



Universität Hamburg

DER FORSCHUNG | DER LEHRE | DER BILDUNG

MAX-PLANCK-INSTITUT  
für ausländisches und internationales  
PRIVATRECHT HAMBURG

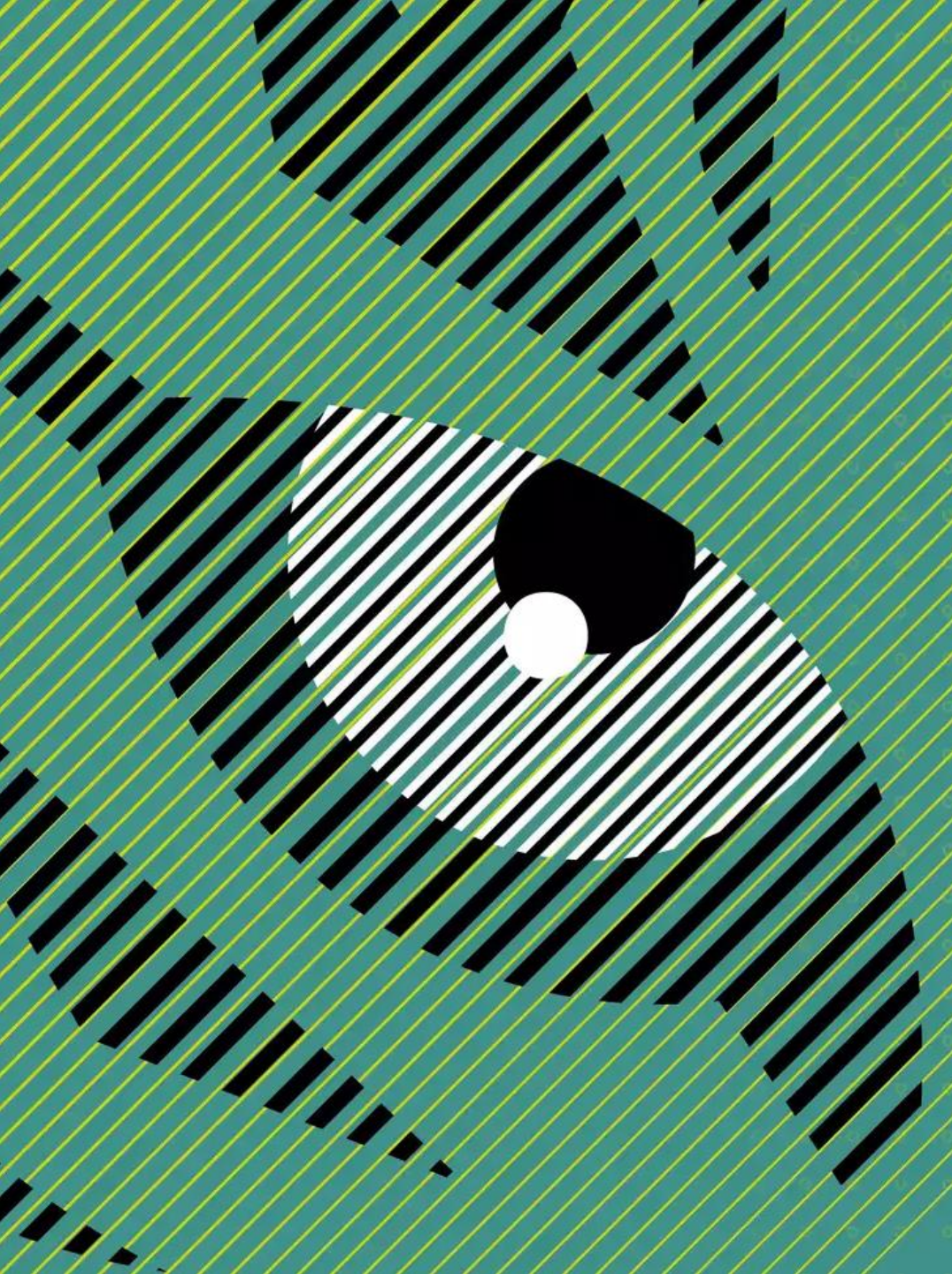


# Animal Rights Law

## SS 2026

**Dr. Felix Aiwanger**

[www.mpipriv.de/aiwanger](http://www.mpipriv.de/aiwanger)

