



Explanatory Report to the European Convention for the Protection of Pet Animals

Strasbourg, 13.XI.1987

1. The European Convention for the Protection of Pet Animals, drawn up within the Council of Europe by the *ad hoc* Committee of experts for the protection of animals (CAHPA), was opened for signature by the member states of the Council of Europe on 13 November 1987.

2. The text of the explanatory report prepared by the *ad hoc* committee of experts and submitted to the Committee of Ministers of the Council of Europe does not constitute an instrument providing an authoritative interpretation of the text of the Convention, although it might be of such a nature as to facilitate the understanding of the provisions contained therein.

I. Introduction

1. On 8 May 1979 (3rd Sitting) the Parliamentary Assembly of the Council of Europe recommended that the Committee of Ministers "instruct the appropriate intergovernmental expert committee to draw up a European convention which should aim, in particular:

i. to control the trade in animals:

a. by imposing strict standards of hygiene and welfare for animal rearing and sale;

b. by imposing a ban on the import of exotic animals ill-suited to European climatic conditions;

c. by encouraging the trade to organise itself into national or international associations, with a view to drawing up an enforceable code of conduct;

ii. to control animal populations:

a. by making registration and marking of dogs compulsory and possibly by imposing a special tax on all dog-owners living in built-up areas, exempting pensioners, the blind and owners of watchdogs;

b. by introducing free or subsidised sterilisation of dogs and cats;

c. by ensuring that, when it is necessary for reasons of public health and hygiene to destroy stray animals, the operation is carried out by qualified personnel, using humane and up-to-date scientific methods."

2. At its 7th meeting in April 1980, the *ad hoc* Committee of experts for the protection of animals (CAHPA), asked by the Committee of Ministers for an opinion on Recommendation 860 of the Parliamentary Assembly, found that the questions raised in the recommendation should be studied on a European basis, but not before it had terminated its work on the drafting of a convention on the use of live animals for experimental purposes.
3. In June 1980, the Committee of Ministers at its 320th meeting at Deputy level instructed the CAHPA "to consider the appropriateness of elaborating one or more international instruments (convention or recommendation), at the European level, dealing with the issues set out in sub-paragraphs i. and ii. of paragraph 5 of Assembly Recommendation 860 on the dangers of overpopulation of domestic animals for the health and hygiene of man, and on humane methods of limiting such dangers".
4. Finally, at its 328th meeting at Deputy level (January 1981), the Committee of Ministers instructed the CAHPA "to examine the legal aspects of animal protection with a view to preparing appropriate instruments".
5. The CAHPA started its work on the Convention in the course of its 13th meeting, in November 1983. Subsequently six meetings of the committee and three meetings of a working party were dedicated to the elaboration of the draft convention.
6. The CAHPA submitted the text of the draft Convention to the Committee of Ministers on 6 June 1986.
7. The Committee of Ministers adopted the text of the draft Convention on 26 May 1987.
8. The European Convention for the Protection of Pet Animals was opened for signature on 13 November 1987.

II. General considerations

9. After examination of the legal aspects of animal protection, it was concluded that animals kept or intended to be kept as pet animals would benefit from legal protection by an appropriate international instrument.
10. It was agreed that such legal protection should be based on the safeguarding of the health and welfare of the pet animal itself as had been the case for the other conventions which the Council of Europe had concluded so far. In the elaboration of the various provisions, however, the conservation of threatened wild animal species (seventh paragraph of the preamble; paragraph 2 of Article 2), the inconveniences caused by stray animals (paragraph 2 of Article 3; sub-paragraph 2.b of Article 10; Articles 12 and 14), the danger that certain animals may present to the health or safety of man (sub-paragraph 3.b of Article 4) and the control of diseases (Article 13) were also taken into consideration.
11. It was considered that, if the overpopulation of domestic animals were to present dangers for the health and hygiene of man, certain counter-measures, such as the regulation of the import and internal commerce in certain exotic animals and the prevention and therapy of contagious diseases, would be outside the scope of an instrument which aims at safeguarding the health and welfare of pet animals and would considerably complicate its implementation.
12. With a view to the mobility of pet animals and their owners, and international trade in pet animals and accessories, the Convention was drafted so as to enable non-member states of the Council of Europe to become parties.

