

Legal Safeguards for Badgers: Perspectives from France and the United Kingdom

Dr. Meganne Natali* & Rob Espin**

Abstract:

This paper critically examines the legal protections afforded to badgers (*Meles meles*) in England, Wales, and France, exposing the stark inconsistencies and systemic shortcomings that undermine their welfare and conservation. Despite their ecological significance and legal status as protected species, badgers remain targets of unjustified persecution rooted in persistent misconceptions—particularly regarding disease transmission and agricultural damage. In the UK, a fragmented legal framework offers limited protection: badgers are safeguarded from intentional harm but not negligence, and penalties are weaker than those for domestic animals under the Animal Welfare Act. Enforcement remains inconsistent, especially in England and Wales, while Scotland’s stronger laws show reform is possible.

In France, underground hunting—widely condemned for its cruelty—remains legal, breaching both national and international standards, including the Bern Convention. Local authorities often extend hunting seasons without public input or scientific basis, worsening these violations. This paper calls for targeted reforms centred on the protection of badgers, emblematic of broader shortcomings in wildlife law. In the UK, it urges the consolidation of wildlife offences and the alignment of penalties with those under general animal welfare legislation. In France, it advocates for a definitive ban on underground hunting and compliance with international legal obligations. By exposing the legal and ethical inconsistencies that leave badgers inadequately protected, the article makes the case for a more coherent, rights-based, and democratically accountable framework for safeguarding badgers and wildlife more broadly.

Key words

Badgers; wildlife conservation; wildlife legislation; animal protection; comparative law.

Introduction

Wildlife across Western Europe is increasingly imperilled by an array of threats—habitat fragmentation, expanding urban infrastructure, and harmful practices such as recreational hunting and so-called "pest control."¹ These pressures unfold within countries that,

* Visiting Fellow at the University of Portsmouth.

** UK Centre for Animal Law.

¹ The authors of this piece would prefer not to use the word pest nor *animal nuisible* or phrases including it, due to its inherent connotations which betrays the intrinsic and inherent value of animals regardless of how desirable of the anthropocentric worth humans bestow to them. The authors also agree with the suggestions of One Kind quoted by the Scottish Wildlife Welfare Commission in their 2021 Report on the use of rodent glue traps in Scotland pursuant to that we all should revise our use of language as this negatively influences public thinking and policy development concerning animal welfare.

The authors would prefer to use the phrase “wildlife management” or “*gestion de la faune*” to address the issues set out above however the words pest or *animal nuisible* may be used in quotes or due to the public understanding of the phrase.

despite their rich biodiversity, often fall short in adequately safeguarding their wild species. France and the United Kingdom offer two particularly telling examples of this paradox. Although their legal traditions and institutional frameworks differ markedly, both nations support rich ecosystems and iconic native species, yet continue to reveal critical shortcomings in their wildlife protection regimes.

One emblematic case is that of the European badger (*Meles meles*)² —a legally protected, nocturnal mammal known for its sentience and ecological importance. Living most of its life in complex underground burrow systems,³ the badger remains a target of unjustified persecution in both countries, fuelled by persistent misconceptions and insufficient legal safeguards (Part I).

This article undertakes a comparative analysis of the legal protections afforded to badgers in the United Kingdom (with a focus on England and Wales) and France. It does not to flatten the profound institutional and cultural differences between these systems, but to identify shared challenges and potential pathways for reform. It first examines the practical functioning of badger protection laws—focusing in the UK on the detection and enforcement of wildlife crime (Part II), while highlighting the absence of comparable legal protections in France, where the analysis centers on the controversial and legally inconsistent practice of permitted underground hunting (Part III).

Finally, the analysis culminates in a discussion of necessary reforms, offering a broader reflection on how both countries might move toward more coherent and ethically grounded wildlife governance (Discussion and Conclusion).

Part I. Understanding the Legal and Ecological Controversies Surrounding Badger Management in France and the United Kingdom

Badgers, nocturnal members of the Mustelid family, spend a significant portion of their lives in underground burrows, known as setts.⁴

² “Blaireau” in French.

³ Setts are a crucial part of badgers’ habitat being formed of up to 300m of connected underground tunnels accessed via holes dug at surface level.

⁴ setts being a crucial part of badgers’ habitat being formed of up to 300m of connected underground tunnels accessed via holes dug at surface level

Despite their critical ecological roles, badgers are often at the centre of public controversies and accused of causing a range of issues, from damaging agricultural crops⁵ and undermining infrastructure through burrowing⁶ to serving as a vector for bovine tuberculosis (TB) — a disease responsible for significant cattle losses. These perceptions arose from a combination of early scientific findings on the links between bovine TB, badgers and cattle that were oversimplified in public discourse, economic pressures on the farming industry, and media amplification, all of which perpetuated the narrative of badgers as agricultural pests. Government policies, such as badger culling, further reinforced these misconceptions, often disregarding scientific evidence that questioned their effectiveness and ignoring the broader ecological contributions of badgers, which remain largely underappreciated.

Contrary to some beliefs that badgers are pests who only damage land and property, badgers contribute positively to ecosystems and agricultural production⁷ by controlling rodent populations, consuming worms, and reducing the spread of certain diseases, such as Lyme disease,⁸ among prey species. Claims that badger burrowing frequently damages infrastructure or causes structural collapses are largely exaggerated, as scientific assessments show such incidents are isolated and the rare risk of collapse does not justify generalized culling policies or the systematic elimination of the species.⁹

Finally, the effectiveness of the destruction of badgers to stop the spread of bovine tuberculosis (TB) has been recognized as "*incompletely characterized*"¹⁰ in both the UK and France.¹¹ The French National Agency for Health, Food, Environment and Work Safety (ANSES) has concluded that it is useless to eliminate badgers on the grounds of a preventive

⁵ See for example "Badger Problems: Advice to people living in rural areas" Welsh Government *Llywodraeth Cymru* (May 2019) available <<https://www.gov.wales/sites/default/files/publications/2019-05/rural-badgers-fact-sheet.pdf>>

⁶ Department for Environment, Food and Rural Affairs "*Badger Problems: advice to householders*" Rural Development Service Technical Advice Note 07, Wildlife Administration Unit, (May 2005)

⁷ Kurek P, et al. (2022). Badger *Meles meles* Ecosystem Engineer and Its Legal Status in Europe. *Animals* (Basel). 12(7):898

⁸ See for example discussion in Question parlementaire – E-003079/2022, « Interdiction de la vénerie sous terre » (prohibition of hunting underground), Annika Bruna (ID), Aurélia Beigneux (ID), Elżbieta Kruk (ECR), 14 septembre 2022 (September 14 2022), <https://www.europarl.europa.eu/doceo/document/E-9-2022-003079_FR.html>.

⁹ Above n.6

¹⁰ « Gestion de la tuberculose bovine et des blaireaux » (management of bovine tuberculosis in badgers), Avis de l'ANSES. Rapport d'expertise collective révisé, aout 2019 (Opinion of ANSES (National Agency for Food, the Environment and Occupational Health Safety) . Revised collective experts' report, August 2019), p. 129, <<https://www.anses.fr/fr/system/files/SABA2016SA0200Ra.pdf>>.

