



CAMMINO DIRITTO

Rivista di informazione giuridica



DEFENDING WHO HASN'T A VOICE: THE ANIMAL RIGHTS.

A study made by Eurispes, has confirmed that the greatest part of the Italian population doesn't approve events like circus, hunting and the production of fur coats; even if there aren't specific laws to face the animal exploitation. For this reason there are many situations in which the animals are still abused or abandoned.

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ALTRO - SOCIOLOGIA DEL DIRITTO

Articolo divulgativo - ISSN 2421-7123

Direttore responsabile

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Publicato, Mercoledì 22 Marzo 2017

When a study about the human rights begins, the “researches” start from the past to establish a comparison, to describe the changes, to show the improvements. Is it helpful to take a step back in time, that is to say a brief historic excursus: starting with the moment in which the animals have had their rights? How were they protected?

In 1859, the Sardinian penal code (art. 685, clause 7), explained “penalties of law and order” for the ones who abused of pets freely and in a public place. Giuseppe Garibaldi created successively the “Regia società torinese protettrice degli animali”. In 1889, thanks to the Zanardelli Code, an explicit prohibition of cruelties and abuses toward animals was established.

The awareness towards animals acquired more importance, for this reason were born a great number of zoophilic companies; in fact it was useful to draw up a regulation of them. The first measure on the subject was the **Luttazzi Law**. (L.n. 611 of 12 June 1913), about the “Regulation of zoophilic companies for the defence of the animals”, still in force, that provides for the opportunity of granting to these companies the recognition of the legal entity and to identify the zoophilic guards as public security officers.

Fascism gave an important boost to the activities regarding the defences of the animals, establishing in 1938 the E.N.P.A. (national board for the animal protection). This association dismantled the existing ones, which were conducted to be provincial and municipal sections of this new institution. The purpose of the E.N.P.A. was the defence of the animals and of the zootechnical heritage; in addition to assume the function of propaganda regarding “a correct zoophilia and of practical animal husbandry”. After about twenty-five years of intense activity, the **D.P.R. March 31, 1979** declared the loss of the legal authority of public law (conferred to the institution with the L. 05.19.1954, n.303), even if it was considered as “legal person of private law” and the supervisory functions about the laws and the general regulations related to the defence of the animals and to the defence of the zootechnical heritage were transferred to the municipalities. The regions had to respect their public functions, regarding the interventions to protect the nature.

Nowadays, the legal protection of the animals hasn't enjoyed of substantial

improvements, in fact the animals are still considered as an “object” during sport competitions, as “subjects” to entertain the audience, or they’re used as hot and useful clothes ; the Neanderthal man would be envious of these coats.

A recent study made by Eurispes certifies that Italians don’t approve phenomenon like hunting, fur farming and circus with animals; the 85,5% contrasts fur farming, the 74,3% contrasts the phenomenon of hunting and the 65% doesn’t approve the circus exhibitions.

With the introduction of the law of **July 20th 2004**, n.189, concerning “*arrangements regarding the prohibition of animal abuse, and also its use for illegal battles or non-authorized competitions*”. This law has modified the normative order about animals, in fact in addition to the title IX of the book II of the penal code, it has been attached the title IX-bis, “about the crimes against the animal feeling”.

The **animal abuse, their killing, their abandon, the incompatible detention with their ethological characteristics**, are prohibited and punished by the penal code (exactly with articles n.544 bis, 727 and 727 bis.)

There are other arrangements referring to the protection of animals and related to the reform of the penal code:

1. the decree Board of Health of November 2nd, 2006. Individuation of the associations and of the custodial institutions of animals subject to seizure or confiscation, and the determination of the parameters of sharing about the revenues deriving from the application of financial penalties. (GU n.19 – 1,24,2007)
2. the decree of Ministry of Interior of March 23th, 2007. Individuation of the method of coordination of police forces and municipal and provincial police corps, in order to prevent and combat the criminal offenses committed against animals. (GU n.104 – 5,7,2007).

It seems that these laws want to contrast the sport activities in which the animals are involved. For what concerns hunting, it has been issued a law, dated 1992, n.157, regarding “*Standards for the protection of the wild warm-blooded fauna and for the picking hunting*”, and in the art.1, entitled “Wildlife”, it is said:

1. The wildlife is an unavailable heritage of the government and is protected in the interest of national and international community.
2. The practice of picking hunting is permitted, provided that it doesn't conflict with the necessity of preservation of wildlife and it doesn't cause damages to agricultural productions.

Here it talks of “**necessity of conservation of wildlife**” and the first reference is for the species in danger of extinction. It would be beneficial, therefore, to not ban the activity, to establish real courses that allow the hunter to recognize the protected species (both in flight that on the ground) and to intensify the controls, making them more rigid and strict in the places where hunting is forbidden.

The set of rules regarding the hunting prohibition, it has decreed “*The main rules of the hunt*” which are shown below:

- **Distances from the houses.** Hunting is prohibited for a distance of 100 metres from houses, factories and buildings used as workplaces. It's forbidden to shoot towards them by a distance less than 150 metres.
- **Distances from roads and railways.** Hunting is prohibited from a distance of 50 meters from the streets (including the unpaved municipal ones) and from railways. It's forbidden to shoot in the direction of them by a distance lower than 150 meters.
- **Distances from agricultural vehicles.** Hunting is prohibited within a distance of 100 meters by working agricultural vehicles.
- **Distances from pets.** Hunting for estate with the presence of livestock is allowed only at a distance greater than 100 meters from the herd, the flock or from the drove.
- **Prohibited hunting abilities.** Nets, traps, beartraps, mistletoe, baits and poisoned bites, lassos, small arches, crossbows, trap cages.
- **Prohibited days.** Tuesday and Friday are days of absolute hunting silence, even public holiday.