13. The convention hereafter, falls into three parts:

- A. Preamble;
- B. Substantive provisions (Articles 1 to 14);
- C. Operational provisions (Articles 15 to 23).

III. Commentary on the provisions of the Convention

A. Preamble

14. Amongst the motivations which led to the conclusion of the Convention, some concerns are already expressed in the preamble and will be elaborated on further in the articles which follow: the extension of the range of animal species to be kept as pet animals, and the lack of knowledge and awareness in the field of pet animals.

B. Substantive provisions

CHAPTER I – GENERAL PROVISIONS

Article 1 – Definitions

15. The definition of a pet animal covers:

- a. animals sharing man's companionship and in particular living in his household;
- b. animals intended for this purpose;
- c. animals kept to breed animals for this purpose;
- d. stray animals and the first generation of animals born of stray animals.

Excluded from this definition are, for instance, animals kept for the production of food, wool, skin or fur or for other farming purposes, those kept in zoos and circuses for exhibition and those kept for experimental or other scientific purposes. However, it is always open to parties to cover working dogs, for instance, in their domestic legislation.

16. It was admitted that the inclusion of wild animals in the Convention might be considered as a recognition of the possibility of using these animals as pet animals. On the other hand, it was realised that to leave out wild animals would create a legal lacuna and that these animals would not be protected at all. It was concluded that certain articles in the convention (Article 2, paragraph 2; Article 4, sub-paragraph 3 and Article 14) provided sufficient guarantees in respect of the keeping of wild animals taken from their natural environment.

17. The number of animals which have to be involved in business transactions, commercial breeding and boarding - for these activities to fall within the scope of the Convention - must be determined by each party for its own territory.

18. It was agreed that by "non-profit making establishment" is meant any establishment other than the ones where profits made are being spent for purposes outside the pursuit of the aims of that establishment.

Article 2 – Scope and implementation

19. Article 2 stipulates which categories of pet animals, as defined in Article 1, fall within the scope of the Convention. Excluded are, for instance, riding horses.

20. The objective of paragraph 2 is twofold. Firstly, the protection which pet animals enjoy by virtue of other international instruments - such as the European Convention for the Protection of Animals during International Transport (1968) - cannot be affected by any provision in this Convention.

Secondly, animals the keeping or possession of which is contrary to any international legal instrument for the conservation of wildlife may not be kept as pet animals in states which are party to such international legal instruments. Such instruments are, for instance:

- the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Washington, 1973);
- the Convention on the Conservation of European Wildlife and Natural Habitats (Berne, 1979);
- the Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 1979).

21. Paragraph 3 confirms the principle that parties to this Convention may, on the one hand, enact stricter domestic legislation on the protection of pet animals and, on the other hand, extend the application of the various provisions to animals which have not been mentioned explicitly in this Convention.

CHAPTER II – PRINCIPLES FOR THE KEEPING OF PET ANIMALS

Article 3 – Basic principles for animal welfare

22. Paragraph 1 of Article 3 lays down a general prohibition, applicable to anyone, including public authorities, on causing pain, suffering or distress to any pet or stray animal that is not necessary or not in the interest of the animal itself.

23. The principle laid down in paragraph 2, that the keeper of an animal may not abandon it, follows implicitly from Article 4. To give an animal to an animal sanctuary or to a person who has accepted the responsibility for it is not considered as abandoning the animal in the sense of this provision.

Article 4 – Keeping

24. Any person, including staff in charge of animals in public institutions, shall be held responsible for the health and welfare of the pet animal concerned, in accordance with the criteria of national civil law, unless that person is forced by exceptional circumstances temporarily to take charge of the animal, which normally does not enter into his sphere of duties.

25. It was found that the physiological needs of a pet animal would be catered for by the obligation to provide accommodation and care, in particular, adequate water and food and a suitable environment. In addition, it was thought necessary to refer to the obligation to take account of the animal's ethological needs, including the need to receive adequate attention appropriate to the species and breed.

