

Testing the plausibility (Art. 14(1) a ii)) of Reg(EC)1/2005 in the framework of official permits of long-distance, border-crossing animal transports ¹

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Key words: slaughter; slaughter practices; slaughter without anaesthesia; animal mistreatment; aiding and abetting animal abuse; premeditated actions of the assisting persons; approval of transports; issue of prior certificates; compliance with instructions; remonstrations; non-observance of the instructions

Summary: From many reports, especially on TV, it is known that many southern countries, especially in Turkey, the Near East, the Maghreb and the Asian states of the old Soviet Union, the slaughter of animals is unnecessarily cruel: besides the lack of anaesthesia, these countries have practices that cause the much suffering and pain to the animal before being slaughtered (e.g. tying, eye gripping, repeated stabbing, causing massive bleeding, a death struggle that often lasts for minutes). As a rule, slaughter occurs in these countries under conditions of animal mistreatment. For the official veterinarian who approves an animal transport to one of these states according to art. 14 par. 1 EU Animal Transport Regulation, the question arises whether, by approval, he/she does not contribute to the offence of ill-treatment of animals (which in Germany is punished under Article 17 No 2b of the Animal Welfare Act, in Austria under Article 222, par. 1 no. 1 of the Criminal Code), even if this occurs in a third country. The same question applies to official veterinarians who are involved in other official acts preceding the subsequent transport to and slaughter in a particular country, for example by presenting certificates regarding animal epidemics. The aid/participation in the mistreatment of animals applied to the subsequent slaughter of animals exists regardless of the fact that the veterinarian usually does not know where and when the transported animal will be slaughtered. It does not matter whether or not contact is made with the person who slaughters the animal, nor does the time or distance between the presentation of the authorization and the slaughter of the animal play a role. Also, for the allegation of contributing to ill-treatment, it is irrelevant if the offender's act (i.e. slaughter) is not punished by the state in which it occurs because the state concerned does not provide for the prohibition of animal maltreatment. For the assumption that the official veterinarian is involved in an offence, it should be sufficient that he/she is aware that the slaughter is carried out without anaesthesia and that the veterinarian's approval of the consignment has a definite causal role in the final form of slaughter. Practices that cause additional pain and suffering are known and constitute an element of the intended infraction. The fact that the mentioned official actions - the approval of the transport according to art. 14 par. 1 EU Animal Transport Regulation and the drawing up of certificates - are an implication of later maltreatment of animals is less important because of the possible criminal consequences (here, as a rule, by art 153 c par. 1 no. 1 of the German Criminal Code prevent the commencement of criminal proceedings), unlike its civil aspects. In terms of public law, the classification of the approval/the issue of certificates contributes to the maltreatment of animals by the fact that the official has not only the right, but is also obliged to disregard the instructions regarding this official deed (in Germany the prosecution obligation is only takes effect after two consecutive unsuccessful protests - that is, when the instructed person communicated the concerns both to the superior and the highest superior and the instruction was not cancelled by the superiors). The reason for non-compliance with this obligation is that in a state governed by the rule of law in Austria and Germany no civil servant may be legally bound to commit criminal offences (in Germany also contraventions).

Chapters / questions ...

1. No authorization shall be granted if it appears from the transport register that any EU Animal Transport Regulation provision will not be complied with for a section of transport?

2. The authorization shall also not be granted when other information available to the authority at the place of shipment shows that there is a probability that an EU Animal Transport Regulation provision will not be respected for a section of the transport?

... and...

3. The authorization shall also not be granted when the information available to the authority at the place of dispatch shows that it does not violate the EU Animal Transport Regulation, but other provisions of European law will be violated?

... have been addressed in the previous version of this periodical ATD.

4. The transport also not be authorized when the information available to the authority at the place of dispatch indicates that, at the end of the transport, the animals will most likely be slaughtered in a cruel manner?

I. Animal mistreatment practices at their slaughter in many third countries, including Turkey, the Middle East, the Maghreb, and the other Asian states of the old Soviet Union.

