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Pelztierhaltung und Pelzhandel in Österreich - Rechtliche Regelungen und Handlungsbedarf

Summary

This work serves the following purposes: Based on the biology and ecology of fur animals there shall be elaborated a comparison between the conditions of keeping these species in fur farms and the animals¹ environmental needs. This will lead one to the conclusion whether fur farming could be carried out sufficiently corresponding to the species¹ specific requirements by any means. Moreover, the development and legal frame of fur farming as well as fur trading is described, above all, pointing out deficits. Eventually, this results in considering possibilities for further legal action according to animal protection principles.

American mink, red fox and Arctic fox are the most commonly kept fur animals.

Mink are semi-aquatic mustelids, adapted both for living on land and in the water. Their habitat is highly structured and always associated with water, where the animals hunt most of their prey. Mink are predominantly active at twilight or nocturnal and use home ranges of about 2 km length alongside rivers. Adult mink live solitary and defend their territories with scent marks and aggressive behaviour. Only at mating time the males leave their home ranges and travel long distances in search of females.

The red fox, captivity-bred mostly as the colour variant "silver fox"², lives in a wide range of habitats in big geographical areas, which causes considerable diversity amongst populations regarding social behaviour, food and range size. Red foxes either live solitary or in groups. They live in scent-marked territories and may raise the offspring together. Red foxes dig their own dens, run quite fast and are good jumpers. Besides, they have excellent senses of vision, smell and hearing.

Arctic foxes are inhabitants of the northern polar circle and are adapted excellently to cold climate. Like the red fox they use a wide spectrum of food sources, have a flexible social system and dig dens. They stand out for their high mobility and often they travel long distances.

Since these animal species have been bred in captivity for just a little time now they are still regarded as wild animals. Fur animals do not or hardly show the biological and ethological characteristics found in domesticated animals, like changes of the skeleton and the heart weight, changes in mating, triggering of instincts and behaviour. Therefore, the majority of Austrian animal welfare acts are explicitly classifying fur animals as wild animals and in two cases the High Court (Verwaltungsgerichtshof) made this classifications also for silver fox and mink.

Keeping conditions on fur farms are more or less uniform throughout the world. Standard cages for mink measure 0.21 to 0.27 m², fox cages about 1 m². On this floor-space several animals may be kept. Coypu meant for pelting live on about 0.3 to 0.6 m²/animal. Fur animals are predominantly, mink and fox solely, kept on wire mesh floor to save working time. In many cases the only item of equipment in a fur animal's cage is a water pot. Sometimes there is not even a board for the fodder, which is then simply placed on the top of the cage. Boards for sitting or lying and nest boxes are often missing. A well-equipped fur farm is providing nest boxes to provide

shelter from cold temperatures.

Under present keeping conditions all animals kept in fur production plants are lacking a structured environment in which to behave according to their natural needs. Possibilities to retreat are missing, as are the necessary conditions for performing essential behaviour patterns. This refers to sufficient space to move around as well as to the mink¹'s desire to swim and climb and the foxes¹ and coypus¹ need to dig.

By keeping fur animals in battery cages, space is reduced to a minimum. Thus, the animals see, hear and smell each other permanently, without a chance to flee from this incessant flood of stimuli. Free living adult mink are solitary and keep the necessary distance to the next conspecific individual. Furthermore, the caged animals cannot adequately react to stress causing temperatures or other disturbing environmental factors. Besides, fur animals are exposed to a series of stressing interferences caused by humans, e.g. during mating or while raising their offspring. The most common methods of killing are gassing, lethal injections and electrocution.

As a matter of fact, every kind of keeping animals has to require a set of minimum standards, which provide the species with their basic needs. Summing up, fur farming does not meet these essential requirements, for most animals clearly show exterior signs of significant suffering, including self-mutilation, stereotyped behaviour and infanticide, as a result of their keeping conditions. Considering the environmental demands of fur animals it seems impossible to run a fur farm economically profitable while satisfying the animals¹ needs.

On top of that it has to be questioned whether fur production is a "reasonable cause² for killing animals, as aspects of fashion prevail. There is a widespread opinion that fur farming is generally contradicting the aims of animal protection laws, even if it could be done in line with animal welfare requirements.

