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MAX-PLANCK-INSTITUT
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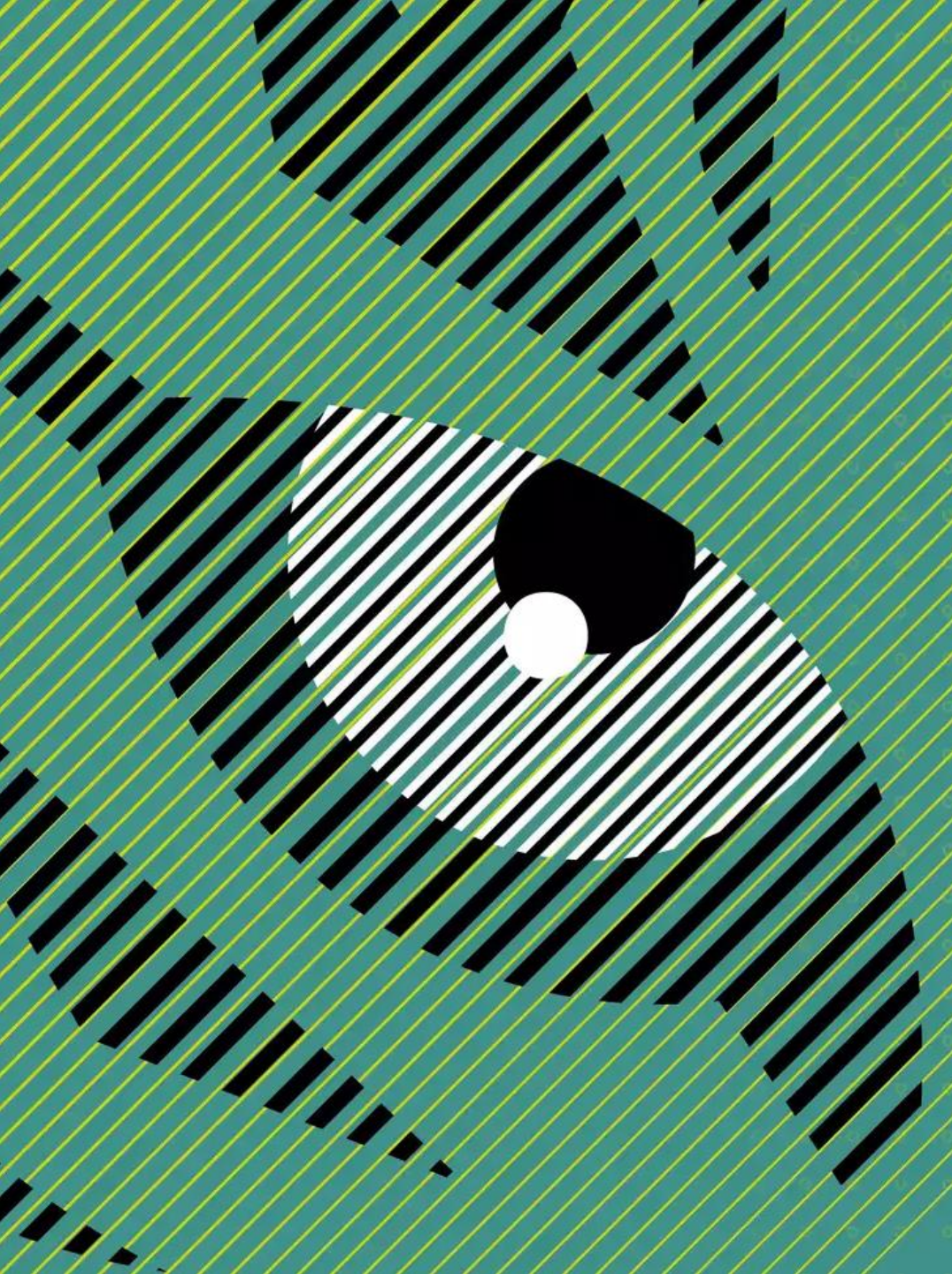


Animal Rights Law

SS 2026

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**Unit 1:
Empirical, philosophical, and
historical foundations of
animal rights**

Overview

- 1) Some empirical data on animals and animal rights
- 2) Historical milestones in the philosophy of animal rights
 - Before enlightenment (Aristotle, Aquinas, Montaigne, Descartes)
 - Utilitarianism (Bentham, Singer)
 - Deontological theories (Kantianism: Kant, Regan)
 - Contractualism
 - The „Political Turn“

Special guest contribution by Prof. Shira Shmueli: The History of Animal Law in the U.K.

