

Lecture

A Leading Case for the (Dis-)Approval of Applications for Animal Experiments

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On the 7th of October 2009, after three years of litigation, the Federal Supreme Court of Switzerland put an end to the legal dispute regarding two animal experiments on primates. The “Zurich monkey experiments“, which had been approved by the canton's veterinary office despite a contrary recommendation by the advisory committee on animal experimentation, leading to appeals by the commission, may definitively not be performed. Even though this judgement does not generally preclude experiments on non-human primates, it is a milestone success in the struggle against animal experiments. It certainly will influence the future approval practice.

The Supreme Court judgement clarifies four points that are of a general nature for animal protection and so have implications over and above to the two cases in question: 1) Some animal experiments are apparently approved wrongly. 2) In the approval process the suffering caused and the violation of the animals' dignity is, to some degree, not given sufficient weight. 3) In turn, the expected research results and their use for humans are, to some degree, given too much weight. 4) The weighing of interests therefore produces an unfair result in which the suffering of the animals in comparison to the expected gain of useful knowledge appears defensible when in fact it is not.

Among other points, the justification of the judgement highlights the importance of the advisory committee, which is of great value for its legitimization. The justification explains that the law demands that animal experiments be limited to an “indispensable measure“ and that it is one of the committee's tasks to interpret such vague legal terms. A deviation from their recommendation therefore would only be acceptable with very good justification.

The judges laid great importance on the weighing of interests. They emphasized that the gain of rudimentary knowledge about human physiology cannot justify severe suffering of experimental animals. In both cases in question the Federal Supreme Court considered the burden for the animals to be disproportionate. This makes the judgement a leading case.

The judges also stressed the value of the animals' dignity, which was given a high status in the Swiss Animal Protection Law in 2005. Dignity carries special weight in the case of non-human primates on account of their strong genetic and sensory similarity with humans. The expected gain of knowledge would thus have to be far higher than in the “Zurich monkey experiments“ to justify the animals' distress and the violation of their dignity associated with the proposed experiments.

This time a number of primates were lucky to be saved by the Federal Supreme Court's judgement. Hopefully this judgement will have further consequences: The right of the advisory committee to appeal against approvals that have already been issued is currently only applicable in the canton of Zurich. It has proven to be an additional and important instrument to prevent illegal animal experiments. This right of appeal must therefore be awarded to all advisory committees in Switzerland and should also be demanded for committees abroad

Judgements and justifications of the Supreme Court (only in German)

<http://www.bger.ch/index/jurisdiction/jurisdiction-inherit-template/jurisdiction-recht/jurisdiction-recht-urteile2000.htm> (click on "Staats- und Verwaltungsrecht" and put "Primaten" as keyword for the search).

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