

TO SAVE LAB ANIMALS THE LEGAL WAY: THE RIGHT TO APPEAL ON PERMITS TO PERFORM ANIMAL EXPERIMENTS

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I. INTRODUCTION

In European law, the use of animals in experimentation is regulated by a directive that, among many other things, sets out minimum standards for the national control of the animal welfare aspects. Each member state is obliged to designate an authority responsible for verifying that certain animal welfare standards are met.²

In Norway a special committee, the Animal Research Authority, has the role of controlling authority.³ The Animal Research Authority is an independent body with eight members representing various scientific fields, law and animal protection organisations. The members are appointed for a two to four year mandate by the Food Safety Authority, which itself is a subordinate body to the Ministry of Food and Agriculture and the Ministry of Coast and Fisheries.

Any researcher, who wishes to perform an animal experiment, must obtain a permit either from the Animal Research

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² See Council Directive 86/609, art. 6, § 1, 1986 (EC) on the approximation of laws, regulations and administrative provisions of the Member States regarding the protection of animals used for experimental and other scientific purposes, *available at* http://ec.europa.eu/food/fs/aw/aw_legislation/scientific/86-609-eec_en.pdf; European Convention for the Protection of Vertebrate Animals used for Experimental and Other Scientific Purposes art. 1, § 2(e), 2005, ETS no. 170 *available at* <http://conventions.coe.int/treaty/en/treaties/html/123.htm>.

³ Norway is not a member of the European Community (EU) but because of a bilateral treaty between the EU and Norway, this legislation applies unequivocally.

Authority or a person authorized to give permission on its behalf. For reasons of simplicity, I will solely make reference to the Animal Research Authority in this article.

When the permit is granted or denied, the question of appeal arises. All appeals on decisions from the Animal Research Authority are directed to the Food Safety Authority, who makes a final decision. Further complaints may be taken to court, but not directed to other governmental bodies.

Decisions relating to permits are administrative in nature. In general, the right to appeal an administrative decision is regulated by national legislation which differs within the various EU member states and in Norway.

In Norway, the right to appeal is covered by the Public Administration Act.⁴ As a person to whom the permit is directed, the researcher is considered a “party” and clearly has the right to appeal.⁵ But what about the animals?

II. THE RIGHT TO APPEAL IN THE PLACE OF THE ANIMALS

Animals are not recognized as individuals having the capacity to hold rights. They are perceived by law merely as things, unable to assume the role of plaintiff, party or any other individual with legal standing.

As a consequence the animals themselves cannot, by legal means, appeal a decision granting someone the right to infect them with a lethal disease, operate electrodes into their heads or poison them. The question then becomes can someone else appeal on their behalf?

According to the Public Administration Act, not only a party, but also “another person having a legal interest in appealing the case” has the right to appeal.⁶ The criteria correspond with similar rules regarding the capacity to act as a plaintiff.

⁴ See Lov om behandlingsmåten i forvaltningssaker [The Public Administration Act] (Forvaltnings 10. februar 1967), translated in Universitetet i Oslo, <http://www.ub.uio.no/ujur/ulovdata/lov-19670210-000-eng.pdf>.

⁵ See *id.* at § 2e).

⁶ See *id.* at § 28 §; Lov om mekling og rettergang i sivile saker [The Civil Procedures Law] (Tvisteloven) 17. juni 2005 nr. 90) §§ 1-4 (Nor.).

In the Civil Procedures Law, which entered into force on January 1st, 2008, it is stated that organisations have the capacity to go to court, provided that the case in question is within the organisation's goals and practices.⁷

This rule is new, but codifies a principle already developed by the Supreme Court. The Supreme Court has concluded several times that organisations have legal interest in various matters where the result represents important interest for them. For animal welfare organisations the two so-called battery hen verdicts are of particular interest.⁸ The Supreme Court assumed that an animal welfare organisation had a legal interest in whether or not a regulation concerning battery hens was in compliance with the animal welfare law or not.

