

ANIMALS IN CIRCUSES. OVERVIEW ABOUT THE LEGAL SITUATION IN GERMANY

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SUMMARY

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I. INTRODUCTION

The European Union (EU) does not offer any legal framework for the protection of animals kept in circuses that would apply in Germany and the national provisions are too feeble to guarantee sufficient protection for animals kept in circuses. Furthermore, different from many other EU Member States, Germany does not prohibit or limit the use of wild animals in circuses. This is in spite of the fact that the majority of Germans are against exhibiting wild animals in circuses. Therefore, many Germany municipalities find their own ways to avoid circuses with wild animals in their territories.

II. EXPOSITION

In 2002, animal protection was integrated as a state objective in the “Basic Law of the Federal Republic of Germany” (Grundgesetz, GG). In detail, Article 20a GG reads *“Mindful also of its responsibility towards future generations, the state shall protect the natural foundations of life and animals by legislation and, in accordance with law*

and justice, by executive and judicial action, all within the framework of the constitutional order.” This means a binding mandate to the state authorities to grant animal protection the highest significance possible”.¹ From this constitutional protection the need could be derived to give animals in circuses the best protection possible or to prohibit their use in circuses where appropriate life conditions cannot be guaranteed.

The German Animal Welfare Act (Tierschutzgesetz, TierSchG) lays down basic requirements for animal husbandry that are applicable to circuses. I. e. §§ 1, 2 and 2a TierSchG stipulate basic norms for appropriate keeping and care of animals. Furthermore, a list of prohibitions in § 3 TierSchG concern all types of animal husbandry and especially the numbers 5, 6 and 11 of § 3 TierSchG are applicable to animals in circuses. § 3 no. 5 prohibits causing significant pain, suffering or damages to an animal during education and training. § 3 no. 6 prohibits to use an animal for film shooting, exhibition, adverts or similar events if this would cause pain, suffering or damage to the animal. § 3 no. 11 prohibits the use of electric devices on animals if this causes significant pain, suffering or damage to them.

According to § 11 no. 4 and no. 8 d TierSchG, a permission by the competent authority is needed for keeping and using animals in exhibitions. § 11 no. 8, furthermore stipulates that the permission for exhibition of animals at changing places may only be granted if the animals concerned do not belong to a species whose exhibition at changing places is prohibited by legislative decree. Accordingly, § 11 IV TierSchG lays down that corresponding legislative decrees can be adopted if being kept at the different places and or transported to different places means significant pain, suffering or damage to the animals.

Furthermore, the Animal Welfare Act defines monitoring tasks by the competent authorities (§ 16 TierSchG). §§ 17 and 18 TierSchG list criminal and administrative offenses.

However, specific legislation on how to keep animals in circuses does not exist in Germany. The only exception is the Regulation on the Protection of Dogs (Tierschutz-Hundeverordnung, Tiersch-HundeV) which is applicable for dogs kept in circuses. For all other animals living in circuses there is no specific legislation but only non-binding guidelines proposing minimum standards for keeping animals in circuses. These are the “Guidelines for Keeping, Training and Using Animals in Circuses or Similar Establishments” from 04th August 2000.² They offer, among

¹ Hillmer, Auswirkungen einer Staatszielbestimmung „Tierschutz“ im GG, insbesondere auf die Forschungsfreiheit, Diss. Göttingen, 2000, S. 187ff

²https://www.bmel.de/SharedDocs/Downloads/Tier/Tierschutz/GutachtenLeitlinien/HaltungZirkustiere.pdf;jsessionid=5C9F3937910DA214D79EEB3B70FBA885.1_cid296?__blob=publicationFile

others, recommendations about the animal facilities, their access to open-air-areas, transport, nutrition, climate, veterinary care and training as well as information and recommendations concerning specific species such as large cats, bears, seals, elephants, equines, rhinoceros, giraffes, camelids and bovines. The guidelines are directed to the circus operators themselves and to the controlling bodies, veterinary services and police and serve as decision-aid for judicial bodies.

Furthermore, the “Mammal Expert Report”, which for the first time was published in 1996 and in revised edition in 2014, describes the minimum standards for keeping mammals especially in zoos but also in private households.³ Also this expert report serves as decision making aid for the authorities in Germany and is not binding.