The co-author visited four different markets around Rabat, Morocco, with the NGO "Animals Angels" (www.animals-angels.de) on April 28 and May 2, 2017, including the Mers el Kheir cattle market with slaughterhouses attached for sheep and cattle. In the cattle slaughterhouse he witnessed one of many slaughters: a Holstein-Friesian black buffalo was transported to the upper hall with the front legs already tied. The existing carcasses, which were skinned, partially skinned, exenterated, wrapped in tape, and hanging on the bands of pipes, were set aside to make room for the slaughter. The edges of the hall floor were covered by a film of blood which deepened to a layer of 8 cm in the centre. Among the people's shouts the back legs of the buffalo were bound and then tied to the front legs. So the animal fell, which led to the blood on the floor being splashed onto several people and animals already slaughtered. Then the executioner jumped on the back of the buffalo lying on the floor, while other people fixed his legs with rope. The executioner roughly bent the buffalo's neck back and began to saw at his throat with a knife. Large blood vessels and respiratory tubes were split. Since the co-author left the premises because he was emotionally overwrought, no statement can be made as to how long it took the animal to die. A comparative picture is available on page 21 of the report "Farming animal protection in Morocco - The urgent need for legislation for the protection of farm animals" in 2014 from Animals' Angels².

Similar methods have been reported by various animal welfare organizations in the Maghreb, the Near East and Turkey. Reports and photos all show a similar picture: thus for example, journalist Manfred Karremann reports in the "37 degrees" program of ZDF³ channel about gruesome sequences of animal slaughter in Egypt. In these sequences, before killing the buffalo, Achilles tendons are cut and then their eyes are removed. Animals Australia (<http://www.animalsaustralia.org>) reports similar cases of Zebu buffalo killings in Egypt⁴. Lesley Moffat, director of Eyes-on-Animals (www.eyesonanimals.com) reports of similar animal-slaughter conditions that are contrary to animal protection norms in Turkey. These conditions have been improved relatively through enforced training programs and technical changes in several slaughterhouses⁵. Compassion in World Farming (www.ciwf.org UK) reports on the fate of European animals, including those in Turkey and Lebanon⁶.

In the latest report, the “Kontraste” show (ARD, 24.05.2018 at 21:45), filming took place in a third-country slaughterhouse whose name was not mentioned: Bovines were killed without stunning; they were tied with ropes and pulled by their tails to the place of the throat slitting; the animals were stabbed several times and cuts similar to those of a saw were applied; the floor was almost entirely covered with blood; the animals screamed, even after the slitting, and their fight with death lasted several minutes⁷.

All these accounts are detailed, supported by images and films, and describe a uniform picture. Taken together, the information indicates that in the case of animals transported to Turkey, the Maghreb, the Near East, and other Asian states of the old Soviet Union, there is a likelihood of them being killed with repeated torment and pain, and that they are subject to unnecessary torment, such that their killing is regularly subject to a criminal offence under Art. 17 no. 2b of the animal welfare law (Germany) and respectively according to art. 222 par. 1 no. 1 of the Criminal Code (Austria).

The Austrian Veterinary Chamber has admitted that these are not isolated cases (www.tieraerztekammer.at). A statement dated 4 January 2018, said: *“Regular reports by numerous NGOs about wild breaches of animal welfare during transport to third countries and at EU borders, especially at the Turkish border, as well as the latest documentary film “The Secret of Animal Transports - When the Law Does Not Protect” by Manfred Karremann are equally shocking and revolting. Many such shipments and the specific practices in many third countries, where for example the animals’ eyes are gouged out without stunning before the slaughter and tendons of the extremities are cut, are clear examples of mistreatment of animals.”*⁸

Similarly, the chairman of the Chamber of Veterinarians from Germany expressed himself at a press conference on 23.11.2017: *“The suffering continues, because this animal journey does not end at the EU’s external border. The transport and killing conditions in the recipient states are far from meeting EU standards. And this is a polite description of the conditions of these animals. ...”*

*“Lastly, sustainable measures must be taken to ensure that the animal protection provisions are met. Otherwise, the transport of live animals to third countries such as Turkey, Lebanon or Egypt can no longer be carried out from the EU! ... Is it really necessary to transport live animals thousands of miles, so that after unimaginable torments they will reach the slaughterhouse?”*⁹

Moreover, there is evidence that animals are being tormented at the place of destination when unloaded (e.g., according to Manfred Karremann’s report, see footnote 3). These practices are considered, according to art. 2 item j of EU Animal Transport Regulation a component of the transport process and for this reason - if foreseeable - it should have led to the rejection of the authorisation under Art. 14 (1) (a) (ii) EU Animal Transport Regulation.

II. On the issue of farm animal exports

By using the argument that it is not about exports for slaughter but for animal breeding, many politicians refuse to undertake responsibility for the situations described above: *“As a rule, in the case of transport of farm cattle there is no transport problem. Farm cattle are particularly valuable animals and for this reason both for the consignor and the consignee, but also for the carrier, it is very important that these animals reach their destination healthy and in good condition.”* This quote from Austria’s former Minister of Agriculture¹⁰ points out that no one can safely say whether animal farming and breeding are taking place in recipient countries. “It cannot be concluded without difficulty that in the desert of Jordan, in the Kazakhstan steppe or in the Maghreb states the animals can be fed on pastures, they can breed and give the necessary yield. And yet the European Union has been exporting such animals for decades¹¹. Despite the European Court’s ruling C-464/13, according to the European statistics on exports from Eurostat (<https://ec.europa/eurostat/de/home>), export figures have increased.

