



Guarantees of Protection of Animals and Birds in Criminal Law (Georgian reality)

Giorgi Latsabidze, PhD candidate
Grigol Robakidze University, Georgia

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Abstract

Animals and birds play an important role in human life, and the creation of a perfect legal framework for the protection of their rights has been discussed many times.

To date, Article 259 of the Criminal Code of Georgia has undergone several legislative changes, none of which were fundamental, and the main changes were about to increased the sentences. As can be seen from practice, article 259 of the Criminal Code of Georgia cannot fully describethe list of actions for which a person can be punished and a person can commit such an action towards an animal and/or bird that his action cannot be punished by criminal law.

Article 259 of the Criminal Law Code of Georgia protects animals from torture, ill- treatment, and other forms of violence and article 104 of the Code of Administrative Offenses deals with improper treatment. Despite the existence of these articles, it is difficult to distinguish whether a person's action is an administrative law violation or criminal liability. Also, the legislator uses such terms that make it even more difficult to solve the issue.

Keywords: Animal, Animal Protection, Criminal Law

The Subject of the Crime of Article 259 of the Criminal Code of Georgia

In the introduction, I mentioned that Georgia is not a signatory party " European Convention for the Protection of Pet Animals ". In the first article of the " European Convention for the Protection of Pet Animals " where

there are definitions of terms, we read that By “pet animal is meant any animal kept or intended to be kept by man in particular in his household for private enjoyment and companionship” and it also includes wild animals that are domesticated and used by humans for family farming.¹

According to the first part of article 259 of the Criminal Code of Georgia, torture of an animal, cruel treatment or other kind of violence that caused its mutilation leads to criminal liability. The mentioned article directly indicates that both domestic and wild animals are the subject of crime and it does not matter whose property they are.² After reading this article, a question is that is it bird subject of the crime of the article 259 of the Criminal Code of Georgia.

A certain part of lawyers think that despite the fact that there is an animal in the entry of Article 259 of the Criminal Code of Georgia, it also means a bird. "On Amendments to the Criminal Law Code of Georgia" in the clarification card of the draft law of Georgia, nothing is said about this issue at all.³ According to the record of this article, the subject of the crime is not a bird, although this notion that the bird in the animal is also implied is not really to be shared, because we cannot consider the bird in the animal. If we say that the bird is also considered in the animal, then the threat of abuse of the powers of this will be created and will comply with the constitutional requirements of the law establishing responsibility.⁴ For example, if a person treats his chicken cruelly (he will remove any part of the body or sneak it or hang it on a rope) and the chicken will die, this will not fall within the scope of the punishment of Article 259 of the Criminal Code of Georgia, because according to this article, the subject of the crime is as I mentioned above, the animal, both wild and domestic, and not a bird.

Also, the subject of this article cannot be the case when people will gather and arrange a Chicken fight for fun because the is a domestic bird, not an animal. According to the Canadian Penal Code, cruel treatment of both animals and birds is punishable.⁵ It shall also be considered a punishable act if a person organizes and/or participates in animal or bird fights. Also in the Canadian Penal Code there is a special article that protects a law

¹ European Convention for the Protection of Pet Animals <https://rm.coe.int/168007a67d> (last check 09.09.2023)

² Lekveishvili M, Todua N, Mamulashvili G, Private part of criminal law, (Book 1) Fourth Edition, Meridian Publishing House, Tbilisi, 2011, 667.

³ Explanatory Note "On Amendments to the Criminal Code of Georgia" of Georgia of the draft law <https://info.parliament.ge/file/1/BillReviewContent/214015> (last Check 10.09.2023)

⁴ Decision of the Constitutional Court of Georgia "Giorgi Beruashvili v. Parliament of Georgia" No. 12/1/1289, July 15, 2021

⁵ Criminal Code of Canada <https://laws-lois.justice.gc.ca/eng/acts/C-46/section-445.1.html> Section 444 to 447

enforcement animal when it assists a law enforcement officer in performing his duties.⁶

Accordingly, the title of Article 259 of the Criminal Code for foreseeability and completeness of the norm should be formulated as follows: "Animal and/or bird", and the artical disposition should start like "Animal and/or bird....." with this change, the artical will become clearer, will help protect animals and birds.

History of legislative changes

As I mentioned in the introduction, Article 259 of the Criminal Code was amended twice. The first change took place on May 29, 2019, and the second change took place on June 30, 2023.