- **Housebreaking.** The article 614 of the penal code “Housebreaking” punishes anyone who introduces in the gardens and in the jurisdictions of the residential buildings.
- **Disturb of people.** The article 659 of the penal code “Disturb of the residential buildings or the rest of the people” punishes the ones who disturb the residential buildings or the rest of the people with noises.
- **Gunshots near homes.** The article 703 of the penal code “Ignitions and dangerous explosions” punishes those who shoot with firearms in an inhabited place or in its proximity, or those who shoot with firearms along a public road or in the direction of it.

Let’s debate about circuses. The condition of the animals that aren’t born in captivity or those that aren’t accustomed to live with men, is of malnutrition and very bad support condition. The **circus activity is regulated in Italy by the law 337/68** , followed by an explicative circular written in 1989 (4804/TB30) and by innumerable ministerial decrees, that confirm the parameters about the annual permits.

In the law aforementioned, there is no regulation for animals. Circuses should respect what the “Washington International Convention about the business of endangered species” affirms and this kind of **crimes are provided for by Italian law 150/92**. The same law, modified by the n.426 of 12.9.98, permits to circuses to be in possess of dangerous animals if “*Declared adequate by the competent authorities in the field of health and public safety, on the basis of previously established criteria by the Scientific Commission [...]*”. Circuses must also respect what says the Presidential **Decree 2.8.1954 n.320 about the obligation to veterinary surveillance** because circuses represent a system where the concentration of animals could be dangerous for the spread of infectious and contagious diseases.

Until now our attention has been addressed on men, but still nothing in favour of animals.

The invitation could be addressed to the municipalities, that can refuse to greet the

circuses in their district. Even if the municipalities may not absolutely ban the encampment of circuses, because they can't ban something that is permitted by the national law.

For what concerns the argument "fur coat" the fur farming is a practiced activity, even if there are many persons who don't accept it. The debate regarding the use of fur coats has always divided the public opinion, creating real barriers: The ones who are animal-rights activists, use to reiterate the bad conditions and the abuses suffered by animals to make a dress that is deliverable also with other kinds of materials; the exponents of the producers, who use to talk of animals in supervised farms, in full compliance with the regarding regulations. In terms of regulations, in 2001, it has been achieved the **prohibition of sale and importation of cat and dog fur coats**. In 2004 the prohibition has been integrated in the law 189. In 2006 an interministerial decree **prohibits in Italy the commerce and the importation of sealskins and other products made with a seal**.

In addition to the aforementioned Washington Convention, also worthy of mention is the **Universal declaration of animal rights**. Proclaimed in Paris in 1978 and edited by L.I.D.A. (Italian League of Animal Rights) and others international associations in the field of animals protection, this declaration wants to claim the **ethic of respect for the environment and all living beings**. In the introduction, which is shown below, we can have a clear description of the Declaration and of its aims:

"Considering that every animal has rights;

- considering that the disregard and the disgust of these rights have brought and continue to bring the man to commit crimes against nature and against animals;

- *considering that the humankind has identified the right to existence of other animal species, it constitutes the basis for the coexistence of species in the world;*
- *considering that genocides are committed by men and still others could happen;*
- *considering that the respect for animals by men is linked to the respect of men among themselves;*

- *considering that the education must teach from childhood to observe, to understand, to respect and to love animals”.*

The most important critique for this act refers to art.1 which ratifies the **equality of all the animal species**. Actually, there are evident differences of forms and existing capacities among animals. Also the art.8 has been exposed to great debates, it refers to **animal experimentation**, declaring it incompatible with the precepts ratified in the Declaration, wherever implies a **physical or mental suffering**; but, in this situation, it is no established to man an explicit obligation not to kill, as counterpart to the right to life of every living being. It admits the possibility that the animal “bred for the nutrition of men is [...] killed” (art.9), provided that this situation doesn’t cause pain and anxiety to the animals.

Definitively, the *Declaration*, could be considered as an invitation to human species to modify the way to interact with other living beings, resizing the management of the biological economy.

It is very important for our study, therefore, the legal certification “subject” of our exam: how can we represent the animal in our system?

The legal system of continental tradition considers the legal qualification of the animal as res, a clear position derived by a Latin term. This dogmatic attitude slumped when it was juridically sanctioned, in the art.13 of the Lisbon Treaty, the **sentient animal disposition**. This doesn’t imply a recognition full of legal subjectivity of the animal but guarantees that a step like this can be possible or, at least, predictable.

We should look beyond the Alps to see that in art.90 of BGB there is a clear stance: “*Tiere sind keine Sachen*” that is to say “Animals aren’t objects”. We can start talking of a gradual abandonment of the typical meaning “objective” of the animal, directed to its mere extrinsic reference, indirect and marginal, trying to open the door to a “subjective” meaning that considers the animal as owner and recipient of rights or, at least, in the attempt of mediation in this dogmatic split, make of it “the most protected propriety”.

Adopting a more modern solution to define the legal status of the animals it's an unanimous wish, protecting its conditions and its relationships with men, after all, as **Mahatma Gandhi** affirmed, *“the greatness of a nation can be judged by the way its animals are treated”*.