The Austrian Veterinary Chamber states on the question of: "Bovine for slaughter/for breeding" the following: *"But the export of bovine animals for farming is a cause for concern: For decades, tens of thousands of cattle have been transported across Europe to the Near East, Maghreb, Russia, Uzbekistan and Kazakhstan, and Turkmenistan, without this having contributed to a significant increase in the number of animals for milk production. If there is a lack of proper feed, knowledge and procedures and there are no climatic conditions for Holstein breeding, then Europe's actions and trade must be seriously questioned. Furthermore, these animals and their offspring are often slaughtered in conditions contrary to European standards."*¹²

In the "Kontraste" show of 24.05.2018¹³, for the Association of Veterinarians for Animal Protection (TVT), expert Dr. Michael Marahrens remarks on the stated cause of the transported animals as being about animals for farming: He asserts that they are deceivers; in the aforementioned countries, he states that they would lack the fodder base for animal husbandry; furthermore, there is no agricultural structure that would allow the animals to grow; bovine animals exported as breeding animals " of course arrive in slaughterhouses".

This estimate is supported by the number of slaughtered bovine animals exported from Germany: In 2017 Germany exported 70 cattle for slaughterhouses and 79,219 cattle - a thousand more times - for farm breeding. Since in the aforementioned countries, and especially in Turkey, many bovine animals have been exported for many years for farming, if it were not a scam on the label, it should be possible for them to be able to prove their large cattle populations to Europe. But this is not possible. Moreover, as the Austrian Veterinary Chamber notes, the export of animals for years to Turkey and other states mentioned above "has not led to an increase in the livestock population for milk production." Another indication that animals exported for breeding are often slaughtered immediately after arriving at their destination, are the very high prices paid in Turkey for meat. Yet another clue is the desire of many consumers to buy meat obtained according to regional methods and after slaughtering with halal methods.

A report by the US Department of Agriculture shows clear indications that cattle exported to Turkey for milk production are actually slaughtered immediately after arrival¹⁴. Proof is the high price of meat and very low milk prices. Also, very high feed prices have played a role, as it is known that German dairy cows in particular consume a lot of feed and pose a challenge for management. According to the report, the dairy cow population in Turkey decreased between 2015 and 2016 - by 16% - despite the continuous exports of bovine animals from Germany.

Even if cattle are used in the first stage for breeding, this only happens to give birth to a single calf, meant to stimulate milk production; the born calf is taken from the mother and then killed.

III. Is the contribution/involvement of German and Austrian veterinarians to the slaughter of animals abroad, who hence commit the offence of ill-treatment of animals, which according to art. 17 no. 2 b of the animal welfare law, respectively Article 222, paragraph 1, no. 1 of the Austrian criminal code, criminally punishable?

About the participation / contribution of officials to the mistreatment of animals

Authorization under art. 14 paragraph 1 of the EU Animal Transport Regulation is an important condition for the further fate of animals exported outside of the EU. This applies both to the many practices of animal maltreatment when unloading them, which is a component of the transport process, and to the cruel conditions associated with slaughter, which affect almost all animals. In order to classify the authorization as an abetment, it would be enough for the authorization to be accompanied by the main offender's involvement in the cruel slaughter that takes place in the

slaughterhouses in Turkey, Egypt, etc. The effects of this action make it not just a mere promotion of the facts, because such action is the cause for which at the time of slaughter the animal is at the place of killing, under the conditions applicable there, which it must endure. (Germany: Article 27 of the Criminal Code in conjunction with Article 17 No 2b of the Animal Welfare Act and Article 38, paragraph 1, No. 1, in conjunction with Article 5, paragraph 1, of the Animal Welfare Act)¹⁵.

For the deliberate act of the offender who directly commits the killing, it is sufficient for him to know and accept all the conditions under which he kills the animal and the pain and suffering caused to the animal. The legal assessment of tormenting an animal is not a necessary component of the intention.