Fur farming started at the end of the 19th century in Canada. In Austria the first fur farm was set up in 1922. Farming of most fur-bearing species started in free-range enclosures, but the steadily growing demand for ranched fur soon led to intensifying fur production towards "industry-style² conditions. Today, the majority of fur farms is found in Northern Europe. In Austria fur farming always remained on a small scale.

Fur trading, once deeply rooted in Austria, underwent a steady decline during the last fifteen years due to a change of public conscience. Furriers¹ turnover rates declined by 40.7% from 1988 to 1994 and by 18.8% from 1995 to 1999. In 1999 their proceeds amounted to ATS 640 million. Also net imports of furs and fur products declined heavily throughout the last 20 years. The balance of imports and exports reached a low in 1998, valuing ATS 158 million, which is less than 10% of the highest value of more than ATS 1.6 billion (inflation adjusted) in 1980.

Since Austria has no federal law on animal protection, legislation on fur farming - pursuant to Art. 15 B-VG - is subject to the ruling of the nine provinces. Before 1995 only Carinthia and Vienna had issued special provisions for fur farming in form of licensing requirements. Four provinces did not require a licence for fur farming (Burgenland, Upper Austria, Salzburg, the Tyrol). The three remaining provinces (Lower Austria, Styria, Vorarlberg) required a licence for the keeping of wild animals.

Because of this insufficient province legislation in the field of fur farming there were parliamentary initiatives for a federal law to protect fur animals at the end of the 80s. These were rejected but resulted in Austria signing the European Convention for the Protection of Animals kept for Farming Purposes in 1992. In 1990 the parties to the Convention had passed a Recommendation concerning Fur Animals. However, this recommendation only wrote down more or less the status quo of fur farming practice - as did the 1999 amendment - and was thus contradicting the Convention's principles.

In 1995 all Austrian provinces made an agreement pursuant to Art. 15 a B-VG on the protection of animals kept for farming purposes, binding themselves to introduce legislation on fur farming before September 1996 that would have to follow the 1990 Recommendation concerning Fur Animals as a minimum standard.

Six provinces (Lower Austria, Upper Austria, Styria, the Tyrol, Vorarlberg, Vienna) enacted this agreement by a total ban on commercial fur farming. They found it necessary as there is an "unsolvable discrepancy between animal welfare and profitability in the field of fur farming² (comment on the amendment of the Vienna Animal Welfare Act). The restrictions necessary for a profitable production of fur animal products are contradicting the animals¹ physiological and ethological needs. It was therefore "the only suitable and adequate possibility to achieve protection of fur animals to ban keeping them as farm animals.² (comment on the Upper Austrian Animal Welfare Act). The ban on fur farming was either enacted without transitional phase (Lower Austria, Styria, Vienna) or this transitional period was combined to an obligatory registration for existing fur farms (Upper Austria, Vorarlberg), which went by without any registration. Thus, only in the Tyrol there can still be legal fur farms until January 1st 2001.

Burgenland, Carinthia and Salzburg allow fur farming, but have enacted rules that let it seem unlikely that any commercial fur farm would be able to comply. This assessment is backed by the negative decision on an application made by a chinchilla farm in Burgenland, where the rules on fur farming found their weakest expression. Thus, there was never any fur farm in Austria that had a permission according to the animal welfare acts.

The legal provisions for the fur trade in Austria that are relevant for animal welfare are on the one hand regulations and directives of the EU. In particular, the regulation to enact CITES, the directive on the import ban on furs of certain seal pups and the leghold trap regulation, and on the other hand multilateral agreements, most of all the GATT and the Agreement on Humane Trapping Standards.

Besides, the Austrian decree for the labelling of fur clothes is also relevant.

CITES restricts the trade in endangered species. These are listed in three appendices according to their degree of endangering. CITES was enacted in the EU by regulation (EC) No. 338/97, the Austrian rules for implementation are contained in the Artenhandelsgesetz.

The EU-Directive on an import ban on seal pup furs obliges EU member states to ensure that furs and products thereof of the pups (whitecoats) of harp seals and pups (bluebacks) of hooded seals are not imported commercially into their territory. Products derived from "the Inuits¹ traditional hunt² are exempt from the ban. In Austria this directive was enacted by a decree in 1996.