¹¹ See for example The Badger Trust and Naturewatch Foundation "*The Persecution of Badgers: A Guide for Investigators in England and Wales*" available here <<https://www.badgertrust.org.uk/badger-crime-guide>>

fight against the disease,¹² with only marginal amounts of French territory impacted by the disease since less than 0.1% of cattle herds have been infected with the disease since 2001.¹³ In addition, even in potential risk areas, a French ministerial decree of December 7, 2016 “*related to certain measures for monitoring and combating tuberculosis (...)*” underscored the harmfulness of badger hunting, attracting attention to the risks of contamination of dog crews by badgers potentially carrying the disease. Therefore, the decree prohibits any recourse to underground hunting as a measure aimed at combating the spread of bovine tuberculosis, demonstrating the ineffectiveness of such a practice to prevent the spread of the disease and protect cattle.¹⁴

In light of the evidence, the ongoing persecution and hunting of badgers in France and the UK starkly exposes the profound gap between public perception, often driven by misconceptions, and the species' true ecological contribution. Yet, continuing persecution not only raises serious ethical concerns but also exposes significant enforcement and legislative challenges, underscoring critical flaws in environmental governance and the democratic processes that should guide wildlife management decisions.

Part II. Protection of badgers in England and Wales in the context of the wider UK Legal regime

The UK lacks any codified wildlife welfare or animal rights legislation, meaning that badgers (and other wild mammals) instead draw their legal protection from a patchwork of different laws. This section will discuss such laws and their enforcement in detail. For readers who are interested in understanding this legal landscape in greater depth, these authors recommend Hannah Moneagle ‘The Protection of Badgers: Where are we now?’, which further

¹² « Gestion de la tuberculose bovine et des blaireaux » (management of bovine tuberculosis in badgers), Avis de l’ANSES. Rapport d’expertise collective révisé, aout 2019 (Opinion of ANSES (National Agency for Food, the Environment and Occupational Health Safety) . Revised collective experts’ report, August 2019), p. 129, <<https://www.anses.fr/fr/system/files/SABA2016SA0200Ra.pdf>>.

¹³ « Remonter à l’origine des contaminations par la bactérie de la tuberculose bovine » (Returning to the bacterial origin of bovine tuberculosis), ANSES, 23 mai 2022 (ANSES 23 May 2022), <<https://www.anses.fr/fr/content/remonter-%C3%A0-l%27origine-des-contaminations-par-la-bact%C3%A9rie-de-la-tuberculose-bovine>>.

¹⁴ Article 7.4 de l’arrêté du 7 décembre 2016 relatif à certaines mesures de surveillance et de lutte contre la tuberculose lors de la mise en évidence de cette maladie dans la faune sauvage (Article 7.4 of the cessation of December 7 2016 relating to certain surveillance measures and the fight against tuberculosis during the highlighting of this disease in wild fauna), <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000033623870?isAdvancedResult=&page=4&pageSize=10&query=v%C3%A9nerie&searchField=ALL&searchProximity=&searchType=ALL&tab_selection=all&typePagination=DEFAULT>.

discusses the current state of badger-specific wildlife welfare law in the UK, with a particular focus on Scotland.¹⁵

Part 2.1 - Legal Protections: Scope of Protection

While the key piece of badger specific wildlife welfare legislation in England and Wales is the Protection of Badgers Act 1992 (“PBA”), badgers are also covered by the scope of the Wild Mammals (Protection) Act 1996 (“WMPA”), the Wildlife and Countryside Act 1981 (“WCA”), and Animal Welfare Act 2006 (“AWA”).

The AWA provides protections against cruelty and suffering to “*protected animals*” which it defines as including animals not living in a wild state which are under the control (even temporarily) of man.¹⁶ This means that it would not apply to badgers living in the wild, however if a badger was captured and held by a person then the provisions of the AWA would apply.

Given that this will not be the case for the vast majority of badgers as a non-domesticated species, this article does not focus on AWA. However, it is worth noting that the limited number of badgers in captivity (for example those held in rescues) receive wider protections against deliberate and negligent unnecessary suffering¹⁷ and failures¹⁸ under the AWA to actively promote badgers’ welfare, than badgers in the wild under the other piece of legislation which do not provide such positive duties of care.

Part 2.2 - Legal Protections: Substance of Protection

The PBA creates offences in relation to different ways in which persons may cause suffering to badgers, namely the general taking, injuring or killing of badgers.¹⁹ The act also criminalises the cruel ill-treatment of badgers,²⁰ even creating specific offences for certain methods of taking or killing badgers, which includes the use of badger tongs or firearms which do not meet specific descriptions.²¹

¹⁵ Moneagle, H. “*The Protection of badgers: Where are we now?*” UK Journal of Animal Law (volume 6, issue 2, 2022) available from <<https://www.alaw.org.uk/wp-content/uploads/2022/10/The-Protection-of-Badgers-Where-are-we-now-by-Hannah-Darnell.pdf>>

¹⁶ AWA s 2(b)(c)

¹⁷ *ibid* s 4

¹⁸ *ibid* s 9

¹⁹ PBA s 1(1)

²⁰ *ibid*, s 2(1)(a)

²¹ *ibid*, s 2(1)(b)-(c)

The PBA goes on to prohibit persons from damaging or interfering with badger setts,²² selling or possessing live badgers,²³ and marking and ringing the animals.²⁴ Alongside the creation of tailored offences, the PBA provides a number of exceptions in sections 6-9 such as allowing persons to take badgers to treat them when injured.²⁵ Moreover, it establishes a licensing scheme permitting derogations from the act for certain activities, such as taking and killing badgers, including acts done to prevent damage to land, crops or other property where it is deemed that human interests outweigh those of badgers but does not permit hunting badgers for sport.²⁶

The WMPA makes it a criminal offence where any person “*mutilates, kicks, beats, nails or otherwise impales, stabs, burns, stones, crushes, drowns, drags or asphyxiates*” any wild animal (which would include wild badgers) with intent to inflict unnecessary suffering.²⁷ There are certain exceptions to the general prohibition set out in WMPA for acts such as mercy killings or trapping and taking animals.²⁸

The WCA, a way in which the UK implements the Bern Convention, which is discussed further in Part III below, provides some protection to badgers as wild animals generally and due to their identification in Schedules 6 and 6Z of the WCA. The WCA criminalises certain methods of taking or killing wild animals including using self-locking snares, decoys, bows and crossbows on trapped animals.²⁹ Moreover, any person using methodologies such as traps, snares, poisons, automatic weapons, gas, smoke, or decoys to trap or kill badgers also commits an offence.³⁰

Badgers also receive specific protection against “badger baiting”, the practice of using trained dogs (commonly smaller breeds such as terriers) to force badgers out of their setts before the badgers are captured and then forced to fight. Badger baiting is a sport with a long history in the UK, with the earliest cultural references to the sport dating back to the tenth century,³¹ However as public sentiment toughened against animal fighting, the sport was

²² *ibid*, s 3(1)

²³ *ibid*, s 4(1)

²⁴ *ibid*, s 4

²⁵ *ibid*, s 6(a)

²⁶ *ibid*, s 8

²⁷ WMPA s 1

²⁸ *ibid*, s 2

²⁹ WCA s 11(1)

³⁰ *ibid*, s 11(2)

³¹ A Cassidy “*Victims, Vermin and Disease; British Debates over Bovine Tuberculosis and Badgers*” Palgrave Macmillan (2019) p.25 Open Access available here <<<https://link.springer.com/content/pdf/10.1007/978-3-030-19186-3.pdf?pdf=button>>>, p.25

theoretically banned through the 1835 Cruelty to Animals Act.³² Notwithstanding the sport having been outlawed in the UK for nearly 200 years, badger baiting remains a significant welfare abuse of wild badgers, with the UK Badger Persecution Priority Delivery Group (the “BPPDG”) citing that over 70% of Naturewatch Foundation investigations involved badger baiting.³³

Whilst the action of taking the badgers for fighting (as an unjustified purpose) is criminalised under the provisions of the PBA, the AWA also creates separate offences connected to animal fighting.³⁴ Pursuant to the AWA it would amount to an offence for a person to take, keep and then cause badgers to fight other animals, be they commonly domesticated (such as dogs, cats or chickens) or wild living in the UK (such as other badgers).³⁵ The AWA goes further and criminalises a wider array of activities in connection with animal fighting and baiting, including advertising or betting on fights,³⁶ keeping any premises for fighting,³⁷ training animals for fighting,³⁸ attending fights without lawful excuse,³⁹ and videoing and circulating footage of the fight.⁴⁰ Whilst comprehensive, the offences under the AWA would not cover actions against the vast majority of badgers as a wild living animal because, as already discussed above, wild living badgers are not animals under the control of a person and therefore within the scope of the AWA.