Consequently, it is sufficient for the veterinarian concerned to know about the country to which the animals are exported and the aggravating practices to which the animals are subjected. If, however, the veterinarian approves the shipment, then he/she acts intentionally. For the premeditated offence (Article 27 of the Criminal Code, Art. 12 of the Criminal Code) it is enough to know that once they reach destination, the animals are killed in torment without stunning¹⁶. The classification of killing without stunning as a method of ill-treatment is not contradicted by the fact that such slaughter can be occasionally accepted in Germany and Austria under strict conditions, because it cannot be said that these strict conditions would be respected in the corresponding Near East states, Turkey, Maghreb or other Asian states in the old Soviet Union¹⁷. Moreover, from the pictures and reports about slaughtering practices of the above mentioned states, it can be clearly seen that besides the lack of stunning, other methods are used that amplify the pain and suffering of the animals (see TV report Kontraste: blood flow by the use of several knife stabs, the cutting of animals by sawing movements, the animals being drawn with rope by their tails to be brought to the place of killing, large amounts of blood on the floor, cries of animals during and after stabbing them, drawn out death of many animals).

The argument that the animals transported are not animals intended for slaughter but for breeding does not change the premeditated offence, because on the one hand this is a scam of the label (see item II above), and on the other hand sooner or later, animals intended for breeding are also killed; the chronological distance between the approval of transport, as well as the involvement in the criminal act and the barbarous killing of the animals does not change the fact that the granting of the authorization has provided objective and subjective aid to the commission of the subsequent criminal deed.

The effect of authorization (which is causal) on subsequent slaughter is known to the veterinarian who approves the shipment. It is irrelevant if he/she does not know or cannot know when, how and what people will torment the animal, as the involvement in acts of ill-treatment is not limited to the perpetrator, the place, time and other circumstances of the offence¹⁸. Equally irrelevant is the inner distance to the processes described, because a crime is also committed by the person who does not want the actions supported by it to take place¹⁹. Equally irrelevant is the fact that the external offender and the approved veterinarian are unaware of and probably will never know each other²⁰. Neither spatial distance nor - in the case of the above estimation, in the case of the declaration, the breeding animals - the chronological distance between the involvement in slaughter and the subsequent actual slaughter relieves a person from the involvement / contribution²¹.

Involvement / participation as a domestic act

The fact that the animals are abused only abroad does not change the fact that the approval of the transport, which is involved in the act of mistreatment, takes place domestically according to art. 14 EU Animal Transport Regulation²². (Paragraph 2, sentence 2 of the German Criminal Code.)

This is a domestic crime, even if the animals are ill-treated abroad (according to article 9, paragraph 2, sentence 1 of the criminal code i.e. Art. 67 par. 2 Austrian criminal code), for which punishment is applied under the German/Austrian criminal law.

By art. 9 paragraph 2, sentence 2 of the criminal code for domestic complicity to a later offence committed abroad, the consequence of the applicability of criminal law is whether the complicity, but not the offence committed abroad, is subject to German criminal law²³. In Austria, the art. 12 of the Austrian Penal Code applies to the person involved in a criminal offence is subject to punishment even if the direct perpetrator - because he is acting abroad and there is no criminal code - is not punished.

For the prosecution of the complicity to an offence committed abroad the principle of legality according to art. 153c paragraph 1 no. 1 of the Criminal Code (StPO), the principle of opportunity mentioned above applies, i.e. the prosecution may abstain from a criminal prosecution, according to their evaluation. But this does not change the classification of such authorization as a criminal contribution to the ill-treatment of animals.

Approving transport or issuing certificates as a neutral activity specific to the profession

In the legal literature, it is currently presumed that in the case of specific professional/neutral actions, complicity to the crimes of another can be considered only if the deeds of the accomplice were intentional or were assumed to be inevitable. If the person considered to be an accomplice considers that he/she is *possibly* helping to contribute to a crime, their behaviour cannot be considered complicity²⁴.

If this logic is followed, it is questionable whether a transport authorisation to one of the aforementioned countries (Turkey, the Near East, the Maghreb, the southern states of the Soviet Union) and the issue of a certificate for such transport is genuine complicity in the further cruel slaughter of animals in another country, since outwardly the issuing of such authorisations to countries that do not have cruel slaughter methods is part of the normal, daily duties of such a veterinarian.

However, the jurisprudence of the Supreme Court (BGH) also sees complicity in the case of neutral actions, if at the time of the complicity situations exist that indicate it to be very likely that the main crime will occur in another country. Therefore, if such a neutral or action particular to the profession is to be assessed as complicity, it is necessary to find evidence that, at the time of the complicity, the accomplice had indications of a high probability of further criminal behaviour in the third country²⁵. Existing indications that show the accomplice knew that the main offender would very likely commit the criminal act are crucial to this decision²⁶.