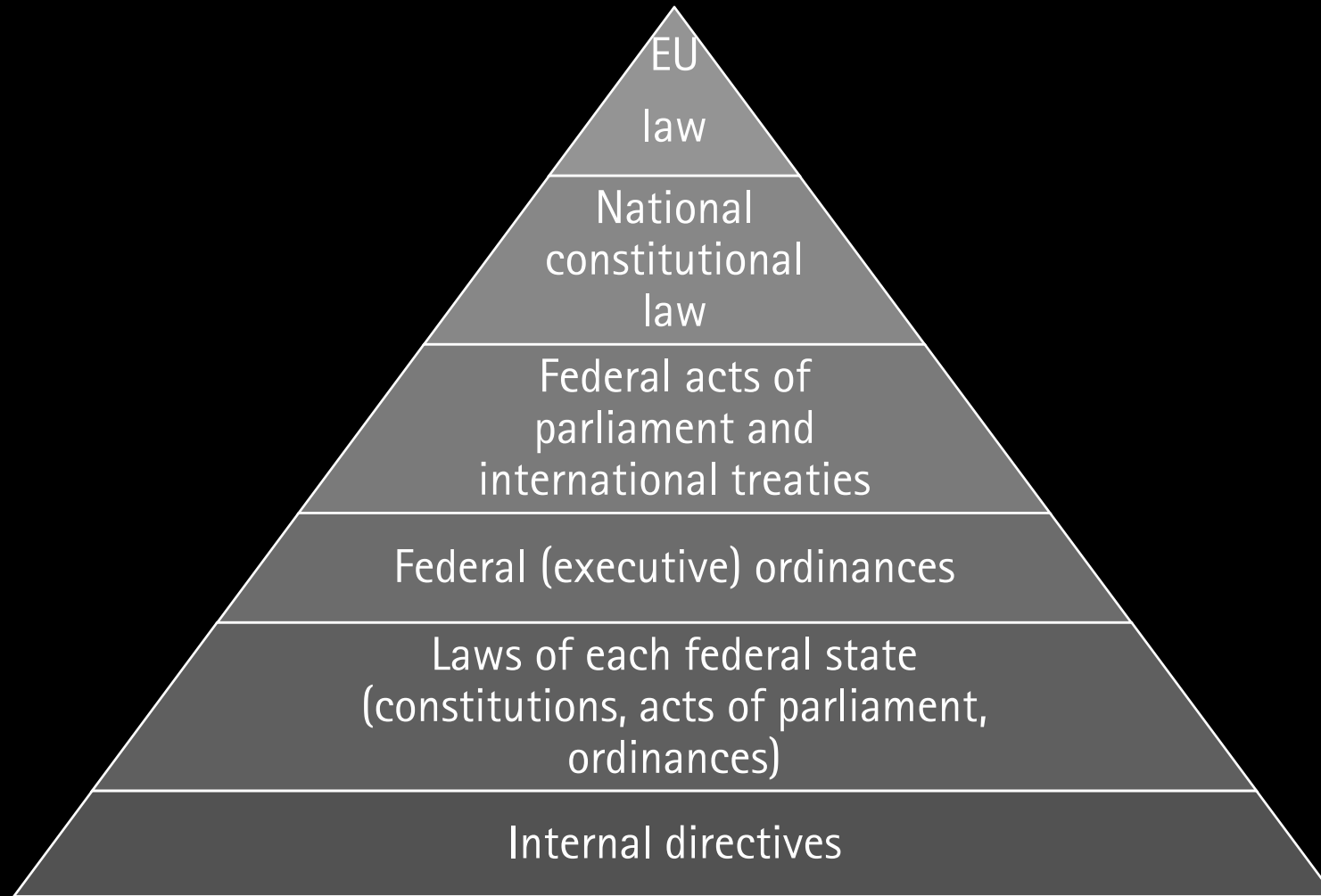


## **Unit 2: Current animal welfare laws**

# 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

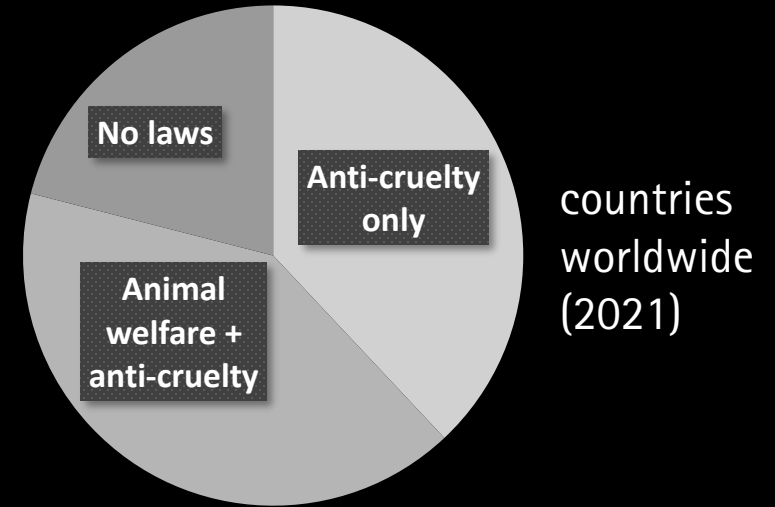
The Confederation shall legislate on the use of reproductive and genetic material from animals, plants and other organisms. In doing so, it shall take account of the **dignity of living beings** as well as the safety of human beings, animals and the environment, and shall protect the genetic diversity 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 welfare act ("AWV 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 anticipatory 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 Protection Act. Furthermore, it is submitted that the ordinance is not covered by the statutory basis § 2a of the Animal Protection Act. 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?*

# Case 1: Laying hens

(adapted from BVerfGE 101, 1, see also currently pending 2 BvF 1/19)

## A. Admissibility

- **Abstract judicial review**: Compatibility of any statute (including ordinances) with the Basic Law
- Compatibility with higher-ranking statutory law as incidental question

## B. Merits

### I. Legal basis authorising the issuance of the ordinance

1. Compatibility of the legal basis with formal requirements
  - **Competence** of federal legislator (+)
2. Compatibility of the legal basis with substantive requirements