Part 2.3 - Penalties and deterrents

Given the fragmented nature of the wildlife welfare regime relevant to badgers it is unsurprising that the penalties tied to the offences created by the different pieces of legislation themselves vary. For example, whilst a person who commits an offence under the PBA in England and Wales which would in fact cause suffering to a badger, may be liable to a period of imprisonment not exceeding six months or a potentially unlimited fine,⁴¹ notably such a level is lower than potential penalties for similar cruelty, such as the infliction of unnecessary

³² *ibid* 5.1 p.163

³³ Naturewatch Foundation: “*What is Badger Baiting?*” 2021, available here <<<https://naturewatch.org/campaigns/wildlife-crime/what-is-badger-baiting/>>>

³⁴ AWA S 8

³⁵ *ibid*, s 8(1)(a).

³⁶ *ibid*, s 9(1)(c)-(e)

³⁷ *ibid*, s 9(1)(i)

³⁸ *ibid*, s 9(1)(h)

³⁹ *ibid*, s 9(2)

⁴⁰ *ibid*, s 9(3)

⁴¹ PBA s 12

suffering committed against (most commonly) domesticated animals under the AWA despite both laws militating against suffering and cruelty to animals.

This is because the Animal Welfare (Sentencing) Act 2021 (“AWSA”) introduced in England and Wales, amongst other things, stronger maximum penalties for certain offences under the AWA. Following the changes pursuant to the AWSA, a person who commits an offence under the AWA concerning badgers under their control including causing them unnecessary suffering or being involved in badger fights can face indictment imprisonment for a term not exceeding 5 years or to an unlimited fine.⁴²

Offences against badgers under the WMPA are punishable with a prison sentence of up to 6 months or an unlimited fine⁴³ and the offences discussed above under the WCA may again be punished by 6 months in prison or an unlimited fine.⁴⁴ This maximum penalty is again lower than the corresponding offence under the AWA.

Part 2.4 - Differences in penalties between different UK jurisdictions

Penalties for breach of wildlife welfare protections is one area where significant differences exist between the jurisdictions discussed below.

Part 2.4(a) - Scotland

The Scottish legislator (Holyrood) enacted two pieces of legislation, the Wildlife and Natural Environment (Scotland) Act 2011 (“WNESEA”) and the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 (“WPPPSA”). The combined effect of these two pieces of legislation in Scotland sees disturbance offences are punishable by up to 12 months in prison⁴⁵ whilst offences for taking or killing badgers pursuant to the PBA as amended pursuant to the Wildlife and Natural Environment (Scotland) Act 2011, can be punished by up to 5 years imprisonment.⁴⁶

Furthermore, the punishment for the offences discussed above pursuant to both the WCA and WMPA through persons committing cruelty to or capturing badgers via the methods

⁴² AWA s 32(1)

⁴³ WMPA s 5

⁴⁴ WCA s 21(1)

⁴⁵ WNESEA s 33(9)(c)(ii)(A)

⁴⁶ WPPPSA s 8(2)(d)

listed there have been strengthened under the WPPPSA and are now punishable by prison sentences of up to 5 years.⁴⁷

Part 2.4(b) - Northern Ireland

Instead of the PBA, wild living badgers in Northern Ireland received their protection under the Wildlife (Northern Ireland) Order 1985 as amended by the Wildlife and Natural Environment Act (Northern Ireland) 2011 (together the “**NI Wildlife Orders**”). The NI Wildlife Orders largely mirror the provisions of the PBA in England and Wales in terms of offences and establishes punishments up to 6 months imprisonment.

For persons in Northern Ireland convicted of offences related to badger baiting and fighting then the punishments available are again similar to England and Wales with up to 5 years imprisonment for those convicted under the Welfare of Animals Act (Northern Ireland) 2011.

Part 2.5 - Analysis of the UK position

Taken together, the provisions of WMPA, WCA and PBA can be seen to somewhat protect wild badgers against deliberate killing and the worst forms of deliberate human cruelty and associated suffering without significant exemption as part of a welfarist approach. However, there is no obligation on persons to avoid negligent acts or omissions which cause suffering to wild living badgers. Such a position is in contrast to the case for animals protected under the AWA which are predominantly domesticated animals including pets. For animals protected pursuant to the AWA, persons are prohibited from deliberately or negligently causing unnecessary suffering and are charged with positive duties to promote animal welfare. It is unclear as to why animals “under the control of man” should be given much greater protection than wildlife when both types of animal are capable of suffering.

This difference in protection for wild animals and domesticated animals reaches as far as the punishments available to judges sentencing those guilty of offences against the two different categories of animals established by law. The maximum six-month jail terms already cited above for contravention of the WMPA, the WCA and PBA in offences against wild living badgers is inconsistent with the wider trend in England and Wales of imposing tougher

⁴⁷ *ibid*, s.7(6)(c) and 11

sentences for equivalent animal welfare offences, such a trend being embodied by the enactment of the Animal Welfare Sentencing Act 2021 (AWSA) and the increase of maximum penalty for AWA offences from 6 months to 5 years.⁴⁸

As no evidence establishes that wild living badgers (or any wild mammal for that matter) are capable of suffering less than any domesticated animal which would receive protection under the AWA, it is unclear why the maximum penalty under AWA is ten times more stringent than pursuant to the wildlife welfare laws. The WCL cites the example of one of the most represented forms of badger crime at 58.7% of total badger crime, sett interference as a result of planning and development activities.⁴⁹ Given that it is corporations who face punishment for such sett damage caused by development activities, it is doubtful that the financial punishments in the form of fines available under the PBA are stringent enough to serve as a true deterrent. For large corporations, such fines can simply be priced into their operations. This issue has been identified and partially addressed in Scotland as discussed above with the provisions of both WNESEA and WPPPSA closing the gap in punishments for cruelty offences against wild living badgers as opposed to animals protected pursuant to the AWA. Given such a difference exists between two bordering nations which have badger populations who will likely cross between borders, it is unjustifiable that such a drastic delta in available penalties for relevant offences exists between those jurisdictions.