Since veterinarians are very likely to contribute to the slaughter of animals in third-countries by issuing transport authorisations, the points required by the Supreme Court (BGH) certainly exist, such that the issuing of transport approval appears to be neutral professional conduct cannot lead to the exclusion of the act as complicity in mistreatment of animals. It is not only that the risk of animals exported to this third country will be mistreated and tortured for months and then killed in torment is very high, but also the likelihood that they will be tortured according to the local practices of mistreatment (tying extremities, throwing animals down, cutting the neck with several stabs and sawing movements, killing them in sight of still bleeding carcasses, often on a floor drenched with blood, and a long, drawn out death over several minutes). "If, for these reasons, veterinarians refuse to approve the shipment or to issue the certificate, the situation of these animals would improve considerably, because at the time of their slaughter they would not be on the site."²⁷

IV. Protests and non-compliance with the instructions by officials

The filing of an authorisation under art. 14 paragraph 1 (a) (ii) EU Animal Transport Regulation as complicity in the maltreatment of animals has less practical significance in criminal law - according to the presentation, art. 153 c par. 1 no. 1 StPO in Germany and the fact that, despite the existence of all preconditions for punishment, there are no criminal proceedings, - unlike the civil servant's laws. According to par. 36 par. 2, sentence 4 of the Civil Servants' law, they are obliged to follow the instructions of their superiors except when such behaviour is punishable or contrary to legal provisions and the offence or its punishment is recognised by the civil servant. According to art. 36 par. 2 phrases 1 and 2, they must submit protest to both their immediate superior and to the superior at the next higher level. If the instruction is maintained despite the protests, it should not be observed by the veterinarian if by his/her actions a breach of criminal law would be committed (Article 17 No. 2 b Animal Welfare Act).

In Austria, according to art. 44 par. (1) and (2) of the Law of Officials (BDG), similar provisions apply²⁸: the official may refuse to comply with an instruction if its observance violates a criminal provision, 222 in conjunction with art. 12 of the Austrian criminal code²⁹.

A significant difference between the authorization procedure under Art. 14 par. 1 (a) ii) EU Animal Transport Regulation and refusal to comply with the instructions under Art. 36 par. 2, sentence 4 of the Law of Officials applies:

In order to refuse the approval of a shipment in accordance with art. 14 par. 1 (a) (ii), it is enough that concrete indications exist, which lead to a real possibility that the EU animal protection provisions will be violated during transport.³⁰ In this case, the transporting organisation must show a credible compliance with the provision, i.e. the veterinary ministry must receive proof with evidence (films, certificates, third party assurances) that compliance with the provisions can be expected despite the existence of other indications, or the organiser will need to change transport planning so as to exclude the likelihood of the infringement.

In order to refuse to comply with an order, it is necessary to fear the possibility that the authorization fulfils the conditions of a criminal act of complicity, in this case the act of enabling torturous slaughter of animals.³¹ This requires the presentation of evidence of increased risk that the animals will be cruelly slaughtered abroad. So, for art. 36 par. 2, sentence 4 of the law and for art. 44 par. 2 BDG a decision depends on whether the cruel nature of animal slaughter in the country to which the animals are exported is likely to constitute a high probability or to occur only occasionally.

As the slaughter without stunning is the order of the day in the countries mentioned (Turkey, the Near East, the Maghreb, the southern states of the Soviet Union) and the presumption that the strict conditions imposed in Germany and Austria can be met in those cases are illusory, orders to authorise the transport of animals must not be carried out according to art. 36 par. 2, 4, of the law of civil servants in Germany and in Austria according to art. 44 par. 2. The risk of becoming an accomplice to the ill-treatment of animals through the authorisation of transports is very high. If it is necessary to justify this refusal, reference can be made to torturing practices due to the lack of stunning, as well as the other cruel and well documented practices mentioned above, which occur in the course of slaughtering.

The same question is also posed to a veterinarian if he/she has to confirm the absence of epidemics among the stock of animals intended for transport to a country in the aforementioned region. This information is available to him/her and he/she must do the necessary research regarding: Where will the animals go? Is the slaughter done there with stunning? (There are

credible reports about other slaughter practices that produce long-suffering or repeated pain (see I and II from the Austrian veterinary chamber.) If they confirm the probability of application of cruel methods in that country, they can also see that the issued certificate is a promotion of ill-treatment and leads to complicity. That is why he/she is also entitled to refuse issuing the certificate, or to protest and in case of protest failure, to refuse to fulfil the order.

It is an open secret that the responsible institutions make use of their right of substitution, that is, they assign the order to other colleagues who are willing to follow through with them.³²

Applicable Legislation

Note: in order to facilitate searching for these texts, no attempt has been made to translate their titles here.