  - Specification of **content, purpose and scope** of authorisation (+)
  - Requirement that **essential decisions** be regulated through act of parliament (+)

### II. Compatibility of the ordinance with formal requirements (+)

### III. Compatibility of the ordinance with substantive requirements

1. Compatibility with the legal basis
  - Compatibility with **§ 2 TierSchG**  
⇒ Balancing of interests (**Art. 20a Basic Law vs. Art. 12 (1) Basic Law**)
2. Compatibility with other constitutional provisions
  - Art. 20a Basic Law ⇒ balancing of interests

## C. Result: The ordinance is unconstitutional, amendment of legislator required

# Regulatory elements of animal welfare law: Scope and definitions

- Definition of animals

## § 2132 US Animal Welfare Act (1966)

The term "animal" means any live or dead dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or such other warm-blooded animal, as the Secretary may determine is being used, or is intended for use, for research, testing, experimentation, or exhibition purposes, or as a pet; but such term **excludes** (1) birds, rats of the genus *Rattus*, and mice of the genus *Mus*, bred for use in research, (2) horses not used for research purposes, and (3) **other farm animals**, such as, but not limited to livestock or poultry [...]

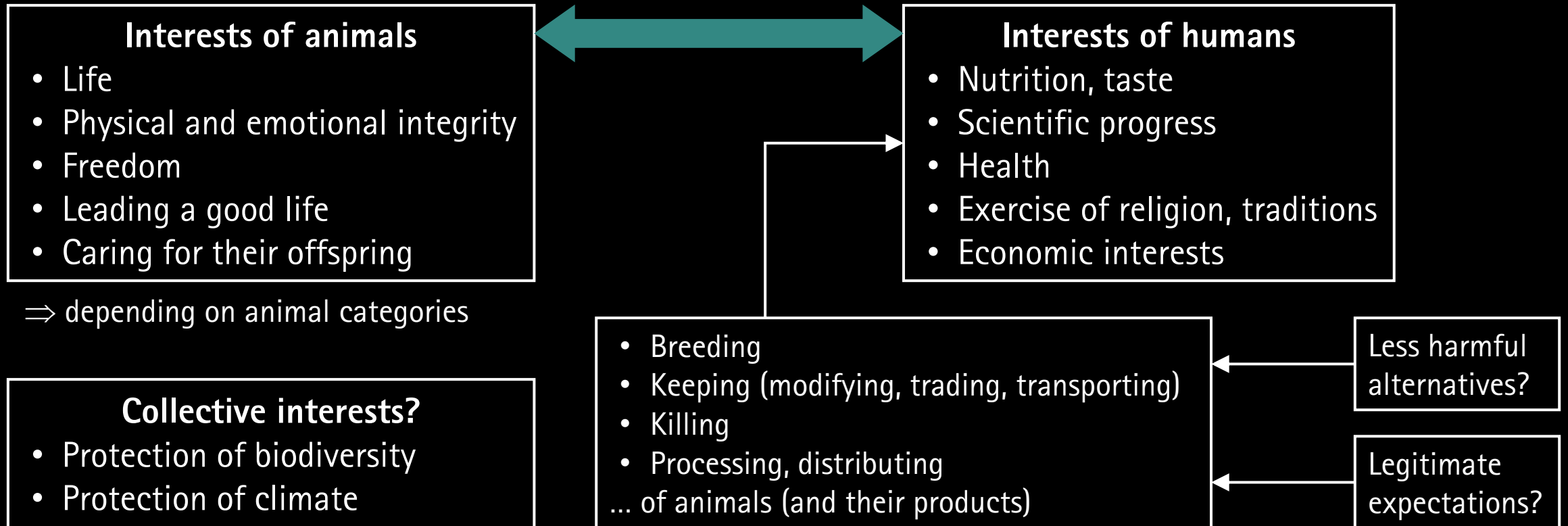
⇒ Limitation of the scope of application

