



Torture in Animal Breeding – Interpretation and Implementation of the Swiss Animal Welfare Regulations on Torture Breeding

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Keywords

Animal protection, animal welfare law, breeding, torture, dignity of animals, administrative measures

Aim of the study

The study at hand aims to implement the animal welfare regulations on torture breeding by conducting a substantiated analysis of the perception of torture breeding, its regulation under penal law and the complementing possibilities of administrative law.

Material and methods

The legal definition of torture breeding results from the interpretation of the national and international legal regulations taking into account the wording, the aim and the materials as well as veterinary findings. In order to identify the perception of torture breeding under penal law, systematic legal considerations – with a predominant focus on the different treaties, laws and ordinances of animal welfare law and the notion of animal dignity in particular – as well as the fundamental distinction between violation crimes and endangerment crimes are taken into account. The third part of the thesis addresses the interaction between criminal and administrative law as well as the complementing measures to implement the ban on torture breeding.

Results and significance

The first part of the study reveals that the Swiss notion of torture breeding essentially encompasses five characteristics: the extensive limitation of its applicability to vertebrates, the requirement of a breeding objective, the occurrence of a burden in terms of pain, harm, suffering or behavioural disorders, the correlation between breeding objective and the burden (in particular heritability) and the manifestation of the burden in at least one of the parental animals and/or the offspring. Unlike other legislations, the wording of art. 10 of the Swiss Animal Welfare Law (TSchG) does not explicitly state the allowance of only potential burdens in offspring; however, the thesis concludes that also under Swiss law the mere possibility of burdens in offspring can be considered as torture breeding, if there is a predominant probability of its occurrence.

Whereas other countries define torture breeding primarily as a form of abuse and therefore as physiological or ethological burdens, the Swiss notion also condemns non-pathocentric offenses against animal dignity (e.g. far-reaching modifications of the animal's appearance). Taking into account the ordinance on animal welfare and breeding of the FSVO, the extent of a burden is divided into four categories (0 to 3), whereby the categories 2 and 3 constitute legally relevant torture breeding. Animals with burdens of the category 1, which can be compensated by diligent care, keeping or feeding, without medical procedures and without regular medical care, are considered as impaired breeds but not as a form of torture breeding. Therefore, the legal perception of torture breeding depends on the existing or potential burden that can be inflicted on an individual animal as well as its intensity, duration and impact on the general condition, the bodily functions, the ability to respond and the species-appropriate behaviour. Whereas legally relevant burdens encompass pain, harm, suffering, behavioural disorders or far-reaching modifications of an animal's appearance and therefore represent the consequence of problematic breeding activities, they are to be distinguished from their medical cause. Appendix 2 of the FSVO ordinance is missing this kind of differentiation, which could exacerbate the judicial subsumption under the regulations of torture breeding. The study at hand therefore offers an exemplary classification distinguishing between breeding objective, burden and cause and suggests a possible evaluation pattern.

The second part of the thesis concludes that violations of the provisions on breeding can either be qualified as cruelty to animals according to art. 26 par. 1 lit. a TSchG or as breeding and producing animals contrary to the animal welfare regulations (art. 28 par. 1 lit. b TSchG). Breeding is considered an abuse and is legally qualified as cruelty, if the parental animals or the offspring suffer from a burden of the categories 2 or 3 or from a far-reaching modification of their appearance, which constitutes an offense to the dignity of animals. All other violations of breeding provisions are to be prosecuted according to art. 28 par. 1 lit. b TSchG.

The third part focuses on accompanying administrative measures and elaborates that the penal law cannot, by itself, implement political aims, such as the protection of animals or the environment. Complementing measures are, to some extent, already envisaged in the FSVO ordinance on animal welfare and breeding. These include the obligation of breeders to subject their animals with potential genetic burdens to a preventative examination by a veterinarian, to keep records of their breeding activities and to inform buyers about potential burdens. However, in order to ensure an effective implementation of the ban on torture breeding, all parties concerned have to be involved: breeders, breeding associations, individuals/buyers, promoters and judges of animal shows as well as the officials and enforcement authorities. Possible complementing measures are education and training obligations, prohibitions to participate in shows or to import animals with legally relevant burdens or the appointment of a specialized committee or office evaluating questions regarding torture breeding.

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