Whether the law sufficiently protects the badgers can be examined through the lens of badger baiting. The offences created by the AWA (and Scottish and Northern Irish versions) are prima facie positive through addressing many different ways in which persons can participate in badger baiting. They aim to deter people against not only organising and causing animals to fight, but also from supporting or facilitating the blood sport in any way. It is positive that the law has somewhat kept up with technological advancements in also prohibiting people from keeping or distributing videos, with blood sports such as badger baiting increasingly being promoted online.⁵⁰

Despite such positive developments, work from jurists has shown that in reality enforcement and prosecution agencies are either reluctant or struggling to bring successful prosecutions under the animal fighting offences. For example, recent Scottish case law shows a greater focus upon the injury or suffering caused to the *dogs* involved in fighting badgers,

⁴⁸ AWSA s 1(2)

⁴⁹ The Wildlife and Countryside Link “*Wildlife Crime in 2021: A report on the scale of wildlife crime in England and Wales*” (2021) p 9, available here

<<https://www.wcl.org.uk/docs/assets/uploads/WCL_Wildlife_Crime_Report_2021_29.11.22.pdf>>

⁵⁰ *ibid*, page 6-7

rather than the injury or death caused to badgers which is also prosecutable pursuant to the PBA.⁵¹ Moneagle has shown various cases where different persons were prosecuted and sentenced for offences such as: (a) keeping dogs for the purposes of fighting; (b) failing to procure veterinary treatment for injured dogs; and (c) possession of firearms and other weapons used in connection to badger baiting.⁵² This is despite (at least in some cases) evidence being available to show that badgers had been injured and/or killed by the dogs in question.⁵³ The punishments applicable to such offences against badgers are lower than would be available under the PBA or AWA, for example being limited to community unpaid work and pay back orders rather than any custodial time. Moneagle's analysis has tried to determine why this is the case, advancing suggestions such as the hesitation on the part of the prosecution in Scotland to bring cases due to the evidential and procedural challenges in having cases heard in higher courts, therefore being excluded from the increased sentencing powers of the AWA and PBA.

It is therefore evident UK law does not protect badgers against all the potential harms they face from humans. This is a key shortcoming of the welfarist approach of UK law, trying to mitigate and minimise the suffering badgers can suffer, instead of properly recognising badgers as sentient non-human persons benefiting from rights against any kind of ill treatment.

Part III. Persecution of badgers in France

Unlike in the UK, there is no comprehensive framework under nature protection or animal welfare legislation that provides safeguards for badgers. As such, the interaction with badgers is regulated by hunting laws.

Despite not appearing on the list of "species likely to cause damage" designated in the decrees of July 3, 2019,⁵⁴ and August 3, 2023,⁵⁵ the badger remains targeted for hunting under

⁵¹ (Moneagle (n.17), page 3)

⁵² *ibid*

⁵³ (Moneagle (n.17) page 7)

⁵⁴ Arrêté du 3 juillet 2019 pris pour l'application de l'article R. 427-6 du code de l'environnement et fixant la liste, les périodes et les modalités de destruction des espèces susceptibles d'occasionner des dégâts (Decree of July 3, 2019, issued for the implementation of Article R. 427-6 of the Environmental Code, specifying the list, periods and methods for the destruction of species likely to cause damage) <<https://www.legifrance.gouv.fr/loda/id/LEGIARTI000038732803/2019-07-07/>>.

⁵⁵ Arrêté du 3 Aout 2023 pris pour l'application de l'article R. 427-6 du code de l'environnement et fixant la liste, les périodes et les modalités de destruction des espèces susceptibles d'occasionner des dégâts (Decree of August 3, 2023, issued for the application of Article R. 427-6 of the Environmental Code and establishing the list, periods, and methods for the destruction of species likely to cause damage) ;

the provisions of the June 26, 1987 decree.⁵⁶ As a result, badgers may legally be shot or hunted underground—a hunting method that predominates due to their nocturnal habits and reliance on underground setts.

Yet, this method of hunting is one of the cruellest. Underground hunting introduces dogs into the animal's burrow in order to corner it there and to pull it out using pincers or tongs in order, most often, to subsequently kill the hunted animals with knives or firearms.⁵⁷ According to applicable rules, the permitted yearly timeframe for underground hunting spans from September 15⁵⁸ to January 15.⁵⁹ However, departmental prefects are granted the authority to extend this period "after consultation with the departmental commission on hunting and wildlife and the hunters' federation". This permits prefects to prolong the hunting season and extend the persecution of badgers from May 15 to September 15 each year.⁶⁰ The 2022-2023 edition of the badger underground hunting map drawn up by the Association Protection des Animaux Sauvages (ASPAS) and Agir pour le Vivant et les Espèces Sauvages (AVES) associations serve as a testament to the widespread endorsement of these supplementary hunting periods across numerous French departments⁶¹. Thirty-three (33) departments have authorized an additional underground hunting period for badgers starting from May 15, while twenty-one (21) have allowed this period from a later date (June 15 or July 15).⁶²

The badger, already a marginalized creature due to the aforementioned public perception, is afforded scant respite or consideration, notwithstanding its negligible contribution to the purportedly grave offenses⁶³ attributed to it. Instead, its vilification serves as a pretext to perpetuate a hunting tradition entrenched in a web of legal contradictions, perpetuating an egregious violation of ethical norms, and environmental democracy.

⁵⁶ Arrêté du 26 juin 1987 fixant la liste des espèces de gibier dont la chasse est autorisée (Decree of June 26, 1987 establishing the list of game species whose hunting is authorised) <<https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000296288>>.

⁵⁷ Article 3 de l'arrêté du 18 mars 1982, modifié par l'arrêté du 1^{er} avril 2019 en son article 1 alinéa 4 (Article 3 of the Decree of March 18, 1982, amended by the Decree of April 1, 2019, in its Article 1, paragraph 4).

⁵⁸ Article R. 424-4 of the Environmental Code.

⁵⁹ Article R. 424-5 of the Environmental Code.

⁶⁰ *Idem*.

⁶¹ « Déterrage de blaireaux : la carte de France de l'horreur » (Digging up badgers : France's map of horror), Association Agir pour le Vivant et les Espèces Sauvages (The Association Acting for Living and Wild Species) (AVES), Septembre 2022. <<https://www.aves.asso.fr/2022/09/deterrage-de-blaireaux-la-carte-de-france-de-lhorreur/>>.

⁶² "Report violation of articles 7, 8 and 9 of the Convention by France due to the authorization of an additional underground hunting period for badgers", submitted for consideration to the Bern Committee during the complaint filed by 10 French environmental protection organizations in May 2023, ASPAS website, <<https://www.aspas-maitre-renard.org/wp-content/uploads/2020/06/RAPPORT-annexe-Plainte-Berne-VF-15-05-2023.pdf>>.

⁶³ See Part I "*Badgers as a species in the UK and in France*" above.

Indeed, the additional periods of underground badger hunting (A), as well as this underground hunting practice as such (B), are in total contradiction with France's legal commitments at European level as well as with the standards and internal progress of the territory.

Part 3.1 - Unveiling the Legal Quagmire Surrounding Additional Periods of Underground Badger Hunting

Article R.425-5 of the Environmental Code, allowing prefects to adopt additional periods for badger hunting underground “upon proposal of the departmental director of agriculture and forestry and after consultation with the departmental commission on hunting and wildlife and the hunters' federation”,⁶⁴ starkly contravenes the established European regulations under the Bern Convention⁶⁵ (the “Convention”) (a).

Furthermore, the internal French standards intended to maintain the ecological balance of hunted species within French territory are largely disregarded, as evidenced by the fact that the vast majority of prefectorial authorizations for these additional hunting periods contravene the principles of public access to environmental information and public participation in decisions that affect the environment (b).