- Categorisations of animals:

- According to **purpose/use** (e.g. agriculture, experimentation, entertainment)
- According to **biological classifications** as indicators for sentience (e.g. vertebrates, invertebrates, mammals, cephalopods)
- According to **species** and their specific needs (e.g. dogs, cats, horses)
- According to **societal views** (e.g. primates, companion animals)

# Regulatory elements of animal welfare law: Types of obligations

- Anti-cruelty laws
  - Prohibition of different forms of cruelty toward animals in general or towards specific animals
    - ⇒ Germany: § 3 TierSchG
  - Prohibition of "unnecessary"/"unreasonable"/"unjustifiable" pain / "without good reasons"
    - ⇒ Requirement of justification ⇒ **balancing of interests**
    - ⇒ Germany: § 1 TierSchG; see also **3Rs in animal experimentation: Replacement/Reduction/Refinement**



# Regulatory elements of animal welfare law: Types of obligations

- Animal welfare laws:
  - More wide-ranging, driven by scientific insights about behaviour and need of animals
  - Positive requirements to promote animals' wellbeing
  - Drawing on **5 Freedoms** (UK Farm Animal Welfare Council 1979, based on report of the Brambell Committee 1965):
    - (1) Freedom from hunger and thirst
    - (2) Freedom from discomfort
    - (3) Freedom from pain, injury or disease
    - (4) Freedom to express normal behaviour
    - (5) Freedom from fear and distress
  - ⇒ Germany: § 2 TierSchG
- Exceptions
  - Due to conflicting **social rules** (e.g. religious rules on slaughter without stunning, e.g. § 4a TierSchG)
  - Due to conflicting **economic reasons** (e.g. reference to industry standards: "generally accepted farming practices" in Canadian animal welfare law)

# Regulatory elements of animal welfare law: Administrative enforcement

- Competent authorities: **State animal welfare agencies** (Germany: § 15 TierSchG)
- **Inspections or checks** (announced or unannounced) (Germany: § 16 TierSchG)
- **Preventive Measures** (Germany: § 16a TierSchG as legal basis for **administrative acts**)
  - Order to take measures for compliance with animal welfare law
  - Confiscation of animals
  - Temporary or permanent prohibition on keeping animals
  - Temporary or permanent closure of establishments
  - Temporary or permanent prohibition of trade in animals
  - Temporary or permanent prohibition of possessing animals
- **Licensing** for activities/premises/people
  - ⇒ preventive prohibition subject to permission (Germany: e.g. § 11 TierSchG)
  - ⇒ repressive prohibition subject to exemption (Germany: e.g. §§ 7a, 8 TierSchG)
- **Reporting/documentary/organisational** duties
- **Certification/labelling** requirements
- Representative actions by NGOs ("Verbandsklage") → Unit 8

## *Case 2: Tethering of cattle*

During an unannounced official inspection of farmer L's cattle, the competent veterinary authority found that L's 24 cows were kept in tethered systems without daily access to a pasture, a yard or similar. Under the tethered system practised by L, almost all the basic needs of the cattle are severely restricted. The lack of exercise could also lead to frequent illness and cause pain. According to Lower Saxony's animal welfare guidelines for dairy cow husbandry and for beef cattle rearing, existing tethered systems should, where possible, be converted to loose housing systems. The Veterinary Agency therefore issued a notice ordering L to provide his cattle with free access to a pasture, paddock, exercise yard or similar area for at least two hours daily and at least during the period from 1 June to 30 September of each year. The order is declared immediately enforceable. L wishes to take legal action against this as soon as possible.



