



Why fur farming is being banned in the Member States – Case The Netherlands

Presentation by Inez Staarink, Policy maker Agriculture, Nature, Animals and Food, The Netherlands at the international seminar Fur Farming Ban in Practice of 20th October 2016 in Prague

Every year almost six million minks are being killed in the Netherlands. There are only 160 mink farmers in the Netherlands. But together their yearly turnover amounts to €190 million euro. This makes the Netherlands the third mink fur producing country in the world, with 10% of world production. China is first, Denmark is second. In Europe we are the second biggest. But all this changed on January 4, 2013 when a bill prohibiting mink fur farming became law.

Starting a new mink fur farm or expanding an existing mink farm is forbidden from that date onward. Fur farming in the Netherlands will be completely forbidden on January 1, 2024. Some people will say that's a long time from now, which it is. Unfortunately having the ban sooner was not an option within the context of the Dutch politics.

In this presentation I will start off with by giving you an historic overview of the fur ban, than I will look at the road ahead of us and end by sharing some of the hurdles and helps we ran into.

History

In the year 1999 an resolution was adopted by the House of Representatives (2e K) which requested government to prepare a ban on mink farming and prohibit new fur farming. The members who put forward the resolution probably drank sparkly wine and ate chocolate after the adoption of the resolution, not knowing it would take a quarter of a century, and the lengthy process of a private members bill, for the ban to be in effect.

All these 25 years there has been very broad support from the public. In the year 2000 78% of the population was in favor of a ban on fur farming. In a poll 2007 75% of the respondents was against fur farming. Two years later in 2009, 80% of the respondents said the killing of animals for fur was unacceptable, only 5% said it was acceptable. In a poll in 2012 only 7% of the respondents said fur is a legitimate reason to kill an animal. So great public support all along the way.

Despite these figures during those 25 years mink farmers expanded their business. In 2000 there were 584.806 minks mother animals, in 2014 there were over a million. Mink farming in the Netherlands is a very profitable business. So despite public discontent, mink farmers expanded their business. They knew a ban might be coming, but the business was very profitable and maybe they hoped they would be bought out and reckoned if they expanded their business they would get more money.



Let me give you a sneak preview. I would like to share one important lesson learned with you already: stop new mink farms and stop expansions of existing mink farms as soon as possible; otherwise the problem will only get bigger and bigger.

The government did follow up the 1999 mink resolution, but before a bill was sent to parliament, the government fell and new elections were held. The new government stopped the procedure to send a bill to parliament and therefore the expansion of mink farming was not prohibited. Our MP Krista van Velsen never stopped demanding a mink ban and she got so impatient that she decided to draft a bill herself. This bill was finished in 2006 and on October 4 of that year it was sent to parliament.

The original plan was a buy out of the mink farmers. Every year a percentage of mink farmers was to be bought out. However The Council of State (Raad van State) which advises the government on all bills (also on private members bills), advised negatively on this aspect of the bill because this would create legal inequality and also was unclear whether it would fit within the EU state support regulations.

By then it was 2008 and because there had been a thing with the Lehman Brothers and the financial markets I doubt if politicians would have been willing to pay for animal welfare at that moment. MP Krista van Velsen redrafted the bill. And the Dutch labor Party, part of the Party of European Socialists (PES), joined the initiative. In the new proposal there no longer was a buyout. The fur farmers were given the opportunity to earn back the money they had invested over a 10 year transition period.

This should not be a problem since mink farming is actually a very profitable business, the average profit was € 412.000 yearly. I don't know if any of you is thinking about a career switch, but in the Netherlands it is more profitable than being a prime minister which is 157.000 a year. In a 10 year transition period fur farmers can make more than enough money to compensate.

This redrafted bill was adopted by the House of Representatives in 2009. With the support of the Socialist Party –us-, Labor Party, the Greens, Democrats, Party for the Animals and on the far right the Party for Freedom from Geert Wilders.

Despite the majority in the House of Representatives, the Senate objected the bill, and we had to write an addendum to change the bill twice.. In the Netherlands there is a specific legal procedure to write a bill to change a bill which is being discussed in parliament. By this time our MP Krista van Velsen left parliament and was replaced by Henk van Gerven. From the Labor Party Jeroen Dijsselbloem-you may have heard of him- was the new MP defending the bill and he helped write a second addendum. Later Recourt replaced Dijsselbloem, who is now our Finance Minister.

The reason we stopped the procedure in the Senate and started to write an addendum was that we foresaw we couldn't get a majority. At the time we were not happy of course, but now, looking back I think it was for the better because legally the bill got more solid. I'll get back to this later in the legal part.