Part 3.1(a) - A Breach of Bern Convention Provisions

The badger, as listed in Appendix III of the Convention⁶⁶, must be subject by the signatory states, including France, to “*appropriate and necessary*”⁶⁷ legislative and regulatory protection measures to ensure its protection. However, the implementation of an extended hunting period lasting nearly eight months,⁶⁸ coupled with the absence of reliable data on the status of badger populations in France, undermines the protection objectives set forth by the Convention. Article 8 of the Convention prohibits the use of all “*non-selective means of capture and killing and means likely to cause local disappearance or seriously disturb the tranquility*”

⁶⁴ Article R.425-5 of the Environmental Code.

⁶⁵ Bern Convention, adopted in 1979 and came into force in 1982, <https://www.coe.int/fr/web/conventions/full-list?module=treaty-detail&treaty-num=104>

⁶⁶ Convention on the conservation of European wildlife and natural habitats, adopted in Bern on September 19, 1979, <<https://eur-lex.europa.eu/legal-content/FR/TXT/?uri=celex%3A21979A0919%2801%29>>.

⁶⁷ Article 7 of the Bern Convention, “Each Contracting Party shall take appropriate and necessary legislative and administrative measures to ensure the protection of the wild fauna species specified in Appendix III.”.

⁶⁸ Article R. 424-5 of the Environmental Code.

of populations of a species"⁶⁹. Yet, underground hunting operations targeting badgers exhibit an indiscriminate approach, ensnaring not only adult badgers but also unweaned individuals⁷⁰ and those below reproductive age⁷¹. It has been estimated that badger cubs often represent 40% of the overall number of badgers killed during the additional underground hunting period⁷². This indiscriminate practice, which fails to distinguish between adult and juvenile badgers, flies in the face of the Convention's mandate to protect vulnerable populations from undue harm.

Furthermore, while Article 9 of the Convention allows for derogations from the aforementioned provisions to prevent significant damage to agriculture, forestry, crops, and livestock, it imposes stringent conditions. These include the demonstration that no viable alternatives exist and that any action taken must not jeopardize the survival of the affected population.⁷³ However, the rationale behind underground badger hunting rarely aligns with these criteria to permit such action. The alleged economic damage caused by badgers remains unsupported by empirical evidence, as highlighted by the French Conseil Scientifique du Patrimoine Naturel et de la Biodiversité (CSPNB) in its 2016 report. The CSPNB stressed that "in the absence of updated data on the actual economic impact of the damage supposedly caused by badgers, there is no justification, at this time, for the mass culling of these animals."⁷⁴ This critical observation sheds light on the deficiency of concrete evidence supporting the necessity for badger culling to mitigate agricultural, forestry crops and livestock damages,

⁶⁹ Article 8 of the Bern Convention.

⁷⁰ BOYAVAL V., « Contribution à l'étude de la reproduction des Blaireaux Eurasiens (*Meles meles*) et de la période de dépendance des blaireautins en France » (Contribution to the study of the reproduction of the eurasian badger and the dependence period of badger cubs in France), 2010 ; « Blaireau », Larousse.fr, <<https://www.larousse.fr/encyclopedie/vie-sauvage/blaireau/184830>>.

⁷¹ It is estimated that badgers are sexually mature past the age of two, Lebourgeois F., « *Le blaireau Européen (Meles meles L.). Synthèse des données européennes concernant la sélection des habitats, la densité des terriers et des populations, les territoires vitaux, le régime alimentaire et les cycles d'activités* » (Summary of European data on habitat selection, burrow and population density, home territories, diet and activity cycles), Rapport de recherche, Université de Lorraine, Agro-Paris-Tech, INRAE, Silva ; Groupe d'Études des Mammifères de Lorraine (Research Report, University of Lorraine, Study group on the mammals of Lorraine), 2020, p. 62.

⁷² "Report violation of articles 7, 8 and 9 of the Convention by France due to the authorization of an additional underground hunting period for badgers", submitted for consideration to the Bern Committee during the complaint filed by 10 French environmental protection organizations in May 2023.

⁷³ "prevent[ing] significant damage to crops, livestock, forests, (...)" "provided that there is no not another satisfactory solution and that the derogation does not harm the survival of the population concerned", Article 9 of the Bern Convention.

⁷⁴ In 2016, the Conseil Scientifique du Patrimoine Naturel et de la Biodiversité (CSPNB) (The Scientific Council on Natural Heritage and Biodiversity) thus concluded its report by indicating that in the absence of "updated figures (of) the real economic consequences (of the damage allegedly caused by badgers) nothing to date justifies for this reason culling companions mass of these animals". (En l'absence de « *chiffrage actualisé (des) conséquences économiques réelles (des dégâts prétendument causés par les blaireaux) rien à ce jour ne justifie pour ce motif des campagnes d'abattage massif de ces animaux* »), in « *Cohabitation entre blaireaux, agriculture et élevage* », CSPNB, 2016, <<https://www.ecologie.gouv.fr/sites/default/files/CSPNB%2020160601.pdf>>.

thereby calling into question the legitimacy of the practice within the framework of Article 9 derogations.

Additionally, even if documents were to attribute damage to specific badger populations, viable alternatives to the lethal culling of badgers exist that align more closely with the precautionary principle of international public law, as deduced from the Convention.⁷⁵ Solutions such as the installation of electric fences or repellent-soaked cords, strategically placed at a depth of 15 cm in the soil,⁷⁶ offers humane and effective deterrents to mitigate conflicts between badgers and human interests. By prioritizing non-lethal methods of conflict resolution, nations can uphold their obligations to protect biodiversity while promoting sustainable coexistence between humans and wildlife.

Finally, the authorization of hunts during supplementary periods poses a grave threat to the survival of badger populations. As previously elucidated, these extended hunting seasons indiscriminately target badgers of all ages, including young individuals not yet of reproductive age. This wanton destruction disrupts the delicate biological balance of badger populations, exacerbating existing pressures on these animals. The indiscriminate slaughter of young badgers during underground hunts not only compromises the reproductive potential of the species but also undermines the long-term viability of badger populations within the territory⁷⁷.

As a non-selective practice that targets a protected species, underground hunting starkly contravenes the principles outlined in the Convention. The persistence of such practices undermines France's efforts to develop comprehensive wildlife conservation plans in line with contemporary ethological knowledge and legislative advancements observed among its European counterparts. This discrepancy underscores the urgent need for France to reassess its approach to wildlife management and enact measures that prioritize the conservation of biodiversity and the protection of vulnerable species such as the badger.⁷⁸

⁷⁵ Notably derived from Article 9, which allows exemptions to the provisions concerning the conservation of species and their habitats, but only on the condition that no satisfactory alternatives exist and that the exemption does not harm the survival of the concerned populations. This requirement for prior examination of alternatives and minimization of negative impacts on species and their habitats echoes the precautionary principle, which recommends taking management measures even in the absence of scientific certainty, in order to prevent potential harm.

⁷⁶ Poole D. W. et al. (2002). Effectiveness of an electric fence to reduce badger (*Meles meles*) damage to field crops. *Crop Protection*. 21(5):409-417.

⁷⁷ This state of affairs has moreover been recognised by a recent decision, n°2101749, Tribunal Administratif de Poitiers, 27 juillet 2021 ((Administrative Court (AC) of Poitiers, July 27, 2021).

