species.

In assessing the appropriateness of the living environment, the other rights guaranteed by Section 3 must be taken into account. For example, when assessing the sufficient spaciousness of the living environment, the right to the natural behaviour guaranteed in subsection 1 must be taken into account. A restrictive living environment may cause distress and suffering to the animal, and thus may be inconsistent with the animal's freedom from distress and suffering caused by humans, as is stipulated in Section 4. The spaciousness of the living environment must also realise the right of the animal to experience and express positive emotions. Cramped conditions may also be a security risk, especially with regard to animals that live in herds.

An animal has the right to shelter; for example, from adverse weather conditions. The temperature of the shelter must be suitable for the animal's welfare. Therefore, in a hot environment access to shade or a cooler area must be granted.

To fulfil the animal's need for rest, there must be a rest area included in the living environment. The qualities of the rest area must meet the needs of the animal: it has to be sufficiently large, clean and dry. The requirements for the living environment, shelter and rest area shall be specified in an Act .

According to *subsection 5*, an animal has the right to receive appropriate medical care without delay. On the other hand, an animal has the right to be euthanized if the animal is in a

condition such that keeping the animal alive is obviously cruel. See in this regard the rationale of Section 2, subsection 2, stipulating a respective right. Euthanizing an animal must always be performed in a manner specified in an Act.

The right to receive appropriate medical care without delay includes a quick diagnosis and the necessary treatments. The responsibility for seeking treatment lies with the caretaker of the animal, whereas and the veterinarian or other medical professional is responsible for the treatment itself. In other words, the right presupposes active measures to secure the health and safety of an animal that is dependent on the care of a human being. This includes also pre-emptive measures regarding animal diseases, the living environment of the animal and treatment practices.

The responsibility for continuing the appropriate treatment in the premises after the veterinary or other medical care is completed belongs to the caretaker. The animal must also be guaranteed peace and a chance to recover after treatment.

Veterinary care and treatments must be such that they do not cause unnecessary pain or distress to the animal. When considering the different treatments available, the interests of the animal and of relieving the pain the animal feels must be central. Normally, a painless or the least painful procedure must take precedence, especially in situations where there is no available pain medication. Efforts must always be taken to alleviate the distress of the animal as much as possible.

## **Section 5 Prohibition of animal breeding**

*An animal may not be bred in such a manner that the breeding would cause the animal or the animal's offspring physical or psychological harm, or prevent the natural behaviour of the offspring.*

## **RATIONALE**

### **Section 5**

The fifth section pertains to animal breeding. In animal breeding, the starting point should always be the best interests of the animal and ensuring that the fundamental rights of animals are realized. Hence, the breeding must not cause harm to the welfare or health of animals.

Only physically and psychologically healthy animals may be used for breeding. It is prohibited to use for breeding animals that will suffer or might suffer physical or psychological harm as a result. An animal may not be inseminated, or made to inseminate other animals, against the animal's will. This prohibition applies to both male and female animals. Not even an animal with a healthy phenotype may be used for breeding if there is a risk that the animal's descendants may suffer from a hereditary disease-causing gene.

It is also prohibited to breed animals in such a way that the breeding inflicts upon an animal or an animal's descendants physical or psychological harm or prevents the natural behaviour of an animal's descendants. With regard to an animal's natural behaviour, reference is made to the rationale under section 4, subsection 1 of the Fundamental Rights of Animals. It is

prohibited to attempt to alter animals' appearance, performance or ability, such as the ability to produce milk, through breeding in a manner that causes harm or damage the animal.