In 2003, the Federal Council (Bundesrat) demanded the introduction of a register for animals in circuses. Following this and in order to fulfill the requirements of Commission Regulation (EC) No. 1739/2005 laying down animal health requirements for the movement of circus animals between member states, in March 2008, the “Regulation Concerning the Registration of Permissions for the Exhibition of Animals at Changing Places” (Zirkusregisterverordnung, ZirkRegV⁴) entered into force.⁵ The circus-register aims to facilitate the exchange of data about travelling companies between authorities and to combat violations against the animal welfare legislation more effectively.

According to a survey conducted by “Forsa” from May 2014, 82% of the Germans believe that wild animals cannot be kept in way appropriate to their species in circuses.⁶ In line with the public opinion, the majority of the federal states are in favor of a general prohibition of having wild animals, respectively certain species of wild animals in circuses. Accordingly, already three times, in 2003, 2011 and 2016, the Federal Council voted for the prohibition of wild animals in circuses. Also, the German Federal Chamber of Veterinarians clearly spoke out for the prohibition.⁷

However, the German government does not act. Therefore, many German municipalities take action themselves by not accepting circuses with wild animals. They do this by not renting or offering their public property to circuses with wild animals. Some circuses take legal action against the municipal prohibitions and so

³ https://www.bmel.de/SharedDocs/Downloads/Tier/Tierschutz/GutachtenLeitlinien/HaltungSaeugetiere.pdf?__blob=publicationFile

⁴ <https://www.gesetze-im-internet.de/zirkregv/BJNR037600008.html>

⁵ Last amendment in December 2013

⁶ Bundestags Drucksache 18/2690 from 29.09.2014

⁷ http://www.bundestieraerztekammer.de/index_btk_presse_details.php?X=20120222210840

far, in the majority of cases, they were dismissed and the decisions of the municipalities were confirmed.

In single cases, the complaints of the circuses were upheld. For example with decision of 12th January 2017 (Az. 1 B7215/16), the Administrative Court of Hannover (VG Hannover) decided that municipalities were not allowed to prohibit a circus with wild animals the access to municipal facilities. According to the VG Hannover the prohibition of wild animals in circuses could only be decided by the federal legislator. The judgment was confirmed by the Higher Administrative Court of Lüneburg (OVG Lüneburg) (10 ME 4/17) on 2nd March 2017. The judges considered that municipalities have no regulatory margin in this question as long as the circus has a general permission according to § 11 TierSchG since there is no federal law prohibiting the exhibition of wild animals in circuses. Furthermore, the argumentation of both tribunals was that the municipal prohibition of circuses with wild animals would interfere in the constitutionally protected right of the circus operator to exercise his or her profession.

III. CONCLUSION

The current legal situation of animals and wild animals in particular in circuses in Germany lags behind the expectations of German citizens and is not in line with the German concept of animal protection embedded in the constitution.

Within the EU, already 19 member states prohibited wild animals in circuses and respectively restricted their use significantly.⁸ Also outside the EU, the number of wild animals in circuses is being more and more reduced.⁹ In this aspect, Germany is at the slow end. On the other hand, the German government admits in its statement of grounds to the third revision of the German animal welfare act:

“...it has already become apparent that for the animal species mentioned, the prohibition or the limitation for exhibitions at changing places could be necessary for animal welfare reasons. Continuous

⁸<http://www.vier-pfoten.de/themen/wildtiere/zirkus/rechtslage-in-deutschland/laender-mit-zirkus-wildtierverbot/>

⁹ http://www.bbc.com/mundo/noticias/2015/07/150629_mexico_ley_animales_circos_jp

infractions of the animal welfare requirements for keeping certain animal species as well as behavioral disorders and health deficiencies in the animals in many circuses indicate that the compliance with the requirements for appropriate husbandry is not feasible in exhibitions at changing places. Additionally, there is new evidence about the necessities of certain animal species concerning appropriate husbandry which in most cases require more space and more free movement.”¹⁰

As regards the argument, the prohibition of the use of wild animals would constitute an infringement of the circus operators’ right to exercise a profession this is not substantive as the municipalities have the right to regulate the use of their public facilities. The only limitation is that the municipal decision has to be based on reasonable and appropriate public considerations and be in accordance with the principle of proportionality.

¹⁰ (Bundestagsdrucksache 17/10572)