⁷⁸ France once again sadly stands out in terms of animal consideration by appearing as the only other European states to continue to authorise the underground hunting of badgers while young are still in burrows. « La France, enfer des blaireaux » (France, hell of the badgers), Association Ligue pour la Protection des Oiseaux (LPO), 12 juin 2020, <<https://www.lpo.fr/qui-sommes-nous/espace-presse/communiqués/2020/la-france-enfer-des-blaireaux>>.

Part 3.1(b) - Unveiling Legal and Democratic Deficiencies in Prefectorial Authorizations

Firstly, prefectorial authorizations operate amidst a glaring legislative contradiction. The provisions of Article R. 424-10 of the Environment Code clash with those of Article R. 424-5, shrouding the legality of prefectorial decisions in uncertainty. While Article R. 424-10 mandates that "*it is prohibited to intentionally destroy, remove or damage nests and eggs, to collect eggs in the wild (...). It is prohibited to destroy, remove, sell, buy or transport the litters or young of any mammals whose hunting is authorized, subject to the provisions relating to animals likely to cause damage [...]*", Article R. 424-5 allows for additional hunting periods even when unweaned⁷⁹ and pre-reproductive age badgers⁸⁰ remain in their burrows.⁸¹ This blatant disregard for protective measures jeopardizes the sustainability of badger populations across French territories, raising profound concerns about the coherence of environmental governance.

In its ruling on July 28, 2023, the Council of State, the highest administrative court in France, affirmed that although a supplementary hunting period for badgers may be authorized from May 15th, this does not automatically permit the destruction of young badgers nor should it harm the conservation of the species.⁸² However, the clear correlation between extended hunting seasons and the potential decimation of young badgers signals a troubling departure from both established legal imperatives and the protective objectives of the Bern Convention.

The threat posed by Article R. 424-5 of the Environmental Code to the long-term viability of badger populations is significant, particularly when viewed in the context of its normative divergence from the objectives established under Article R. 424-10 of the same Code. This discrepancy, which permits certain exceptions to wildlife protection, stands in contrast to the overarching legal frameworks designed to safeguard biodiversity and prevent the depletion of protected species. Furthermore, abundant case law⁸³ has consistently highlighted the tension between these provisions and France's broader European legal obligations, particularly in regard to wildlife conservation under EU law. These legal

⁷⁹ BOYAVAL V., *op. cit.*; « Blaireau » (Badger), Larousse.fr.

⁸⁰ LEBOURGEOIS F., *op. cit.*.

⁸¹ BOYAVAL V., *op. cit.*

⁸² Decision n°445646, Council of State, July 28, 2023,
< <https://www.legifrance.gouv.fr/ceta/id/CETATEXT000047902257>>

⁸³ Decision n°1903966, AC of Rennes, April 12, 2021; Decision n°2101749, AC of Poitiers, July 27, 2021; Decision n°2002015, AC of Poitiers, November 18, 2021 ; Decision n°2201808, AC of Amiens, June 21, 2022 ; Decision n°2201368, AC of Poitiers, June 23, 2022 ; Decision n°2201437, AC of Châlons-en-Champagne, July 18, 2022 ; Decision n°2201607, AC of Caen, July 29, 2022.

precedents emphasize the need for alignment between national regulations and international commitments, underscoring the potential risks to species conservation posed by such inconsistencies.

Secondly, the prefectorial decisions authorizing additional periods of hunting, in addition to contravening the aforementioned provisions, violate fundamental democratic principles enshrined in French law. Specifically, Article 7 of the Environmental Charter,⁸⁴ alongside Articles L. 120-1 and L. 123-19-1 of the Environmental Code, mandates a transparent, inclusive, and participatory decision-making process in environmental matters under certain conditions.

Thus, the draft decisions authorizing extended hunting seasons must be "*accompanied by a presentation note specifying, in particular, the context and objectives of this project*"⁸⁵ to enable the public to "*access the relevant information allowing for its effective participation.*"⁸⁶ However, the prefectorial decisions, which are largely shaped by hunting federations, fail to comply with this procedural requirement. Instead, they rely predominantly on unsubstantiated claims and selective declarations, revealing the undue influence exerted by certain prefectures and hunting federations. Although these decisions do not explicitly reference "underground" hunting, this method remains the most commonly used approach for killing badgers, further highlighting the inadequacy of the presented justification.

In this sense, prefectural decisions consistently fail to articulate, within their presentation notes, the contextual nuances, overarching goals, and the rationale driving the extension of underground hunting periods. This deficiency is underscored by a plethora of recent legal precedents⁸⁷, which reveal that prefectural decisions are often marred by formal defects. These defects primarily manifest in the absence of justifications for the lack of alternative solutions to mitigate purported damages, thereby contravening the tenets of Article 9 of the Convention. Moreover, the purported justifications for additional hunting periods lack

⁸⁴ Article 7 of the Charte de l'environnement (Charter of the Environment) adopted in 2004, <<https://www.legifrance.gouv.fr/contenu/menu/droit-national-en-vigueur/constitution/charte-de-l-environnement>>.

⁸⁵ Article L. 123-19-1, II° of the Environmental Code.

⁸⁶ Article L.120-1, II. 1° of the Environmental Code.

⁸⁷ As evidenced by recent and abundant case law in recent years: Decision n°2102956, Tribunal Administratif (Administrative Court (AC)) d'Amiens, December 28, 2023; Decision n°2101567, AC of Châlons-en-Champagne, December 28, 2023; Decision n° 17BX02598, Cour administrative d'appel de Bordeaux, 9 juillet 2019 (Administrative Court (AC) of Appeals, July 9, 2019); Decision n°2003689, AC of Bordeaux, December 18, 2020 ; Decision n°2101749, AC of Poitiers, July 27, 2021; Decision n°2002015, AC of Poitiers, November 18, 2021; Decision n°1902761, AC of Orléans, March 24, 2022; Decision n°2001278, AC of Nancy, May 17, 2022; Decision n°2201104, AC of Châlons-en-Champagne, June 7, 2022 ; Decision n°2103520, AC of Rennes, June 13, 2022; Decision n°2201368, AC of Poitiers, June 23, 2022; Decision n°2201437, AC of Châlons-en-Champagne, July 18, 2022; Decision n°1908282, AC of Nantes, October 27, 2022.

substantiation through verified data⁸⁸ regarding badger densities in the respective departments or the actual extent of damages attributed to them.

Worse, some arguments clash with inconsistencies that starkly highlight the emptiness of their foundation.⁸⁹ This systematic absence of complete information allowing the relevance of authorizations for additional periods to be objectively assessed therefore contravenes the aforementioned articles by preventing the public from having a guarantee⁹⁰ of clarity and transparency in their participation in the decisions of the public authorities having an impact on the environment⁹¹.

Part 3.2 - On the irregularity of the underground hunting as such: a hunt in opposition to the principle of environmental democracy

In recent years, France has witnessed a burgeoning wave of public mobilization against animal cruelty. Notably, an IPSOS survey conducted in 2023 revealed that a staggering 84% of French citizens expressed opposition to the continuation of underground hunting⁹². This sentiment has been consistently echoed in public consultations initiated under the purview of Articles L. 120 and L.123-19 of the Environmental Code⁹³.

In this sense, recent consultations have overwhelmingly demonstrated public aversion to underground badger hunting, with a majority of contributions vehemently opposing both the practice itself and the authorization of additional hunting periods. For instance, in 2022, public dissent against underground badger hunting and the extension of hunting seasons reached

⁸⁸ « Protection des espèces – blaireau », Association AVES France, <<https://www.aves.asso.fr/le-blaireau/>>.