The most important things the addendums did, was to partly compensate the costs of demolishing old fur farming buildings and to introduce discretionary powers for the minister of economic affairs to compensate older mink farmers in individual cases if they were disproportionately disadvantaged by the bill. These disadvantages have mostly to do with pension accrual; the building up pension.

An amendment to the annual budget arranged for a budget of 28 million in 2024. The 160 mink farmers considered this less than a fee. But the money was specifically not meant as a buyout or compensation payment. Compensation was given in the form of a 10 year transition period. December 2012 the bill was adopted. We ate chocolate and drank sparkly wine, but the story wasn't over because the state was being challenged on the legitimacy of the law by the mink farmers in a civil case based on the right of property in the *ECHR* (*European Convention on Human Rights*).

Legal

A lower court decided on May 21, 2014 that the law was not legitimate. Therefore the law was suspended. This was a set back and mink farmers immediately started expanding their fur farms again, probably because they hoped that they would be bought out in the end. And off course if your farm is bigger, if you have more minks, you will get more compensation payment. That's what they hoped! However the state appealed with a higher court and won. On November 10 this year there was a positive verdict of the Court of Appeal that the Dutch ban on fur farming was indeed legitimate. The law was now back into force. And of course this was celebrated with chocolate and sparkly wine.

The mink farmers, off course, will try to get this verdict annuled will go into cassation to the Supreme Court. And, afterwards, they will probably appeal to the European Court of Human Rights here in Strasbourg, but we are hopeful of the outcome.

The key legal question before all courts was; can a government strongly regulate property and thus ban fur farming on moral grounds and was the 10 year transition period sufficient? We believe we can and we believe it was enough. The Court of Appeal agreed.

And rightly so: If society believes an activity is not acceptable on moral grounds, this should prevail over the right to freely enjoy property. Sadly minks are just property in legal terms..

The crucial article is Article 1 of the first protocol of the ECHR (European Convention on Human Rights)

It reads:

«Every natural or legal person is entitled to the peaceful enjoyment of his possessions.

No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties

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The mink ban heavily regulates property. The mink farmers get to keep their property, the cages, the barns, but they are not allowed to use it for fur farming. Their property is heavily regulated. ECHR says regulating property is only allowed under the following conditions

- 1) It should be formally arranged by law. This legal base should be transparent and foreseeable. In the Dutch case they could have seen it coming from 1999. However, it had not been officially notified. This could only be done after the law was published because it was a PM initiative. A normal bill can be officially notified in advance and should be as soon as possible.
- 2) It should be in the public interest.
- 3) A fair balance should be kept between the public interest and the property rights of the individual. There may be no excessive individual burden. This is crucial. If one individual is hit much harder by the bill than others, there is excessive individual burden. For instance an older mink farmer who just invested and who hasn't got enough years left for pension accrual. Remember in the Senate we amended the law to introduce discretionary powers for the minister of economic affairs to compensate older mink farmers in individual cases if they were disproportionately disadvantaged by the bill. I think this was a good amendment and it made it more solid legally.
- 4) The state has a broad margin of appreciation in regulating property and on assessing if and how should be compensated. There however should be a balance between the regulation of property and the goal of the regulation.

Having a fair balance between the public interest and the individual's rights is crucial. This is what the courts have been weighting. The right of the state to introduce a ban on fur was not questioned.

Any bill to ban fur should have a fair balance and no excessive individual burden.

The mink farmers demanded compensation payment of one billion euro (a thousand million). ECHR does not require compensation payment. It doesn't say so anywhere. But it does require a fair balance. We think the fair balance is given with the ten years transition period. If fur farmers earn less in the coming decades than they expected because of the ban, this falls well within the range of normal entrepreneurial risk. Especially if you considering the fact that the law was foreseeable.

Fox and Chinchilla farming has forbidden without compensation. Also the traditional light bulb has been banned without compensation payment but with a transition period.

Anyway: we won the appeal on good grounds.

The latest news is that the attorney general thinks the appeal should be done over again because the court neglected to investigate whether the ten year transition period is also sufficient for individual fur farmers.

The fur farmers will probably appeal until the end. I have faith the ban will hold.

To me our ban is not the end, it is the beginning. A beginning of a European wide production ban, a beginning of a EU wide fur sales ban and a beginning of a EU wide import ban. Of course there is overlap between a sales ban and an import ban, but better safe than sorry!



This all may take some time. But I am convinced this is the direction in which we are heading.

So what can you do now?

1. Make your own production ban! Do not wait for European legislation, we showed you the way, start in your own country and from there work towards an EU wide ban. It wasn't easy, but if we can do it, you can do it!
2. Stop expansions. Prohibit starting a new fur farm or expanding existing mink farms as soon as possible. Legally this is relatively easy because ECHR the right of property does not apply to future property. This can be done in your country relatively quickly. I'd suggest a two track project: 1) go for a ban and 2) prohibit expansions right away. Do both at the same time but in a different bill.
3. Talking with the apparel (fashion/textile) industry is also an option. But it is not enough.

