Legal and Ethical Aspects of the German Animal Welfare Act

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Summary

The implementation of EU Directive 2010/63/EU into the German Animal Welfare Act (Tierschutzgesetz) had to take into account that since 2002 animal welfare has been included in the Constitution of the Federal Republic of Germany. It was also important that according to legislation in Germany, an ethical evaluation had to be carried out, which was predominantly in line with the harm-benefit evaluation of indispensability. This ethical evaluation is a four-step procedure in which the permissibility, suitability, indispensability and proportionality of an application are evaluated separately. The consequences for amending the German Animal Welfare Act are described.

Keywords: German Animal Welfare Act, Tierschutzgesetz, ethical harm-benefit evaluation

In contrast to the previous EU Directive 86/609/EEC (EEC, 1986) on the use of experimental animals, the “3Rs Principle” was established as the ethical basis of the 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 (EU, 2010), to which Article 4 “Principle of replacement, reduction and refinement” specifically refers to in the following manner:

1. Member States shall ensure that, wherever possible, a scientifically satisfactory method or testing strategy, not entailing the use of live animals, shall be used instead of a procedure.
2. Member States shall ensure that the number of animals used in projects is reduced to a minimum without compromising the objectives of the project.
3. Member States shall ensure refinement of breeding, accommodation and care, and of methods used in procedures, eliminating or reducing to the minimum any possible pain, suffering, distress or lasting harm to the animals.
4. Member States shall ensure in the choice of methods, be implemented in accordance with Article 13 (Choice of methods).

The 3rd paragraph is the most important one from the animal welfare perspective since it reads as follows: “Death as the end-point of a procedure shall be avoided as far as possible and replaced by early and humane end-points. (...)”

OECD Guidance Document No. 19 (OECD, 2000) provides guidance on the identification of humane endpoints. When giving the talk, Germany had not legally implemented EU Directive 2010/63/EU into German law. In other words: although the updated, amended German Animal Welfare Act had been approved by the lower and upper houses of the National German Government (Bundestag and Bundesrat) on February 13, 2013, it had been not officially published in the “Official Journal” (Bundesgesetzblatt). Therefore, the final version was not available and the specific Annexes of EU Directive 2010/63/EU had not been adapted according to the legal framework of the Federal Republic of Germany. Therefore, only some legal and ethical aspects of the new German Animal Welfare Act were discussed in this workshop.

It is also important to note that, in contrast to EU legislation, Germany has no specific legislation for experimental animals but only a more general Animal Welfare Act that covers all legal aspects of animal welfare. Only a few paragraphs refer to experimental animals.

Two aspects of the German animal welfare legislation are interesting for other EU member states, since they have consequences for the transfer of Directive 2010/63/EU into national law: 1. Animal welfare was included into the Constitution in 2002; 2. an ethical evaluation of the procedure has already been an established element of the German Animal Welfare Act. Therefore, a short outline of these two points was given.

1. Animal welfare included into the German Constitution in 2002

By adding the three words “and the animals” to Article 20a of the Constitution of the Federal Republic of Germany in 2002 (current version 2012), all animals including experimental animals are specifically protected by the German Constitution. This means that animals are legally no longer considered objects but companions which must be respected and protected.
2. The ethical evaluation procedure according to the current German Animal Welfare Act

According to the current legislation in Germany (Federal Republic of Germany, version of 2006, current version 2014), an ethical evaluation has to be carried out, which is predominantly in line with the harm-benefit evaluation of indispensability. It is a utilitarian approach based on the principle of proportionality. According to the current practice in Germany, the scientist who applies for authorization of a project, the expert committee on animal experimentation and the authority have to carry out an ethical evaluation. It is a four-step procedure in which the permissibility, suitability, indispensability and proportionality of an application are evaluated separately. This approach will be described since it may be suitable to carry out the “harm-benefit evaluation” according to Directive 2010/63/EU.

References


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