⁸⁹ This is particularly the case with the prefectural decision of the Prefect of Vienne who authorized additional periods of badger hunting, on the grounds, in particular, that it would be a transmission of tuberculosis, even though the department is free from disease, Decision n°2101749, Administrative Court of Poitiers, July 27, 2021.

⁹⁰ Term used in many decisions, including, for the most recent: Decision n°17BX02598, Administrative Court of Appeals, July 9, 2019; Decision n°2003689, AC of de Bordeaux, December 18, 2020 ; Decision n°1903966, AC of Rennes, April 12, 2021 ; Decision n°2002015, AC of Poitiers, November 18, 2021 ; Decision n°2001278, AC of Nancy, May 17, 2022 ; Decision n°2201607, AC of Caen, July 29, 2022 ; Decision n°2103520, AC of Rennes, June 13, 2022 ; Decision n°2201808, AC of Amiens, June 21, 2022 ; Decision n°2024308, AC of Montpellier, September 15, 2022 ; Decision n°1908282, AC of Nantes, October 27, 2022.

⁹¹ Article L.123-19-1 of the Environmental Code.

⁹² Survey by Ipsos (French polling company) conducted in France from October 4th to 6th, 2023, <<https://www.ipsos.com/sites/default/files/ct/news/documents/2023-10/Ipsos%20One%20Voice%20-%20Les%20Français%20et%20la%20chasse%20Vague%204%20-%202023%20v2.pdf>>

⁹³ « I. - La participation du public s'effectue par voie électronique. Elle est applicable :1° Aux projets qui font l'objet d'une évaluation environnementale et qui sont exemptés d'enquête publique en application du 1° du I de l'article L. 123-2 » (I. Public participation is conducted electronically. It applies: 1° To projects subject to environmental assessment and exempted from public inquiry in accordance with 1° of Section I of Article L. 123-2”), article L.123-19 of the Environmental Code.

extraordinary levels, with opposition rates soaring to 99% in Côtes d'Armor⁹⁴, 96.2% in the Hautes Alpes⁹⁵, and 70% in Saône et Loire⁹⁶ and Vienne^{97 98}.

Despite the unequivocal public outcry against underground hunting, the relevant prefectures have persisted in authorizing additional hunting periods⁹⁹, perpetuating the continuation of this controversial practice. This steadfast defiance underscores a troubling pattern of disregard for the results of public consultations regarding underground hunting within the final decision-making processes of prefectures. Regrettably, the Departmental Federation of Hunters and the Departmental Commission for Hunting and Wildlife (CDCFS) wield considerable influence over France's wildlife management, their dominance allowing them to shape decisions in ways that often prioritize hunting interests over broader

⁹⁴ Synthèse des observations et propositions formulées lors de la consultation du public de l'arrêté préfectoral relatif à l'exercice de la chasse dans le département des Côtes-d'Armor pour la campagne 2022-2023 (Summary of observations and proposals made during the public consultation of the prefectural decree regarding hunting in the Côtes d'Armor department for the 2022-2023 season) <<https://www.cotes-darmor.gouv.fr/contenu/telechargement/56811/395789/file/2022%20synthese%20observations%20O-F.pdf>>.

⁹⁵ Synthèse des observations relative au rejet d'arrêté préfectoral de clôture et d'ouverture de la chasse dans le département des Hautes Alpes pour la saison 2022/2023 (Summary of observations related to the rejection of the prefectural decree for the closing and opening of the hunting season in the Hautes Alpes department for the 2022-2023 season), <https://www.hautes-alpes.gouv.fr/IMG/pdf/b_synthese_des_observations.pdf>.

⁹⁶ Synthèse des observations et propositions formulées lors de la consultation du public de l'arrêté préfectoral relatif à l'exercice de la vénerie sous terre du blaireau pour une période complémentaire pour la campagne 2022-2023, <https://www.saone-et-loire.gouv.fr/IMG/pdf/synthese_observation.pdf> (Summary of the observations and proposals made during the public consultation on the prefectural order regarding the practice of hunting badgers underground for an additional period in the 2022-2023 campaign).

⁹⁷ Synthèse des observations et propositions formulées lors de la consultation du public de l'arrêté préfectoral relatif à l'exercice de la vénerie sous terre du blaireau pour une période complémentaire pour la campagne 2022-2023 (Summary of the observations and proposals made during the public consultation on the prefectural order regarding the practice of hunting badgers underground for an additional period in the 2022-2023 campaign).

⁹⁸ It should also be noted that the overwhelming public opinion in favor of stopping underground hunting of badgers has been marked for a few years already. The authors can thus cite, among other results of public consultations, the opposition of 72.5% of French people against the underground hunting of badgers in Loir-et-Cher in 2020 or the complete opposition of all participants in the consultation against the project to authorise additional periods in Lot-et-Garonne in 2019, (Note de synthèse des observations du public issue de la consultation publique du 16 mai au 5 juin 2019 (Summary of public feedback from the public consultation held from May 16 to June 15, 2019), <https://www.lot-et-garonne.gouv.fr/IMG/pdf/note_synthese_consultation_publice_ap_ouverture_cloture.pdf>.

⁹⁹ Motivations de la décision concernant l'arrêté préfectoral relatif à l'exercice de la chasse dans le département des Côtes d'Armor pour la campagne 2022-2023 (Motivations for the decision regarding the Prefectural Decree concerning hunting in the Côtes d'Armor department for the season 2022-2023), <<https://www.cotes-darmor.gouv.fr/contenu/telechargement/56812/395793/file/2022%20Motivations%20decision%20O-F.pdf>> ; Arrêté préfectoral relatif à l'extension de la période complémentaire de la vénerie sous terre du blaireau dans le département de Lot-et-Garonne pour la campagne 2019-2020, (Prefectural Decree concerning the extension of the additional period for hunting badgers underground in the Lot-et-Garonne department for the 2019-2020 season); Arrêté du 9 juin 2022, préfet Saône et Loire (Prefectural Decree from the Saône et Loire department, June 9, 2022) <https://www.saone-et-loire.gouv.fr/IMG/pdf/ap_blaireau_ouvcomplem2022_vf.pdf> ; Arrêté n°2022/DDT/429 en date du 15 juin 2022 (Decree n°2022/DDT/429, June 15, 2022) ; Arrêté préfectoral relatif à la campagne d'ouverture et de clôture de la chasse pour la saison 2022-2023 des Hautes-Alpes (Prefectural Decree regarding the opening and closing dates for the hunting season 2022-2023 in the Hautes Alpes department).

conservation/protection goals.¹⁰⁰ Consequently, the ostensibly democratic process of public consultation is tainted by a lack of representativeness and parity, rendering it a mere façade of genuine engagement.

This distortion of democratic dialogue not only undermines the legitimacy of public decisions but also contravenes the constitutional principle of inclusive participation in shaping public policy¹⁰¹, as well as the objectives outlined in the Aarhus Convention¹⁰². Despite reforms designed to enhance public participation in environmental matters, the core challenge extends beyond merely fulfilling procedural requirements for engagement. It rests in ensuring that public input is meaningfully considered and integrated into the actual decision-making processes, bridging the gap between formal consultations and tangible outcomes in policy and practice within France.

Part IV - Discussion and Conclusion

Part 4.1. Comparative Legal and Ethical Challenges in Badger Protection

The legal and ethical challenges surrounding badger protection in France and the UK expose significant discrepancies in how these two countries treat this species.