- 3) Fundamental conceptions
 - Speciesism
 - Sentience, pathocentrism
 - Intrinsic value, inherent value, ultimate value
 - Animal welfare

Specieism

= prejudicial attitudes and views against animals based on their species

- Coined by psychologist and activist Richard Ryder (*1940) and popularised by Peter Singer
- Analogy to other prejudicial attitudes such as sexism and racism: **dominant groups have power over others** (structural similarity)
- Unique features of (some) humans as justification for different treatment
- Deeply rooted in Western thought (→ Aristotle, Christian theology, Kant)
- 2 types of speciesism:
 - **Anthropocentric specieism**: Human interests > similar interests of any non-human animal
 - **Species bias**: Interests of some animals > interests of other animals (e.g. depending on their use or tradition)
- Humans are animals as well ⇒ **"nonhuman animals"**

Sentience

= capacity to have feelings; sometimes as synonym for consciousness

- Basis for many animal welfare laws and animal rights laws
- **Pathocentrism = sentientism = sentiocentrism**: sentience is the decisive criterion for moral/legal consideration
 - ↔ **Anthropocentrism** (being human as decisive criterion)
 - ↔ **Biocentrism** (being alive as decisive criterion)
 - ↔ **Holism** (being as decisive criterion)
- Scientific evidence for sentience:
 - Behavioural parallels (reactions) upon stimuli of feelings
 - Anatomical/physiological similarities with sentient creatures:
 - **Nociception**: sensory detection of aversive stimuli ⇒ signal through the nervous system to different brain areas ⇒ escape reaction (found in vertebrate and invertebrate animals)
 - **Psychological processing of stimuli**: Conscious affective state ⇒ long-term learning effect (found in vertebrates and octopuses)
 - Shared evolutionary background: Evolutionary functions of feelings (e.g. pain) for **self-preservation** (e.g. recognising and avoiding detrimental situations)

Ecocentrism/physiocentrism

= umbrella term for pathocentrism, biocentrism, holism

Intrinsic value

= value that its holders have in and of themselves, regardless of whether they are useful or valued by someone else or for some other value

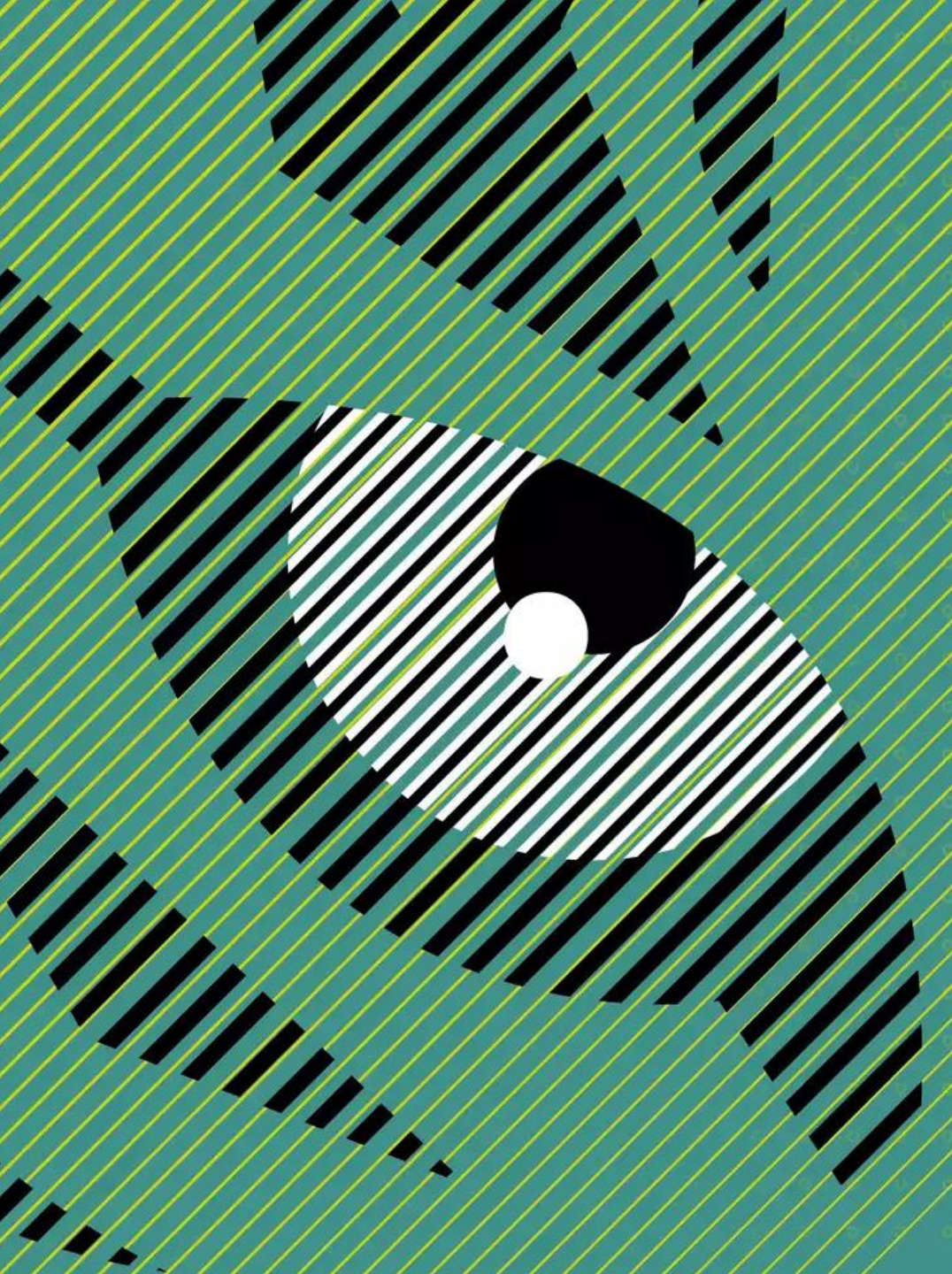
- **Ultimate value** = value that does not derive from the use as means to anything else
↔ **instrumental value**
- **Intrinsic value** (in the narrower sense) = value that is of primary moral concern (e.g. sentience)
- **Inherent value** = value that depends solely on the nature of the thing in question (or value that is even independent of valuers)
- Terms often used synonymously