The reason for the change implemented on May 29, 2019 was that Article 104 of the Code of Administrative Offenses of Georgia provided for a provision similar to Article 259 of the Criminal Code of Georgia, That is the content and grounds of the action, which caused misunderstanding, in particular, the person's action was an administrative law violation or he was subject to criminal liability. According to the legislative change, the provisions of Article 104 of the Code of Administrative Law Violations of Georgia and Article 259 of the Code of Criminal Law of Georgia were changed and separated from each other.⁷

According to the edition valid until May 29, 2019,

“Article 259 - Cruelty to animals

1. Cruelty to animals that results in their death or mutilation, as well as torture of animals, - shall be punished by a fine or corrective labour for up to a year.

2. The same act committed:

a) jointly by more than one person;

b) repeatedly;

c) in attendance of a minor, -

shall be punished by a fine or imprisonment for up to two years.”

After the change made on May 29, 2019, the disposition of Article 259 of the Criminal Code was formulated as follows:

“Article 259 – Torture or ill-treatment of animals

1. Torture or ill-treatment of animals having resulted in their death or mutilation, –

⁶ Criminal Code of Canada <https://laws-lois.justice.gc.ca/eng/acts/C-46/page-59.html#h-123162>

⁷ Explanatory Note"On Amendments to the Criminal Code of Georgia" of Georgia of the draft law <https://info.parliament.ge/file/1/BillReviewContent/214015> (last Check 10.09.2023)

shall be punished by community service for a term of 120 to 240 hours, house arrest for a term of six months to one year, a fine or by imprisonment for a term of up to one year.

2. The same act committed:

a) by a group of persons;

b) repeatedly;

c) in the presence of a minor, –

shall be punished by community service for a term of 200 to 400 hours, house arrest for a term of one to two years, a fine or by imprisonment for a term of up to three years.”

After the change made on June 30, 2023, the title of Article 259 of the Criminal Code of Georgia was also amended and “other forms of violence” was added to “torture or ill-treatment of animal”, which was previously not found in the title of article 259 of the Criminal Code of Georgia. Unfortunately, the explanatory note does not mention a single word about why the legislator decided to add the words “other forms of violence” to the title.⁸ Also, torture or ill-treatment of animals, or use of other forms of violence against them leading to its death were separated as a separate act.

After the change implemented on June 30, 2023, the disposition of Article 259 of the Criminal Code was formulated as follows:

“Article 259 – Torture or ill-treatment of animals, or use of other forms of violence against them

1. Torture or ill-treatment of animals, or use of other forms of violence against them that have resulted in their mutilation, –

shall be punished by a fine, community service for a term of 120 to 240 hours, house arrest for a term of six months to one year, or by imprisonment for a term of up to two years.

2. The same act committed:

a) by a group of persons;

b) in public;

c) repeatedly;

d) in the presence of a minor;

e) against two or more than two animals, –

shall be punished by a fine, house arrest for a term of one to two years, or by imprisonment for a term of one to three years.

3. Torture or ill-treatment of animals, or use of other forms of violence against them that have resulted in their death, –

⁸ Explanatory Note on the draft law of Georgia About making changes to the Criminal Code of Georgia <https://info.parliament.ge/file/1/BillReviewContent/333756> (last Check 10.09.2023)

shall be punished by a fine, house arrest for a term of one to two years, or by imprisonment for a term of one to four years.

4. An act provided for by paragraph 3 of this article committed:

- a) by a group of persons;
- b) in public;
- c) repeatedly;
- d) in the presence of a minor;
- e) against two or more than two animals, –

shall be punished by a fine, house arrest for a term of one to two years, or by imprisonment for a term of two to four years.”

Before the change implemented on June 30, 2023, the leniency of the punishment of Article 259 of the Criminal Code was criticized by many lawyers and the legislation of different countries was cited for comparison. In one of the articles, the author of the article points out the laws of different countries and what kind of punishment this or that country uses for cruel treatment of animals and points out that “According to French law, "mistreatment (suffering) or causing severe suffering to an animal, as well as sexual violence or cruelty to a domestic or domesticated animal, as well as its capture, is punishable by imprisonment for a term of up to 2 years and a fine of 30,000 euros. The court can apply restriction of the right to have an animal or other prohibition for a person as an additional punishment.” According to the laws of some countries, for example, Hungary, even the illegal abandonment of an animal is considered a crime and is punishable by imprisonment for a term not exceeding 2 years, and if the cruel treatment of an animal is of a special or permanent nature or the action is directed against more than one animal, it is punishable by imprisonment for a term not exceeding 3 years. According to the Finnish Criminal Code, a person who intentionally or grossly negligently overburdens an animal, fails to provide adequate care, does not provide food, water or otherwise violates animal legislation, as well as a person who cruelly treats an animal, hits it and causes excessive suffering, causes severe Pain is punishable by a fine or imprisonment for a term of up to 2 years. If the crime against animals is committed in a particularly cruel way, or the act is directed at a significantly large number of animals, or the act serves only the purpose of obtaining a significant financial benefit, which can be considered as an aggravating circumstance overall, the act is punishable by imprisonment for a term of 4 months to 4 years.”⁹

⁹ Ioseliani K, “Legal Status and Rights of the Pet (companion) Animals and Ensuring Their Harmonious Coexistence with Citizens According to Legislation of Georgia”, 2021 (№20) Volume 7; Issue 5; 109-123.