In England and Wales, the Protection of Badgers Act 1992 remains the cornerstone of legal protection, offering a framework that criminalizes direct cruelty, interference with setts, and certain methods of killing. This protection is further reinforced by additional statutes that prohibit hunting badgers for sport, baiting, and inhumane capture methods. However, these legal tools are applied inconsistently. The lack of coherence between wildlife and domestic animal protection laws results in weaker penalties for wildlife offences, limiting deterrence. Moreover, the cultural persistence of badger baiting and the piecemeal structure of enforcement reflect the broader shortcomings of a system rooted in animal welfare, rather than in a more progressive recognition of wildlife rights.

¹⁰⁰ Articles R.421-29 and R.424-5 of the Environmental Code organize the participation of the CDCFS in the decision-making process concerning the declaration of complementary hunting periods.

¹⁰¹ Article 7 of the Charter of the Environment.

¹⁰² The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters was signed by the European Community, now European Union, in 1998 and prescribes in particular “*better access to information and increased public participation in the decision-making process enable the making of better and more effectively applied decisions, contribute to raising public awareness of environmental issues, provide the public with the opportunity to express their concerns, and help public authorities duly consider them*”, <<https://unece.org/DAM/env/pp/documents/cep43e.pdf>>.

In contrast, France does not offer any species-specific legislation protecting badgers.¹⁰³ While it is a party to the Bern Convention, which requires “appropriate and necessary”¹⁰⁴ measures for species listed under Appendix III—including the badger—this obligation is far from fulfilled. Provisions in the Environmental Code continue to authorize underground hunting, a practice widely condemned for its inherent cruelty. Compounding the problem, departmental authorities frequently extend underground hunting periods at their discretion, often without public consultation or scientific justification. These discretionary extensions expose a fundamental inconsistency in France’s legal treatment of badgers, as they violate the Bern Convention and conflict with other provisions of the Environmental Code. This legal incoherence undermines the framework’s credibility and threatens essential principles such as legal certainty and environmental democracy.

Whilst the two regimes offer radically different perspectives—one being significantly more advanced in recognizing badgers as worthy of protection from abuse, and, more broadly, in affording legal safeguards to wild animals—both suffer from illogical and contradictory provisions and enforcement gaps.

Part 4.2 Future Pathways to Improvements

To fortify badger protection within England and Wales, it is recommended that, in light of the inconsistencies in penalties available under the different pieces of legislation from which badgers draw protection against different kinds of cruelty, badger baiting and all other crimes against badgers should be given recognition in their own right as an offense and included under the terms of a reformed version of the PBA. This would keep badgers’ protection under one roof rather than prosecution agencies having to consider and subsequently choose under which piece of welfare legislation they bring cases based on procedural points, causing inconsistency in punishments and deterrents. Should this prove impossible, a suggested alternative to a single piece of legislation is for the law in England and Wales to be brought into line with the laws of Scotland, which have been demonstrated to provide greater protection through stricter penalties for contravention of animal protection legislation. Unfortunately there seems little current appetite from the relevant legislator and executive function in England and Wales to

¹⁰³ It must be noted that in France, wild animals in general don’t enjoy legal protection against cruel treatment, unless they are considered as endangered.

¹⁰⁴ Article 7 of the Bern Convention.

improve protections for badgers, with suggestions from the Law Commission on how to better protect wildlife including badgers being ignored for the last ten years.¹⁰⁵

In France, addressing the protection of badgers requires urgent and comprehensive legal reform to reconcile existing contradictions and align national provisions with European standards. It is somewhat notable—and perplexing—that, despite the formal complaint lodged by ten French environmental organizations earlier in 2023, the Bern Convention Committee’s October decision refrained from formally urging France to strengthen its badger protection measures. While the complaint prompted the Committee to engage with the issue, its reasoning—rooted primarily in isolated local legal victories—¹⁰⁶ fails to address the broader, systemic shortcomings in badger conservation across the country. By accepting these fragmented successes as sufficient, the Committee risks legitimizing piecemeal progress rather than advocating for the comprehensive, territory-wide reforms necessary to ensure effective protection. Nonetheless, the July 28, 2023 decision of the Council of State offers a pivotal judicial clarification in the regulation of badger hunting in France.¹⁰⁷ Although it did not prohibit supplementary hunting periods for badgers, it clarified the responsibility of prefects in authorizing such extensions. The ruling requires prefects to “ensure, taking into account the opinions of the departmental hunting and wildlife commission and local circumstances, that this extension of hunting does not harm the badger population or encourage the violation of the prohibition on destroying young badgers.”¹⁰⁸ By emphasizing the necessity of evidence-based, proactive biodiversity protection, this ruling strengthens the legal obligation to uphold conservation objectives in hunting regulation and empowers local courts to revoke prefect authorizations that do not comply with established legal standards.

However, given the legal inconsistencies that weaken protections and undermine the credibility of France’s wildlife management framework, Article R.424-5 of the Environmental Code must be repealed once and for all and replaced with a clear, explicit prohibition of supplementary underground hunting. Better still, underground hunting should be completely banned, as this practice is not only inherently cruel and ethically indefensible but also prone to numerous abuses arising from what is currently permitted—such as badgers being fed to dogs

¹⁰⁵ Law Commission, *Wildlife Law Volume 1: Report* (Law Com No. 362, 2015) [5.25]

¹⁰⁶ « Déterrage des blaireaux : l’étonnant motif du rejet de la plainte des ONG », Fondation Droit Animal, Ethiques & Sciences, Novembre 2023 (The destruction of badgers, the stunning reason for the rejection of the complaint by NGOs, the Animal Law, Ethics and Sciences Foundation November 2023).

¹⁰⁷ Council of State on July 28, 2023, 445646, <<https://www.legifrance.gouv.fr/ceta/id/CETATEXT000047902257#:~:text=Il%20est%20interdit%20de%20d%C3%A9truire%2C%20d'enlever%2C%20de%20vendre,d'occasionner%20des%20d%C3%A9g%C3%A2ts%20>>

¹⁰⁸ *Ibid.*

or killed with pickaxes. Effective oversight is nearly impossible due to the vast, remote forested areas where hunting occurs, creating conditions where hunters can act with impunity amid minimal enforcement. Together, these ethical and practical failures demonstrate that underground hunting cannot be responsibly regulated and must be abolished entirely. In light of these challenges, France could look to the UK, where, despite imperfections, more robust regulatory frameworks offer a clearer baseline for accountability and serve as a progressive model for reform.

Ultimately, protecting badgers requires more than statutory provisions; it demands legislative modernization, consistent enforcement, and a transparent framework that meaningfully integrates public participation, scientific knowledge, and evolving ethical principles. Although the UK and France operate under markedly different legal systems, this comparative analysis reveals shared systemic shortcomings and underscores an urgent, mutual need for reform. By highlighting these contrasts and commonalities, the discussion aims to inspire more informed, context-sensitive policymaking that advances the long-term conservation of badgers in line with evolving international environmental and ethical standards. Central to this is the broader shift in public and legal consciousness toward recognizing wild animals not as exploitable resources, but as sentient beings entitled to moral and legal consideration. Advancing badger protection in the UK and France will therefore require legal frameworks that evolve in step with contemporary animal ethics—ones that move beyond mere management and toward fostering a more respectful, compassionate, and ethically grounded relationship between humans and wildlife.