Deutsches Beamtenstatusgesetz: Beamtenstatusgesetz vom 17. Juni 2008 (BGBl. I S. 1010), zuletzt geändert durch Artikel 2 des Gesetzes vom 8. Juni 2017 (BGBl. I S. 1570)

Österreichisches Beamten-Dienstrechtsgesetz: Bundesgesetz vom 27. Juni 1979 über das Dienstrecht der Beamten (Beamten Dienstrechtsgesetz 1979 – BDG 1979). StF: BGBl. Nr. 333 / 1979

Deutsches Strafgesetzbuch: Strafgesetzbuch in der Fassung der Bekanntmachung vom 13. November 1998 (BGBl. I S. 3322), zuletzt geändert durch Artikel 1 des Gesetzes vom 30. Oktober 2017 (BGBl. I S. 3618)

Österreichisches Strafgesetzbuch: Bundesgesetz vom 23. Jänner 1974 über die mit gerichtlicher Strafe bedrohten Handlungen (Strafgesetzbuch – StGB), StF: BGBl. Nr. 60 / 1974

Deutsche Strafprozessordnung: Strafprozessordnung in der Fassung der Bekanntmachung vom 7. April 1987 (BGBl. I S. 1074, 1319), zuletzt geändert durch Artikel 2 des Gesetzes vom 30. Oktober 2017 (BGBl. I S. 3618)

Deutsches Tierschutzgesetz: Tierschutzgesetz in der Fassung der Bekanntmachung vom 18. Mai 2006 (BGBl. I S. 1206, 1313), zuletzt geändert durch Artikel 141 des Gesetzes vom 29. März 2017 (BGBl. I S. 626)

Österreichisches Tierschutzgesetz: Bundesgesetz über den Schutz der Tiere (Tierschutzgesetz – TSchG), StF: BGBl. I Nr. 118 / 2004

TTVO: Verordnung (EG) Nr. 1 / 2005 des Rates v. 22. Dezember 2004 über den Schutz von Tieren beim Transport und damit zusammenhängenden Vorgängen sowie zur Änderung der Richtlinien 64 / 632 EWG und 93 / 119 EG und der Verordnung Nr. 1255 / 97 / EG (Tiertransportverordnung), Abl. L 3 vom 5. 1. 2005

Verordnung (EG) Nr. 1255 / 97 des Rates v. 25. Juni 1997 zur Festlegung gemeinschaftlicher Kriterien für Aufenthaltsorte und zur Anpassung des im Anhang der Richtlinie 91 / 628 / EWG vorgesehenen Transportplans, Abl. L 174 vom 2.7.1997

Acronyms

<i>Abs.</i>	<i>Paragraph</i>
<i>Art.</i>	<i>Article</i>
<i>a. a. O.</i>	<i>at the named location</i>
<i>dt.</i>	<i>German</i>
<i>EG</i>	<i>Europäische Gemeinschaft /European Community</i>
<i>EU</i>	<i>Europäische Union /European Union</i>
<i>lit.</i>	<i>litera</i>
<i>o. e.</i>	<i>mentioned above</i>
<i>o. g.</i>	<i>named above</i>

<i>ö.</i>	<i>Austrian</i>
<i>TierSchG</i>	<i>Tierschutzgesetz (Deutschland) / Animal Welfare Law in Germany</i>
<i>TSchG</i>	<i>Tierschutzgesetz (Österreich) / Animal Welfare Law in Austria</i>
<i>TTVO</i>	<i>Tiertransportverordnung (EU) / Animal Transport Regulation EU</i>
<i>StGB</i>	<i>Strafgesetzbuch /Legal Code</i>
<i>StPO</i>	<i>Strafprozessordnung / Legal Regulations</i>
<i>VO</i>	<i>Verordnung / Regulation</i>

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[16] *Wickler, Widerstand von Staatsdienern gegen Rechtsbruch in Verwaltung und Justiz. In: Thüringer Verwaltungsblätter 2 / 2016, 29-38*

[17] *Wissenschaftliche Dienste des Deutschen Bundestages, Ausarbeitung WD 5 – 3000 – 001 / 17 zu „Regelungen der europäischen Tiertransportverordnung zu langen*

Tierbeförderungen im Licht des Urteils des Europäischen Gerichtshofs v. 23. 4. 2015 (C-424 / 13)“

[18] *Wolter, Jürgen (Hrsg.), Systematischer Kommentar zum Strafgesetzbuch, Gesamtwerk in 6 Bänden, Carl Heymanns, 9. Aufl. 2017, ISBN 978-3-452-28307-8*

¹ Originally published as „Zur Plausibilitätsprüfung nach Artikel 14 (1) a) ii) anlässlich der Genehmigung langer grenzüberschreitender Transporte in Drittstaaten“ in: *Amtstierärztlicher Dienst und Lebensmittelkontrolle*, 25. Jahrgang – 4 / 2018.

