



Promoting and
Preserving Circus
Arts and Culture

PRESS RELEASE

Austrian Court Decision on Animals in Circuses Does Not Decide European Question

In a decision published on 21 December 2011, the Austrian Constitutional Court ruled that Austria's ban on "wild" animals in the circus does not violate the Austrian Constitution. The court did not decide the legality of the ban under European law, which requires that Member States of the European Union use the least restrictive means possible to achieve their objectives when governmental legislation impacts freedom of services and functioning of the internal market. Whether the Austrian ban violates European law is a matter that is ultimately for the European Court of Justice to decide.

The Austrian court ruled on a complaint filed by Circus Krone that Austria's ban on wild animals in the circus violated its freedom guaranteed under European law to provide its services in Austria. This claim followed the legal conclusions of the European Commission which stated in a letter to Austria dated 12 October 2005 that Austria's ban on non-domesticated animals in the circus "violated Article 49 of the EC Treaty." Krone also argued that the ban was unconstitutional under Austrian law.

The court rejected the Government's argument that Krone had no recognizable legal interest. It concluded, however, that the ban did not violate Austria's Constitution because the government did not ban all circus performance but only performance with non-domesticated animals. The court considered this to be a "restriction" of circus activity that is within the government's discretion.

The court did not address Krone's point that the ban is discriminatory because the same animals are permitted to perform on film sets. In its 2005 letter, the European Commission noted that the Austrian law banning performance in circus does not ban the use of animals in entertainment or for film productions, but creates restrictions. According to the Commission, "this shows that the aim to protect animals in circuses can be achieved with less restrictive measures." The fact that measures that are less restrictive than a ban are available is also proven by the existence of laws that regulate circus animals in France, Germany, Italy and elsewhere.

The Austrian court took the view that there was no discrimination because the ban applies equally to Austrian and foreign circuses. According to the European Commission, "Article 49 of the EC-Treaty does not just demand that there cannot be any discrimination against service providers due to their citizenship. But also, all other obstacles, even if they equally apply to the citizens of the country as well as foreigners, are prohibited, if they make it impossible or difficult to provide this service in the country, if the same service is being legally provided in another Member State."

In its decision the court summarized the Government's allegations about circus animals welfare. Circus Krone was not given the opportunity to submit evidence, including published scientific studies, showing that circuses can and do meet the health and welfare requirements of their animals. This evidence was considered by an independent panel of experts commissioned by the United Kingdom (DEFRA) in 2007.

*The **European Circus Association** is a non-profit organisation established to promote and preserve circus arts and culture. The ECA represents more than 130 circuses, festivals, trainers and presenters in 29 countries, including nearly all renowned European circuses. It collaborates closely with professional organisations working in the areas of education of travelling children and vocational education and with partners such as the European Showmen's Guild and the Christian Council for the Pastoral Care of Circus and Carnival Workers.*



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The panel found that there was “not ... scientific evidence sufficient to demonstrate that travelling circuses are not compatible with meeting the welfare needs of ... non-domesticated animals [including big cats and elephants].

Furthermore, in the absence of compelling scientific evidence, any attempt to ban the use of an animal would fall foul of the principle of proportionality.” The panel also concluded that “although circus animals are transported regularly, there is no evidence that this, of its own nature, causes the animals’ welfare to be adversely affected.” Recent scientific studies conducted in Europe to test stress levels of circus animals before, during and after transport have confirmed this conclusion.

The European Circus Association and its members continue to promote best practices for animals in the circus and to advocate the development of appropriate governmental regulations to ensure the health and welfare of all animals under human care, including performing animals.

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