Animal welfare

= protections of animals' wellbeing

- Animal welfare laws: seek to promote animals' wellbeing in **positive** ways
- Anti-cruelty laws: limited to **negatively** prohibiting certain cruel treatments against animals (primarily enforced through criminal law)
- Welfarism and animal rights:

Classic Welfarism	(Abolitionist) Animal Rights	New Welfarism
"bigger cages"	"no cages"	"first bigger, then no cages"
utilitarian	deontological	deontological
Precedence of human interests	Equal status with human interests	Principally equal status
No right to life	Absolute right to life	Relative right to life
Admissible purposes, prohibited means	Prohibited purposes	Certain prohibited purposes
Animals as things	Animals as persons	Animals as things

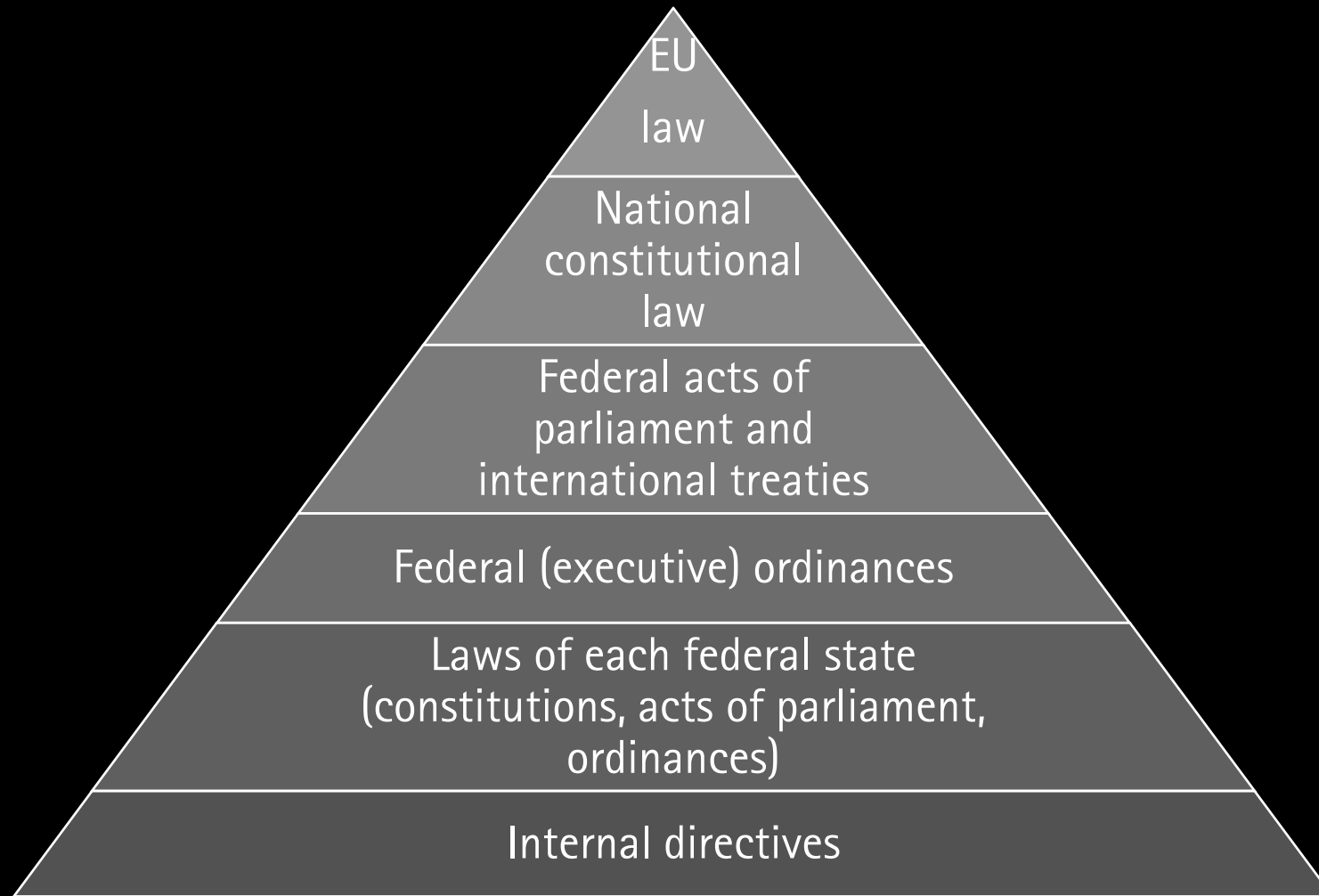


Unit 2: Current animal welfare laws

Overview

- 1) National and international sources of animal welfare norms
- 2) Regulatory elements of animal welfare law
 - Scope and definitions
 - Types of obligations
 - Administrative enforcement
 - Criminal enforcement
- 3) Intersections with other fields of law
 - Environmental law and hunting law
 - Product safety law
 - Criminal law
 - Private law

Sources of animal welfare norms



Soft law

European animal welfare law

- Primary European law:

Art. 13 Treaty on the Functioning of the European Union (TFEU), since 2008

In formulating and implementing the Union's [...] policies, the Union and the Member States shall, **since animals are sentient beings**, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to **religious rites, cultural traditions and regional heritage.**"

= "cross-sectional clause"

- Art. 36 TFEU: protection of health and life of animals as **justification for prohibitions or restrictions** on imports, exports or goods in transit