An appeal to a superior authority is cheaper, less time-consuming and easier to administer than a case in court. This is why it is more favorable to allow, for example, organisations the right to appeal if they already have the capacity to go to court.⁹

Due to the decisions from the Supreme Court and further arguments from literature in law, the Food Safety Authority has long assumed that certain animal protection organisations have the right to appeal on permissions to perform animal experiments.¹⁰

III. THE DEVELOPMENT OF THE CASE OF APPEAL

When the Animal Research Authority has made a decision, an appeal must be submitted within three weeks of the complainant learning about this decision.¹¹ However, the right to appeal is exhausted within three months of the decision no matter when the complainant became cognizant of the Animal Research Authority's decision.

Animal welfare organisations are not notified about permissions to perform animal experiments, and therefore have to keep themselves informed. Without the possibility to access these decisions, the right to appeal would have been rather illusory.

⁷ See The Civil Procedures Law, *supra* note 6.

⁸ See Rt. 1984 s. 1488 and Rt. 1987 s. 538 (Nor.).

⁹ See Eckhoff, T., *Forvaltningsrett*, 5. utgave, Tano, 1994 (Nor.).

¹⁰ The question was discussed in detail in Appeal no. 2005/5396 (Nor.).

¹¹ See The Public Administration Act, *supra* note 4 at § 29.

However, under the Freedom of Information Act the vast majority of all applications for animal experiments are made public, along with the minutes from the Animal Research Authority's monthly meetings and other relevant documents that were referred to in making the decisions.¹² All these documents are listed online in the Food Safety Authority's archive system. Any person can examine the list and order documents of interest.

When an appeal is brought, it is directed to the Animal Research Authority, which considers if the applicant has met the formal criteria for appeal.¹³ For example, it must consider if the time limit is expired and if the complainant has "legal interest of appeal." When the appeal does not comply with imperative conditions, it is rejected.

If the appeal makes it necessary, the Animal Research Authority will have to investigate the case further. The other party, in this case the researcher, will be informed about the appeal.

The Animal Research Authority considers the appeal, and may chose to change its previous decision. If the decision is upheld, the appeal is sent to the Food Safety Authority, which makes the final decision.¹⁴ All aspects of the case may be considered, and the Food Safety Authority can even consider new information.¹⁵ The result can be a new decision, a change, or that the former decision is upheld.

The Food Safety Authority must handle the case within three months after the Animal Research Authority has received the case. In practice, it can take longer, but an appeal is generally a swifter process than a court case.

IV. CONSEQUENCES

The Norwegian Animal Protection Alliance (NAPA) has actively used the mechanism to appeal decisions to permit animal experiments. On several occasions we have succeeded in stopping

¹² See Lov om offentlighet i forvaltningen [The Freedom of Information Act] 19. juni 1970 nr. 69 § 2, translated in The World Law Guide, <http://www.ub.uio.no/ujur/ulovdata/lov-19700619-069-eng.pdf>.

¹³ See The Public Administration Act, *supra* note 4 at ch. VI.

¹⁴ See *id.* at § 28.1.

¹⁵ See *id.* at § 34.2.

animal experiments or changing procedures to the benefit of the animals.

The Marine Toxin-case is one example. Norway produces shellfish for human consumption, and the shellfish sometimes contain toxins that can be dangerous. Two out of three standard types of toxins have traditionally been tested out on animals. According to scientists not only the actual poisoning, but also the test itself causes severe suffering. In Norway approximately 3,000–4,000 mice have been killed every year in relation to the testing. Alternative methods are developed, but even if scientists agree that they provide safer results than the animals, they have not been applied. The reason for that is specific EU legislation that applies also in Norway. In 2006 The Norwegian Animal Protection Alliance challenged the interpretation of the EU legislation and appealed on a permission to conduct animal experiments in shellfish testing. As a result permission was withdrawn for one of the two standard tests. Later the same year the test was banned. As a consequence approximately 2,000–3,000 animal lives are spared every year from now on.

Appeals lead to better scrutiny of animal experiments, and may be seen as an extra guarantee for fair trial in particularly controversial cases. Because the researchers have the right to appeal as well, the possibility for animal welfare organisations to appeal for the animals introduces an element of contradiction and balance into a highly debated and ethically difficult matter.

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