Germany approves "group action" rights for animal protection activist organizations

Product Liability Alert

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Germany’s most populous state has adopted a law, already in effect, allowing so-called group actions in cases involving animal protection.

The new act (Gesetz über das Verbandsklagerecht und Mitwirkungsrechte für Tierschutzvereine) will remain in place at least until the end of 2017. Similar acts are already in place in other German states, and yet more states plan to enact similar laws.

All this legislation is a sign that non-governmental organizations are slowly winning the right to become involved in lawsuits – until recently, a novel idea in Germany.

Standing in court for group actions

The new act grants approved animal rights groups (more about this below) the right to bring group actions before the North Rhine-Westphalia administrative courts when animal protection is in question. Similar rights were granted to environmental organizations for all German courts by the federal parliament several years ago concerning environmental claims. Granting such rights to animal protection organizations— that is, granting these organizations the right to become involved in lawsuits – breaks with Germany’s traditional administrative law system, in which standing in court only existed for parties who claimed that their individual rights had been violated.

Notably, the act provides that only organizations approved by the Ministry for the Environment have the right to file group actions. However, all groups that comply with certain conditions (such as residence in North Rhine-Westphalia and being active for at least five years) have the right to claim approval.

Group actions may be brought under these conditions

Under the new act, the approved organizations have legal recognition in regard to cases concerning:

- permits for religious butchering
- permits to debeak commercial poultry, and to dock the tails of calves
- permits for animal testing on vertebrates
- permits to breed, rear, exhibit, train, trade and fight vertebrates and
- construction permits and emission control permits for structures and installations for commercial animal
Approved animal protection organizations also have the right to file actions against individual regulatory acts for violations of animal rights, and, even more importantly, they can take action against administrative default when violations occur. Thus, these organizations have the potential power to judicially force authorities to take action against violators of animal protection laws.

Limitations

Legislators, concerned about unregulated access to judicial proceedings by special interest groups, have instituted certain safeguards to prevent abuse and misuse. Thus, group actions are only admissible with regard to specific violations of animal protection laws.

When an animal protection organization seeks to bring an action before the courts, the issue at hand must be part of the organization’s chartered objective. The organization must not have neglected its own participation rights (please see below). In cases where organizations challenge permits for animal testing, group actions are only admissible if at least two members of the body granting the permit had previously voted against granting it.

To the extent prescribed by the law itself, and intended by legislators, the new legal schemes may, however, have negative consequences for stakeholders in the relevant businesses.

“Participation rights” in administrative procedures

Under the act, the above-mentioned organizations are granted the right to participate in administrative proceedings. Approved organizations now must be informed by the appropriate authorities and also must be given the opportunity to express their views:

- during the process of preparing administrative and legal instruments that affect animal welfare and
- in advance of granting construction permits and emission control permits for commercial animal keeping.

In some cases, the approved organizations will, on their own specific request, be given a voice regarding procedures for:

- permits for religious butchering
- permits to debeak commercial poultry, and to dock the tail of calves
- permits for animal testing on vertebrates
- permits to breed, rear, exhibit, train, trade and fight vertebrates, and
- construction permits for small animal stalls of no more than 50 m².

The approved organizations also have a right to request information about the volume and the nature of ongoing administrative proceedings in the relevant areas.

Concerned parties should consider and prepare for the fact that the newly strengthened organizations will raise concerns. In individual cases, this may mean longer procedures as well as a higher level of scrutiny by the appropriate authorities. Concerned parties - especially if they foresee that they may be targeted by animal rights groups - should be prepared to allocate additional resources to the preparation of permit applications, which under the new act are accessible to NGOs.

For more information about this legislative trend and its impact on your business, please contact:

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