- Art. 191 (2) TFEU: **precautionary principle** → protection in case of doubts

- Secondary European law

- Regulations, e.g.:

- Council Regulation (EC) No 1099/2009 of 24 September 2009 on the **protection of animals at the time of killing**
- Council Regulation (EC) No 1/2005 of 22 December 2004 on the **protection of animals during transport and related operations**

- Directives, e.g.:

- Council Directive 98/58/EC of 20 July 1998 concerning the **protection of animals kept for farming purposes**
- Council Directive 2008/120/EC of 18 December 2008 laying down **minimum standards for the protection of pigs**
- Directive 2010/63/EU of the European Parliament and of the Council of 22 September 2010 on the **protection of animals used for scientific purposes**
- Council Directive 1999/22/EC of 29 March 1999 relating to the **keeping of wild animals in zoos**

Animal protection in national constitutions

- Competence norms, e.g. Art. 74 (1) No. 20 Basic Law (Germany)
- State objectives
 - Constitutions of Austria, Belgium, Egypt, Germany, India, Italy, Luxemburg, Mexico, Russia, Slovenia

Art. 20a Basic Law (Germany), since 2002

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.

- similar provision in constitutions of most sub-states of Germany
 - ⇒ Justification for **limiting human (basic) rights**
 - ⇒ Guideline for **interpretation** of statutory law
 - ⇒ Duty of legislator to **promote** animal welfare, but not justiciable
- Direct legal protections
 - Art. 225 Constitution of Brazil: "right to an **ecologically balanced environment**"
 - ⇒ Can be invoked by animal protection organisations to challenge constitutionality of statutory law