The leghold trap regulation first provides for a ban on the use of the leghold

trap, a cruel and non-selective trapping device, within the EU, and second for an import ban on certain furs derived from hunting with leghold traps. The latter caused strong resistance by the mainly affected countries USA, Canada and Russia.

Their threats to bring the case before the WTO and to introduce trade sanctions led to a steady dismantling of the leghold trap regulation. In the course of dismantling the European Commission made omissions and actions of doubtful legality or contrary to the intentions of the leghold trap regulation. In order to avoid implementation of the import ban on the USA, Canada and Russia, agreements on "humane² trapping standards were negotiated. These standards resulted to be very weak, e.g. allowing a threshold of 300 seconds until loss of consciousness of an animal trapped in a killing trap, and are constituted to allow further use of leghold traps by either labelling them as drowning traps or as "humane padded traps². Furthermore, the agreements provide for transitional periods of several years, with some of the deadlines still not running, as Russia and the USA did not ratify the agreements up to now. Nevertheless, these countries were listed as countries applying "humane² trapping standards by the European Commission and therefore exempt from the import ban.

The Austrian decree on the labelling of furs specifies the labelling of fur clothing to be sold to consumers, including designation of the respective animal species.

Considering the above results the needs and possibilities for further legal action to protect fur animals have been discussed.

In regard to CITES, EU-import figures show that there is still significant trade in furs from animal species listed in Annex II.

Due to the Common Market the exact portion of furs or clothing made thereof bound for Austria cannot be concluded from these figures. The EU-regulation on CITES provides the possibility for member states to apply stricter rules unless this contradicts directly applicable community law.

Concerning the trade in whitecoat- and blueback-fur it had to be stated that Statistic Austria still reports imports to Austria, valuing more than ATS 24 million from 1995 to 1999. These goods were imported illegally unless they are derived from the Inuits¹ traditional hunt, which appears to be unlikely considering the amount of traded furs. Thus, the exemption for Inuit products appears to be a loop-hole for illegal imports. Furthermore, the exemption is contradictory as it is based on the grounds that the Inuit hunters spare seal pups. At the same time the import ban only deals with seal pup skins. This contradiction could be solved by extending the annex of the directive to furs of all sub-adult and adult seals or to all seal products.

With reference to the classification of fur farming as incompatible with the principles of animal welfare, several animal welfare societies call for an import ban on furs. However, such a ban faces several problems concerning constitutional law and community law as well as in regard to multilateral treaties.

The constitutional rights can be guarded by the proportionality of import restrictions, with the federal principle of mutual consideration posing another argument for constitutionality, as imports from countries that do not ensure sufficient protection of fur animals are undermining the efforts of the provinces¹ animal welfare acts.

The EC-treaty prohibits trade restrictions between member states. Exemptions to protect human, animal or plant life are possible if these do not

represent means of arbitrary discrimination or disguised trade obstructions. Animal welfare is an accepted reason for trade obstacles within certain limits, but it seems doubtful, if trade barriers on furs based on animal welfare grounds would be permitted.

The most relevant multilateral treaties are GATT (General Agreement on Tariffs and Trade) and the Agreement on International Humane Trapping Standards. GATT prohibits discriminating trade restrictions and is opposing trade restrictions based on process and production methods. While it also provides for exemptions to protect animal life, these are generally interpreted restrictively.

The trapping agreement prohibits the introduction of any measure by a party that would restrict the trade in furs and fur products originating in other parties to the agreement. Only restrictions in line with CITES are exempt from this rule. However, imposing trade restrictions only on certain countries is in clear contradiction to GATT/WTO rules.

There is a need for further action in regard to consumer information, in particular because of missing or false information on aspects about the protection of animals or animal species, and because of the non-declaration of fur trimmings, shoes, gloves and headgear. In fur advertisements either any reference to animal welfare is missing or the keeping of fur animals is depicted positively. In addition, fur is often linked to environmental protection. To achieve better protection of fur animals provinces and municipalities could set initiatives to inform the public that fur farming is in contradiction to Austrian animal welfare law. Furthermore the decree on the labelling of fur clothing could be changed in order to include an obligatory consumer information that fur farming can not be carried out economically profitable and at the same time in line with the principles of animal welfare.

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