Finally, it should be said that on June 30, 2023, Article 259 of the Criminal Code underwent changes in many directions. In particular, aggravating sentence, the title of article 259 of the criminal code of Georgia was amended and “use of other forms of violence” was added “Torture or ill-treatment of animals” which was not previously included in the title of article 259 of the criminal code. Also, it was separated into a separate part due to its aggravating circumstances “Torture or ill-treatment of animals or use of other forms of violence against them that have resulted in their death”.

The Objective Side of the Action

The objective side of the action of Article 259 of the Criminal Code can be expressed torture or ill-treatment of animals, or use of other forms of violence against them that have resulted in their mutilation, also same actions that have resulted in their death.

According to Article 104 of the Code of Administrative Offenses - Ill-treatment of animals that has caused their suffering, bodily injury, pain for a single time and during a definite period of time, – shall carry a fine in the amount from GEL 100 to GEL 500, and according to article 259 of the criminal code, “Torture or ill-treatment of animals or use of other forms of violence against them that have resulted in their death” causes criminal liability. However, it is quite difficult whether a person's action should fall within the scope of the Code of Administrative Offenses, or if he should be punished by criminal law.

The legislator defines torture in the first part of article 144¹ of the criminal code, according to which torture is - exposing a person, or a third person to such conditions or treating him/her in a manner that causes severe physical pain or psychological or moral anguish, and which aims to obtain information, evidence or confession, threaten or coerce, or punish the person for the act he/she or a third person has committed or has allegedly committed.

The objective side of torture is revealed – a) in action or inaction, b) In the result (severe physical pain, mental and moral suffering and the existence of a causal connection.¹⁰ On the subjective side, torture requires the existence of a special purpose aimed at obtaining information, evidence or confession, intimidating or coercing a person or punishing a person for an act committed or allegedly committed by him or a third party.¹¹ It is interesting that the person who tortures the animal what does man have a

¹⁰ Lekveishvili M, Todua N, Mamulashvili G, Private part of criminal law, (Book 1) Seventh Edition, Meridian Publishing House, Tbilisi, 2019, 321.

¹¹ Lekveishvili M, Todua N, Mamulashvili G, Private part of criminal law, (Book 1) Seventh Edition, Meridian Publishing House, Tbilisi, 2019, 324.

special purpose in relation to the animal/bird in order to get information, evidence or confession from it. Therefore, it is literally impossible to qualify a person's action towards an animal as torture.

Ill-treatment of animals is one of the objective aspects of qualifying an action under article 259 of the Criminal Code of Georgia. It is interesting that what action should be considered as Ill- treatment, while the criminal law code, unlike the definition of the concept of torture, does not explain what Ill-treatment is. The term - Ill- treatment is found in Article 115 of the Criminal Code of Georgia. In article 115 of the Criminal Code of Georgia (Incitement to suicide) in the first part, we can found out the words "ill-treatment". By this article "incitement to suicide or attempted suicide by threatening or ill-treating the victim or by humiliating his/her honour or dignity is punishable.

Ill-treatment refers to "committing such actions that cause special physical or moral suffering to the victim. It can be systematic or represent a one-time act. Examples of ill-treatment include severe beatings, torture, leaving without food, forcing to perform pointless, hard work, carrying out actions that create a psychotraumatic situation, committing violent sexual crimes against the victim, forcing sexual intercourse, etc."¹²

"Ill-treatment of animals can be considered as beating, wounding, leaving them without food and water, using them for non-scientific experiments, in various types of fights, as a result of which animals get mutilated or die. Unjustified suffering, suffering, hunting of animals by inhumane/means, etc., during medical or biological research (scientific experiments) shall also be considered cruel treatment."¹³

In the commentary to Article 126 of the Criminal Code, other types of violence are defined as follows - "Other violence differs from beating in that it can be manifested in a one-time forceful act (a slap in the face with a hand) or not at all connected with a blow (for example, pulling hair, twisting hands, pulling out a panghur, pulling hair, etc.). Here too, it is necessary for the victim to experience physical pain. Thus, the result of the crime in question is that the victim suffers physical pain."¹⁴ Another kind of violence against a dog can be considered the act of breaking the chain, breaking the collar, etc. but the main thing is that this action causes injury or death.