Art. 120 Federal Constitution (Switzerland), since 2000

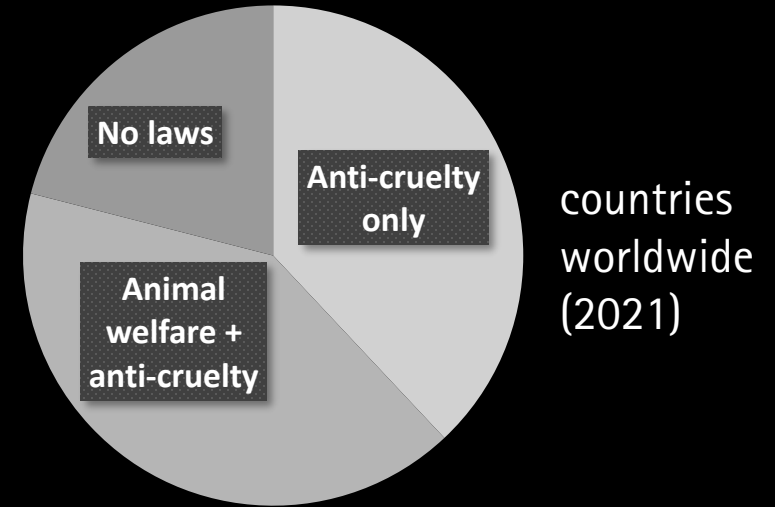
The Confederation shall legislate on the use of reproductive and genetic material from animals, plants and other organisms. In doing so, it shall take account of the **dignity of living beings** as well as the safety of human beings, animals and the environment, and shall protect the genetic diversity of animal and plant species.

International treaties on animal welfare

- No global treaty protecting animals
- Protection of biodiversity (species):
 - Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973) – "CITES"/"Washington Convention"
 - Convention on the Conservation of Migratory Species of Wild Animals (1979) – "Bonn Convention"
 - Bern Convention on the Conservation of European Wildlife and Natural Habitats (1979) – "Bern Convention"
- Treaties of the Council of Europe:
 - European Convention for the Protection of Animals kept for **Farming Purposes** (1976)
 - European Convention for the Protection of Animals for **Slaughter** (1979)
 - European Convention for the Protection of Animals during **International Transport** (1968)
 - European Convention for the Protection of **Pet Animals** (1987)
 - European Convention for the Protection of Vertebrate Animals used for **Experimental and Other Scientific Purposes** (1986)

National statutory animal welfare law

- Development of animal protection legislation during the 19th century (firstly UK Martin's Act of 1822)
- **Anti-cruelty** laws and **animal welfare** laws
- Germany:
 - Federal acts of parliament
 - **Animal Protection Act** ("Tierschutzgesetz"/TierSchG)
 - Related Acts (Animal Health Act, Animal Breeding Act, Federal Nature Protection Act, Federal Hunting Act)
 - Federal executive ordinances, e.g.:
 - Ordinance on the Protection of Farmed Animals ("Tierschutz-Nutztierhaltung-Verordnung")
 - Ordinance on the Protection of Animals used for Scientific Purposes ("Tierschutz-Versuchstier-Verordnung")
 - Ordinance on the Protection of Dogs ("Tierschutz-Hunde-Verordnung")
 - Ordinance on the Protection of Animals during Transport ("Tierschutz-Transport-Verordnung")
 - Ordinance on the Protection of Animals during Slaughter ("Tierschutz-Schlacht-Verordnung")
 - State acts of parliament
 - regarding competent authorities
 - State nature protection acts and state hunting acts



Internal directives and soft law on animal welfare

- Administrative directives
 - Issued by government (ministries)
 - Addressed to administrative agencies and their staff
 - Germany: General administrative directive for the implementation of the animal protection act ("AVV TierSchG")
 - Can have binding effect toward external parties (citizens) due to the **principle of equal treatment** (Art. 3 German Basic Law)
- Guidelines, expert reports etc.
 - Issued by expert committees (private or public)
 - Used to interpret **vague legal terms**
 - Can have some relevance in legal proceedings as **presumptive expert opinion** to prove facts of a case
- Industry standards, codes of conduct
 - Voluntary self-commitment by companies
 - Can become part of contracts

Case 1: Laying hens

The government of North Rhine–Westphalia considers the Ordinance on the Protection of Laying Hens in Caged Systems (“Laying Hens Ordinance”), issued by the Federal Minister for Food, Agriculture and Forestry, to be unconstitutional. The ordinance permits the rearing of laying hens in battery cages subject to certain minimum requirements, in particular regarding the size of the cage areas and the length of the feed troughs. North Rhine–Westphalia takes the view that the permitted rearing conditions prevent the animals from engaging in essential species-specific behaviours and therefore violate the Animal Welfare Act. Furthermore, it is submitted that the ordinance is not covered by the statutory basis § 2a of the Animal Protection Act and was issued in breach of the requirement to cite the statutory basis. The government of North Rhine–Westphalia is therefore seeking before the Federal Constitutional Court a declaration that the ordinance is incompatible with the Basic Law and void.



Matias Vassor / Open Wing Alliance / We Animals

Will the motion of the government of North Rhine–Westphalia be successful?



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