² https://www.animals-angels.de/fileadmin/user_upload/1_DATEN_AB_2014/2_EINSAETZE/MAROKKO/Animals_Angels_Farm_Animal_Welfare_in_Morocco_2014.pdf

³ <https://www.zdf.de/dokumentation/37-grad/37-ge-heimsache-tiertransporte-100.html>

⁴ <https://vimeo.com/65498418>.

⁵ <https://www.eyesonanimals.com/de/unsere-erfolge-2/successes-in-2014>;
<https://youtube.be/On-qkoXe-Kwc>,
<https://www.eyesonanimals.com/de/inspection-of-tekirdag-slaughterhouse-turkey>

⁶ <https://youtu.be/tQdAIPBL>
<https://youtu.be/m23TrbPZBJA>

⁷ <http://www.daserste.de/information/politik-weltgeschehen/kontraste/videosextern/index.html> (tormented and jammed together with official approval)

⁸ *The Austrian Veterinary Chamber; "Prevention of animal transport and slaughter in torment"*, statement of 4.01.2008,
https://www.tieraerztekammer.at/fileadmin/daten/Oeffentlicher_Bereich/Kammer/Positionen/2018/Stellungnahme_Tiertransporte.pdf

⁹ *The Austrian Veterinary Chamber; "Prevention of animal transport and slaughter in torment"*, statement of 4.01.2008,

¹⁰ Response of the Federal Minister for Agriculture Josef Pröll to a Parliamentary inquiry (3867/J) of the MP's Mag. Brigid Weininger and colleagues concerning export subsidies for breeding cattle, https://www.parlament.gv.at/PAKT/VHG/XXII/AB/AB_03839/fname_060118.pdf

¹¹ See. *Alexander Rabitsch, Tiertransporte - Anspruch und Wirklichkeit (Animal Transports – The Right and the Reality) Veterinärspiegel Verlag (schaefermueller publishing), ISBN: 978-3-86542-065-7, S. 261 ff.*

¹² Declaration of 4.1.2008 „ Preventing painful animal transports and painful slaughtering “

¹³ see footnote 7

¹⁴ Compare: *Report of the USDA (= US Department of Agriculture) Foreign Agriculture Service of 15.8.2017, Gain Report Number TR 7033*

¹⁵ The difference of opinions in the criminal law regarding the question whether the act of involvement must have caused the offence to be committed, or if it is sufficient that by the actions of the person involved, the final offender was enabled in committing the offence (according to law, compare the new magazine for criminal law - NStZ - 2018, 328), is not relevant: without the approval of the transport, i.e. without certification, the animal would not be in the foreign slaughterhouse at the moment of killing, so it could not even be slaughtered there. The approval of transport is thus the cause of the cruel killing process

¹⁶ Compare *Wolter (ed.) / Hoyer, Systematic commentary on Criminal Code, edition 9 2017, art. 27, rn. 34*: The premeditated act of the involved person need not extend to the person who, when and where the act was committed, but only to the final act itself and to the fact that it took place." Compare also the commentary from Munich at *StGB Joecks, 3rd edition 2018, art. 27 RN 96*: He must have heard of the extent of injustice, but it does not need to know the details."

¹⁷ Compare the constitutional federal court judgment of *15.01.2002, 1 BvR 1783/99, juris rn. 40, 58*: "... by secondary agreements on exceptional authorization to ensure that animals do not suffer during transport, anaesthesia and during the slaughter process. They must be obtained by provisions relating to areas, annexes and other appropriate ancillary means ... by secondary provisions and by monitoring their observance ... it shall be ensured that the animal protection provisions are met as far as possible".

¹⁸ Compare *Schoenke / Schroeder / Heine / Weisser, Criminal Code, edition 29, 2014, art. 27 Rn. 29*: "For accomplices it is enough to perceive the extent of the injustice of the deed – i.e. their contribution to the injustice and the direction of the attack ... The details of the deed must not be known to the accomplice. You do not have to know the person who commits the deed, or when, where, to the detriment of whom and under what unfavourable conditions is the act done".

¹⁹ Compare *Schoenke / Schroeder / Heine / Weisser*: "the simple act of declaring to the offender that he does not agree with the acts intended and that the accomplice transfers the entire responsibility to the offender does not exclude the accomplice of participation in the premeditated act.."