It is interesting whether such an action will be considered as ill-treatment of an animal, torture or any other kind of violence or not, when a

¹² Lekveishvili M, Todua N, Mamulashvili G, Private part of criminal law, (Book 1) Seventh Edition, Meridian Publishing House, Tbilisi, 2019,97.

¹³ Lekveishvili M, Todua N, Mamulashvili G, Private part of criminal law, (Book 1) Sixth Edition, Meridian Publishing House, Tbilisi, 2016, 738.

¹⁴ Lekveishvili M, Todua N, Mamulashvili G, Private part of criminal law, (Book 1) Seventh Edition, Meridian Publishing House, Tbilisi, 2019, 166.

father kills with a single shot on the street at night the exact same dog that has scared his son several times and every time he meets the child on the way before going to school, it barks and bites him. The mentioned action cannot be considered as cruel treatment of the animal, neither torture nor any other kind of violence, because in this case the father's goal is to kill the animal on the basis that his child goes to school in a normal environment, and not that the animal experiences pain, suffering, etc.

According to the first part of Article 259 of the Criminal Code, cruel treatment or other violence must result in mutilation. Some lawyers consider the ambiguity of article 259 of the criminal code to be a problem of the criminal code and believe that it makes it difficult to subsume the norm, that is, to assess the existing factual circumstances and correctly compare the corresponding norm of the law. They consider the composition of the crime specified in the article to be a problem, which is formulated in general terms denoting the action. In particular, what is meant by the term mutilation.¹⁵ The term mutilation is defined in the Encyclopedia of Jewelry as an act that causes "physical changes in the human body resulting from burns, trauma, illness, or congenital disease."¹⁶ From this definition, we can consider that mutilation is an act that leaves an animal with such a defect in its appearance and/or body that it is visible to the human eye.

We might not have considered the term "mutilation" to be so vague if it was not consistent with the term "improper treatment" in Article 104 of the Code of Administrative Offenses. For example, a person who beats an animal in such a way that it breaks its bones and the animal does not show anything on the outside. Should we consider this action as "mutilation" or "mistreatment".

Also interesting is the case when a person is a zoophile and his action may or may not be included in the objective structure established by Article 259 of the Criminal Code and be punished. According to Article 259 of the Criminal Code, a person can be punished for torturing, ill-treating or otherwise abusing an animal, if these actions result in maiming or death. Accordingly, zoophilia is not punishable according to the Criminal Code of Georgia.¹⁷ Also, it is not punishable to distribute a video showing sexual contact with an animal. Section 184 of the German Penal Code punishes the distribution of pornographic content depicting violent acts by humans or

¹⁵ Ioseliani K, "Legal Status and Rights of the Pet (companion) Animals and Ensuring Their Harmonious Coexistence with Citizens According to Legislation of Georgia", 2021 (№20) Volume 7; Issue 5; 109-123.

¹⁶ Civic encyclopedic dictionary <http://www.nplg.gov.ge/gwdict/index.php?a=term&d=5&t=5868> (last Check 10.09.2023)

¹⁷ GEGELIA T, KELENJERIDZE I, JISHKARIANI B, SEXUAL OFFENCES, PUBLISHING HOUSE „WORLD OF LAWYERS“ Tbilisi, 2020. 115

sexual acts with animals.¹⁸ Also, if a person administers a quick-acting poison to an animal in order to kill it, and the animal dies quickly, this action will not be punished either administratively or criminally, as it will not fall under the provisions of any of the articles.

Finally, it should be said that article 259 of the criminal code does not fully cover such actions that a person may commit and be punished under article 259 of the Criminal Code.

Conclusion

From the study of the issue, it appeared that the legislator is trying to protect animals only by making the punishment tougher, while article 259 of the Criminal Code of Georgia needs a number of changes to protect the rights of animals.

Finally, it is necessary for article 259 of the criminal code of Georgia to change both the title and the content of the article, so that it can be separated from article 104 of the Code of administrative offenses, and a number of ill-treatment against animals will not go unpunished.

Finally, Article 259 of the Criminal Code of Georgia should be formulated as follows:

Article 259. "Serious bodily injury or killing of an animal and/or bird in violation of the rules established by law."

1. Serious bodily injury to an animal and/or bird shall be punished by a fine, community service for a term of one hundred and twenty to two hundred and forty hours, house arrest for a term of six months to one year or imprisonment for a term of up to four years.

2. Killing of animals and/or birds in violation of the rules established by law.

shall be punished by a fine, community service for a term of one hundred and twenty to two hundred and forty hours, house arrest for a term of six months to three years or imprisonment for a term of up to five years.

Note: For the purposes of this article, serious bodily injury means - loss of a separate body part or organ; bodily injury that is life-threatening or may be life-threatening; caused permanent damage to health.

¹⁸ German Criminal Code Section 184a https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html (last check 24.09.2023).

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