26. Paragraph 3 aims at preventing any animal, including an animal taken from the wild, from being introduced as a pet animal into an unsuitable environment. Although strictly speaking it fails under the definition of pet animals in Article 1 and within the scope of Article 2, an animal may still not be kept in the following cases:

- a. when the environment in which it is to be introduced does not fulfil all the conditions required; and
- b. when, even if all the necessary conditions are met, the animal's physiological or ethological needs prevent it from adapting to the restriction of captivity, which is detrimental to its welfare and might even present a danger to the health and safety of man.

Article 5 – Breeding

27. Article 5 lays down the principle that, in the breeding of pet animals, care should be taken by those responsible for the breeding to ensure that the physical and mental health of the offspring and female parent are not put at risk.

In the selection of specimens for breeding, care should be taken to avoid the transmission of behavioural patterns such as abnormal aggressive tendencies and hereditary defects: for example, progressive retinal atrophy (leading to blindness), oversized foetal heads (preventing normal birth), and other physical characteristics required by certain breed standards which predispose to clinical conditions such as entropion and soft-palate deformities.

Article 6 – Age-limit on acquisition

28. Article 6 aims at avoiding the introduction of pet animals into households as the result of their acquisition by children under 16 years of age without the full agreement of parents or persons exercising parental responsibility, as this could result in failure to meet the requirements of Article 4.

Article 7 – Training

29. As training can be a source of severe stress for the animal - some training methods even being cruel - the need was felt to make a severe provision on this issue, which requires that the animal will never be forced to exceed its natural capacities or strength.

Article 8 – Trading, commercial breeding and boarding, animal sanctuaries

30. The first sentence of Article 8, paragraph 1, is a transitional provision which stipulates that, as of the day when the Convention becomes effective, all trading, commercial breeding and commercial boarding activities and the operation of animal sanctuaries must be declared after a specific period to the competent authorities. The second sentence requires that, once the Convention is in force, intentions to start any of these activities must be announced.

If the competent authority considers that the requirements are fulfilled, the activities may be continued, or started. It is understood that each party is free to issue or not to issue licences for such activities. Once allowed, the activities must be supervised, if that is in accordance with national legislation.

If the requirements are not met, the competent authority must recommend measures for the improvement of the conditions or, if the welfare of the animals is at stake, stop the activity altogether or not allow it to begin.

Article 9 – Advertising, entertainment, exhibitions, competitions and similar events

31. While it was accepted that certain advertising activities could lead to the encouragement of irresponsible ownership of attractive pet animals, it was, however, considered that their welfare was provided for in paragraph 3 of Article 4 and in Article 14.

Paragraph 2 prohibits, amongst other things, the doping of animals for the specific purpose of increasing or decreasing their performances.

Article 10 – Surgical procedures

32. The article has been worded so as to place the emphasis on the prohibition of surgical interventions which are mainly carried out for aesthetic reasons or for the personal convenience of the owner and/or the breeder.

33. It was considered that the pinioning of wings was a surgical procedure but, being only one of the different methods employed to impede the flight capacity of birds, was not so frequently carried out as to warrant mentioning in paragraph 1.

34. It was agreed that, for the purposes of the Convention, tattooing should not be considered as a surgical procedure.

35. It was also agreed that the example in sub-paragraph 1.d of Article 10, relating to declawing, applied particularly to cats and dogs.

36. Surgical procedures are prohibited but may be carried out if:

- deemed necessary by a veterinarian, either for veterinary medical reasons, or in the interest of the animal itself, such as the removal of dewclaws;
- such procedures would prevent reproduction.

37. Such procedures must be carried out by a veterinarian, or at least under his supervision, and under anaesthesia if they are likely to cause severe pain to the animal. If no anaesthesia is required, the operation may be carried out by persons who are competent to do so under domestic law.

Article 11 – Killing

38. Because the killing of pet animals and stray animals can lead to much suffering if done by persons who do not have the necessary skill and knowledge, it was agreed that normally such animals may only be killed, and anaesthetised in connection with this killing, by a veterinarian or another person who has the skill and ability to kill a pet animal in accordance with the requirements under this provision, and that physical and mental suffering of the animal should be avoided as much as possible.