²⁰ Compare *Lackner / Kuehl / Criminal Code, edition 29 2018, art. 27 Rn 7*: "The accomplice does not need to know the person committing the act. Complicity is not necessarily excluded if the accomplice does not wish for of the crime to be carried out".

²¹ The fact that the actions of complicity take place long before the act of killing does not relieve the accomplice, compare the civil code, the new edition for criminal law.

²² Compare *Gribbohm in: Commentary on the Criminal Code, Berlin 2007, art. 9 Rn 29*: "shall apply if the offender has participated in an act on foreign territory, German law shall apply for participation, even if the offence is not punishable under the law of that country"; *Ambos: Münchener Commentary on Civil Code Edition 3 of 2017, art. 9 Rn 39*

²³ Compare *Lackner / Kuhl Heger, Criminal Code, edition 29 2018, art. 9 Rn. 3*

²⁴ According to *Otto, Harro*, "obstruction of justice" by means of daily behaviour specific to the profession is not regarded as complicity

²⁵ Federal Court of Law, sentence of *22.01.2014, 5 StR 468/12*: compares *Greco, Luis*, the short report on punishing professional complicity and neutral complicity in the event of a serious probability In: *magazine for commercial and fiscal law (wistra) 2015, 1, 4*: "In the constellation of the so-called complicity BGH does not want to be content with clear points for promoting a deed; the court has a high degree of probability.

²⁶ BGH a.a.O. Rn. 32. See also *Lackner / Kühl a.a.O., § 27 Rn. 2*: Aiding and abetting: „when the accomplice only assumes a crime may be committed but knows of the offender’s propensity which creates a high risk of crimes being committed.“ *Münchener Kommentar zum StGB / Joecks, § 27 Rn. 62, 64*: „If the accomplice only has *dolus eventualis*, it will depend on the level of risk that he/she attributes to crimes being committed. ... The accomplice must regard the further crimes a ‘very likely’. “ *Schönke / Schröder / Heine / Weißer, 29. Aufl. 2014, § 27 Rn. 10*: According to the case law of the BGH „the threshold for criminal aiding and abetting shall already be crossed if the accomplice recognises that, based on the tendency to commit such crimes by the ultimate offender, there is a high risk of such a crime being committed.“

²⁷ In the view of *Greco, wistra 2015, 6*,: A neutral, profession-specific act becomes a criminal one if it’s refusal would substantially improve the situation of the legal property that will later be affected by the main crime. This is clearly the case here, because without the authorisation of transport or the issuing or required

certificates, the animals later tormented would not even be at the location where they will be cruelly killed. By not performing this act, the veterinarian involved is drastically improving their situation.

²⁸ See *Pleyer / Loibl-van Husen / Horvat / Ritter, Beamten-Dienstrechtsgesetz, Kommentar, Linde 2010, § 44 (2)*: „Instructions of superiors may not be carried out (without discretion!) if their compliance would lead to a criminal action against them.”

²⁹ In contradiction to § 36 Abs. 2 Satz 4 *BeamStG* – whereby this right and duty is enough to refuse carrying out an instruction which is in contradiction to internal regulations, the prevailing legal opinion in Austria is that only carrying out orders which constitute criminal actions according to § 44 Abs. 2 BDG (actual crimes, not offenses against regulations) are to be understood as relevant.

See also *Kucsko-Stadlmayer, Das Disziplinarrecht der Beamten, Springer 4. Aufl. 2010 S. 236*. – The criminally liable result of slaughter without stunning in other countries exists in general and specifically under the above mentioned circumstances as an infraction of § 222 Abs. 1 Nr. 1 StGB and thus as an infraction of the general criminal code.

³⁰ Compare *Deutscher Bundestag, Wissenschaftliche Dienste, Ausarbeitung zu „Regelungen der europäischen Tiertransportverordnung zu langen Tierbeförderungen im Licht des Urteils des Europäischen Gerichtshofs v. 23. April 2015 (C-424 / 13)“ S. 10, 11*.

³¹ so *Wickler, Thüringer Verwaltungsblätter 2016, 29, 36*

³² See *Plog / Wiedow, Bundesbeamtengesetz, BBG, Bd. 1, Loseblatt Luchterhand, Lfg. Feb. 2013, § 36 BeamStG Rn. 4*: Exploiting the rights mentioned in Paragraph 2 und 3: “still only rarely used in practice.” According to our judgement, one reason for this is the usual practice of substituting a willing civil servant as participant in such cases.