

Guarantees of Protection of Animals and Birds in Criminal Law: A Case Study of Georgia

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Abstract

Animals and birds play an important role in human life, and the creation of a robust 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. The main changes involved increasing the sentences. As seen in Article 259 of the Criminal Code of Georgia, it cannot fully enumerate all the actions for which a person can be punished. A person may commit an act against an animal and/or bird that is not explicitly punishable under criminal law. Article 259 of the Criminal Code protects animals from torture, ill-treatment, and other forms of violence, while Article 104 of the Code of Administrative Offenses addresses improper treatment. Despite the existence of these articles, it is difficult to determine whether a person's action constitutes an administrative law violation or criminal liability. Additionally, the legislator uses such terms that make it even more difficult to solve the issue.

Keywords: Animal, Animal Protection, Criminal Law

Introduction

The protection of animal rights has been discussed many times and many legislative changes have been made in the legislature to protect their rights. However, before we briefly review what legislative changes have been made, it should be said that Georgia is currently not a member of the "European Convention for the Protection of Pet Animals" and the "World

Declaration of Animal Rights". Also, it is not a signatory state of the convention and has not ratified these documents, which is a significant obstacle in protecting animals and creating and improving a safe environment for them. Video footage showing violence, cruel treatment or killing of animals has been spread on social networks many times, which subsequently became the basis for the legislative changes and toughening of punishments. To protect the rights of animals and create a safe environment for them, a number of legislative changes were made in both the criminal law and the administrative offenses code. Basically, the legislator tries to limit himself to the tightening of the punishment and they are able to protect animals and create a safe environment for them. Article 259 of the Criminal Code, which prohibits animal torture, ill-treatment or other forms of violence, has undergone legislative changes twice. Also, Article 104 of the Code of Administrative Offenses, which imposes a fine in case of improper treatment of animals, has undergone changes a lot of times. Despite the numerous legislative changes implemented in Article 259 of the Criminal Code, there are many gaps in the legislation, and this paper focuses on reviewing how well the Georgian legislation protects the rights of animals.

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 to the "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 "pet animal is any animal kept or intended to be kept by man in particular in his household for private enjoyment and companionship." Thus, this 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, the torture of an animal, cruel treatment or other kind of violence that caused its mutilation will result 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, the question arises: Is a bird subject to the crime outlined in Article 259 of the Criminal Code of Georgia?

Some lawyers believe that, despite the mention of 'animal' in Article 259 of the Criminal Code of Georgia, it also applies to birds. However, the clarification card of the draft law of Georgia, "On Amendments to the

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

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

Criminal Law Code of Georgia," does not address this issue at all.³ According to this article, the subject of the crime does not include birds. While some may argue that birds fall under the definition of 'animals,' this perspective is not widely accepted as it is difficult to consider birds as part of the animal category. If we were to include birds within the category, then it could result to the abuse of powers and may not comply with the constitutional requirements of the law establishing responsibility.⁴ For example, if a person treats his chicken cruelly (such as removing any part of the body or mutilating it or hanging it on a rope) and the chicken dies, this will not fall within the scope of the punishment of Article 259 of the Criminal Code of Georgia. This is because, according to this article, the subject of the crime encompasses only wild and domestic animals, excluding birds.

Also, the subject of this article will not be the case when people gather and arrange a Chicken fight for fun because it 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 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 "Animal and/or bird". Also, the article disposition should start like "Animal and/or bird....." With this change, the law will become clearer and will help protect animals and birds.

History of Legislative Changes

As previously mentioned, Article 259 of the Criminal Code was amended twice. The first amendment took place on May 29, 2019, and the second 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 a provision similar to Article 259 of the Criminal Code of Georgia. Hence, this 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

³Explanatory 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)

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

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

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

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.

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

2. Torture or ill-treatment of animals having resulted in their death or mutilation, –
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.
3. 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.

⁷Explanatory 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)

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 their death, was 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, – 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 was 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 they use for cruel treatment of animals.

⁸Explanatory 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)

It was pointed 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. However, 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 and 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

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

The Objective Side of the Action

The objective aspect of Article 259 of the Criminal Code can be expressed through the torture or ill-treatment of animals, or the use of other forms of violence that result in their mutilation, as well as similar actions that have resulted to 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. Also, according to Article 259 of the

⁹Ioseliani, K. (2021). “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.

Criminal Code, “Torture or ill-treatment of animals or use of other forms of violence against them that have resulted in their death” leads to 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 a person who tortures an animal may have a specific purpose such as obtaining information, evidence or a 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 to note that the criminal code does not explain what constitutes ill-treatment, unlike the definition of torture. The term “ill- treatment” is found in Article 115 of the Criminal Code of Georgia. Also, in the first part of Article 115 of the Criminal Code of Georgia (Incitement to suicide), we can find the words "ill-treatment". This article states that 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 duty, hard work, carrying out actions that create a psychotraumatic situation, committing violent sexual crimes against the victim, forcing sexual intercourse, etc.”¹²

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

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

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

"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, hunting of animals by inhumane/means, etc., during medical or biological research (scientific experiments) shall also be considered cruel treatment."¹³

In the commentary of 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, 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. However, the main thing is that this action causes injury or death.

It is interesting to consider whether such an action would be considered as ill-treatment of an animal, torture, or another form of violence when a father kills a dog with a single shot on the street at night. This is the same dog that has scared his son several times and barks at him, even attempting to bite him every time he meets the child on his way to school. The mentioned action cannot be considered as cruel treatment of the animal, torture, or any other form of violence, because in this case the father's goal is to kill the animal to ensure that his child can go to school in a safe environment, rather than to inflict pain, or suffering on the animal.

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, and they believe 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

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

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

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

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 such that it is visible to the human eye.

Consequently, 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, if a person beats an animal in such a way that it breaks its bones without any visible signs of injury, should we consider this action as "mutilation" or "mistreatment"?

Another interesting situation 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 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 is important to note that Article 259 of the Criminal Code does not fully cover such actions that a person may commit and be punished under this article.

Conclusion

From the study of the issue, it appears that the legislator is attempting to protect animals solely by making the punishment tougher. However, Article 259 of the Criminal Code of Georgia requires several amendments to effectively protect the rights of animals.

Finally, it is essential to amend both the title and the content of Article 259 of the Criminal Code of Georgia to distinguish it from Article 104 of the Code of Administrative Offenses, ensuring that various forms of ill-treatment against animals do not go unpunished.

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

¹⁶Civic encyclopedic dictionary

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

¹⁷Gegelia, T., Kelenjeridze, I., & Jishkariani, B. (2020). Sexual Offences, Publishing House "World of Lawyers" Tbilisi, 115

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

“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 120 to 240 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 120 to 240 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’ refers to the loss of a specific body part or organ, any bodily injury that is life-threatening or may become life-threatening, or injuries that result in permanent damage to health.

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