An exception to this provision may be made if, under abnormal circumstances, the welfare of the animal required immediate killing by another person, or in any other emergency situation, where the killing by another person is allowed under national legislation.

39. The methods of killing which are to be prohibited are listed in paragraph 2, even if these prohibitions can be understood to follow from the other principles. The methods of suffocation which are prohibited have been interpreted as meaning any method by which an animal is deprived of an adequate supply of oxygen and thereby loses consciousness or dies as a direct consequence. However, this does not exclude a method involving the administration of anaesthetic gases such as CO₂, provided that it is administered with an adequate level of oxygen in the inhaled air, in such a way as to anaesthetise the animal and not simply cause it

to suffocate. The prohibited methods include electrocution, unless preceded by immediate loss of consciousness.

CHAPTER III – SUPPLEMENTARY MEASURES FOR STRAY ANIMALS

Article 12 – Reduction of numbers

40. Article 12 stipulates that, when a party considers that the numbers of stray animals present a problem, it must take the legislative and/or administrative measures which it considers appropriate to reduce these numbers in a humane way.

41. Paragraph *a* does not impose the obligation on public authorities to capture, keep or kill stray animals if these present a problem, but, if they decide to do so, public authorities must use humane methods.

42. Under paragraph *b*, parties must in general take into consideration certain measures, but may decide themselves whether or not to implement them.

43. By "finder" is understood a person who takes a stray dog or cat into his custody. Parties must consider encouraging such a person to report to the competent authority, which may take action in accordance with national legislation, as one of the objectives should be to return, where possible, a stray or lost animal to its owner for the benefit of the animal.

Article 13 – Exceptions for capture, keeping and killing

44. It was agreed that, in the execution of emergency programmes established by governments for the control of zoonotic diseases such as rabies, the provisions of the Convention on the capture, keeping and killing of stray animals could be waived.

CHAPTER IV – INFORMATION AND EDUCATION

Article 14 – Information and education programmes

45. Article 14 aims at ensuring that publicity is given to the provisions of the Convention amongst private persons who are directly concerned by the implementation of some of the articles.

It was agreed that on a number of issues, such as the training of animals by persons with adequate knowledge and ability, giving pet animals to children as presents or as prizes, the unplanned breeding of pet animals, the introduction of wild animals as pets and the irresponsible acquisition of pet animals, effective results could be obtained only by informing and educating private organisations and individuals and that accordingly parties should encourage the development of information and education programmes.

CHAPTER V – MULTILATERAL CONSULTATIONS

Article 15 – Multilateral consultations

46. It was agreed that the aims of a convention on the protection of pet animals would be more easily achieved if the representatives of the parties had the possibility of meeting to monitor the implementation of the provisions, or to develop common and co-ordinated programmes in the field of pet animal welfare. To avoid the setting up of yet another intergovernmental body for this purpose, it was preferred to provide for the possibility of the parties being convened once every five years or more often, whenever a majority of them so requested, within the existing structures of the Council of Europe.

CHAPTER VI – AMENDMENTS

Article 16 – Amendments

47. Article 16 empowers parties themselves - that is to say without formal adoption by the Committee of Ministers - to amend those provisions of a technical nature, which might require more frequent adaptation to changing circumstances and the modification of which is unlikely to have direct political consequences for the Council of Europe.

Articles 15 to 23 can, where appropriate, be amended by a protocol of amendment which has to be adopted by the Committee of Ministers and will become effective after all the parties have ratified it.

CHAPTER VII – FINAL PROVISIONS

Articles 17 to 23 – Final provisions

48. In general, the final provisions in this Convention follow the usual pattern of final clauses adopted by the Committee of Ministers of the Council of Europe for conventions and agreements drawn up within the Organisation.

Article 19 – Accession by non-member states

49. It was agreed that the Convention should be open to accession by non-member states, as is the case with all conventions in the field of animal protection drawn up within the Council of Europe (see also paragraph 12 above).

Article 21 – Reservations

50. It was found that reservations should be possible only in respect of Article 6 and Article 10, insofar as the latter relates to the prohibition of tail-docking only.