*Will L's legal action succeed?*

## ***Case 2: Tethering of cattle***

*(adapted from VG Münster, 11 L 843/19, see also failed reform bill 2024)*

### **A. Admissibility**

- § 80 Code of Administrative Court Procedure

### **B. Merits**

#### **I. Formal requirements of order of immediate enforceability (+)**

#### **II. Substantive requirements of order of immediate enforceability**

⇒ Legality of the administrative act

##### **1. Legality of the administrative act**

a. Legal basis: § 16a (1) TierSchG

b. Formal requirements (+)

c. Substantive requirements

- Violation of § 2 TierSchG (+)

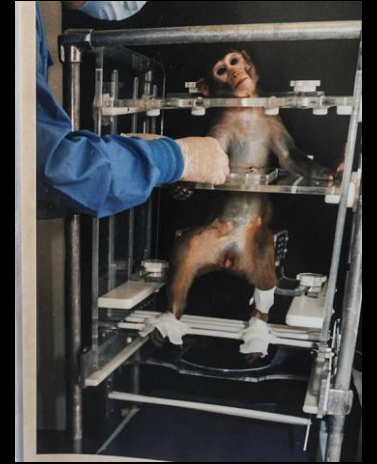
- Lower Saxony's animal welfare guidelines as **anticipatory expert opinion** (+)

2. Special public interest in immediate enforceability (+)

### **C. Result: As the agency's order was legal, L will not be successful.**

## ***Case 3: Animal experimentation for basic research***

Prof. K heads a department at the University of Bremen and conducts research into the neural mechanisms underlying complex brain functions. This involves animal experiments using macaques (rhesus monkeys), for which Prof. K was first granted a temporary licence in 1998. During the experiments, the animals' brain activity is measured using electrodes implanted in the brain. During the experiments, the animals are secured in a so-called primate chair and are required to respond to specific signals, for which they are rewarded with water. For one week, they therefore receive water solely as a result of their participation in the experiment. K's research project was evaluated by a commission of experts in June 2024, which concluded that the research approach was of international standing and provided fundamental insights into cognitive functions such as perception, attention and memory. In a decision dated 15 October 2025, the competent authority of the State of Bremen refused to grant further authorisation for the research project for the experimental period from 1 December 2025 to 30 November 2028. The experiments were deemed ethically unjustifiable due to the stress they caused the animals in relation to the intended scientific benefits. Following an unsuccessful appeal, K brings an action before the Administrative Court of Bremen seeking the grant of a licence.



*Will K's action succeed?*

## Case 3: Animal experimentation for basic research

(adapted from BVerwG, 20.1.2014 – 3 B 29/13)

### A. Admissibility

- "Enforcement action" against rejection of administrative act (§ 42 (1) Code of Administrative Court Procedure)

### B. Merits

⇒ Entitlement of K to be granted the licence?

- Mandatory issuance of licence according to § 8 (1) TierSchG (no discretion of authorities)

#### § 7a (2) No. 3 Animal Protection Act (Germany)

Experiments may be carried out on vertebrates only if the pain, suffering or harm they can be expected to inflict on the laboratory animals is **ethically justifiable** in view of the purpose of the experiment.

- Assessment of "ethical justification" **not subject to judicial review?**
  - ⇒ *Federal Administrative Court*: judicial review can only be restricted in exceptional circumstances, here (-)
- **Animal protection** (Art. 20a Basic Law) vs. **academic freedom** (Art. 5 (3) Basic Law)
  - ⇒ *Federal Administrative Court*: Science does not have to be oriented toward utility or practical application, but its **self-regulation** and the value of **basic research** should be respected
  - ⇒ **Scientific significance** to be balanced against **severity of animal suffering**

C. Result (*Federal Administrative Court*): Scientific significance prevails. K is entitled to be granted the licence and will be successful.



**Dr. Felix Aiwanger**

**Max Planck Institute for Comparative  
and International Private Law**

Mittelweg 187, 20148 Hamburg

Tel.: +49 40 41 900 426

Email: [aiwanger@mpipriv.de](mailto:aiwanger@mpipriv.de)

Internet: [www.mpipriv.de/aiwanger](http://www.mpipriv.de/aiwanger)