Then there are things to be done at the European level:

1. Plea for a production ban on the European level. There are a multiple countries now with a production ban, Europe should follow their example.
2. Secondly tackle the consumers side, the buying of fur. This can only be done on EU level because of the common market rules. There is an EU wide ban on Polar Bear fur on Seal Fur on Dogs and Cats fur. So why not?
3. Organize correct labelling in the European Union as soon as possible. The present labelling is not good. Fur is not labelled as fur. The label says 'contains parts of animal origin' whatever that may be. But when you buy leather boots or jacket with a fur lining or with fur inside there is no way you can tell if it's fake or real. Fur should be labeled fur, leather labeled leather. Correct fur labelling should preferably mention the country of origin and the kind of animal. Correct labelling is also needed when you want to tax fur with a sales tax to generate some extra income and discourage fur.
4. Thirdly you can tackle fur imports on EU level. In The Netherlands resolutions were adopted to plea for a European import ban on angora rabbit wool and raccoon dog fur (wasbeerhondenbont). This was after horrible movies were published from raccoon dogs being skinned alive in China. All the reasons to want an import ban. However WTO may complicate things because you are not allowed to discriminate between likewise products. There are options to ban products on 'public moral' and on sustainability issues.

Let me tell you in conclusion about the hurdles and helps we encountered along the way.

First the hurdles:

1. great lobby power from mink farmers, especially within the Christian parties and the right wing liberals; all in all within the more conservative parties.
2. We had to carefully work within the ECHR framework protecting property



3. The mink farmers did not want a transition period and demanded a sum of almost one billion euro (a thousand million)
4. The discussion on jobs was an issue, although not a very big issue in the debate. Some 900 jobs were involved in the Netherlands. However in the countryside mink farms are very notably present because it stinks a lot. For the quality of life in the countryside the ban is positive.
5. The Netherlands as an EU-member state can't ban fur import nor ban selling fur by itself. And this led to the discussion: why forbid production if you can still buy fur? I personally think of all the farm animals in Europe, minks and other fur animals have the worst life. And even greater suffering abroad can't be an excuse to condone this. If we succumb to these arguments there can never be any progress in the world and the worst country will become the standard. We would have never abolished child labor if we would act like this.

Let's move on to the helps:

1. There has been a very broad support from the public all along. In a poll in 2012 only 7% of the respondents said fur is a legitimate reason to kill an animal.
2. Animal welfare ngo's have been a great help. They are a great source of information, they helped draft documents, they lobbied other parties, they influence public opinion and they campaign retail to stop selling fur. Without them it would have been much more difficult.
3. There has been quite broad support in parliament, by far not as broad as in society, but broad enough.
4. The number of fur farmers is small. Only 160 in an important producing country like The Netherlands.
5. It was good we invited a second party for the MP initiative. My party, the Socialist Party unfortunately hasn't been in government yet. We now represent 10% of the electorate. The second party we invited is the Social Democrat Party PvdA, this is a party which is in government now and has been in government quite a lot. Our decision to broaden the initiative and to invite them, wa a good decision.
6. It was a good choice to base the justification of the ban on ethical grounds rather than on welfare grounds. Our plea was: *Vanity, the goal is too light to justify the suffering and killing of animals*. I think it was a good choice, otherwise the discussion would be steered towards: what if we make a bigger cage, what if we add a pvc tunnel? And all kind of industry supported reports will pop up
7. Furthermore it was good that we did not went along in the discussion on animal welfare solutions because there are no animal welfare solutions. Minks are solitary water animals and should not be put in cages.
In the welfare debate be aware. You have 2 different ways of debating welfare. The first you look at the animal and say well she doesn't seem unhappy to me. And sometimes animals have visible stress by showing repetitive neurotic behavior or the bite themselves. And then they try to solve the neurotic behavior and if they succeed they claim the problem is solved. The second way is if take the natural behavior of the animal as a starting point. This was our choice and means minks should not be kept in cages because they can't express their natural behavior like swimming and hunting. This is a very different starting point for a welfare discussion.



8. Last but most important: good examples. In the Netherlands fox farming and chinchilla farming had been forbidden in 1998 with a ten year transition period. An EU ban on seal fur had been installed, one on cats and dogs fur and a ban on polar bear fur; The ban on fur farming in the UK and Austria; The ban on fox farming in Denmark and Sweden and many other good examples paved the way. And I hope our ban will help pave the way for a ban in the Czech Republic...