

Balancing of Interests in the Process of Authorization of Animal Experiments

(Güterabwägung im Tierversuchsbewilligungsverfahren) – Gerritsen Vanessa (2022), available in German only

Summary

Animal experimentation is an ethical problem in our society that remains unresolved. Animals have a great significance in Swiss law and society, and science is constantly generating new insights into their abilities, thus moving them closer to humans on both a biological and emotional level. Furthermore, the Swiss legal system recognizes the value of life. The deliberate exposure of animals to any kind of stress in experiments therefore runs counter to the high standards laid down in the Federal Constitution in terms of human and animal ethics, resulting in legal and practical conflict.

This study examines the complex Swiss legal framework relevant to animal experimentation as well as its implementation and observes tendencies over a 15-year period. It identifies a number of gaps in legislation and enforcement and offers practical suggestions for improvement, which are intended to benefit both animal welfare and research.

The first part of the study examines the constitutional provisions relevant to animal experimentation in relation to each other and clarifies that fundamental rights, such as freedom of research or economic freedom, cannot in themselves confer a right to conduct animal experiments. Only when they are linked to a clear and well assessed benefit to society is it acceptable to consider animal experiments for scientific research or product approval. Moreover, animal testing is to be understood as a means of last resort.

Whether animal experiments can be authorized is also subject to a number of additional requirements. These are explained in detail in a comprehensive presentation of the legal bases at the statutory and regulatory level, as well as the authorization procedure and the inspection duties incumbent on the cantonal and federal authorities. The basic section also includes a discussion of the principle of essentiality, which is the core principle of animal experimentation law. Experiments in which animals are subjected to stress must be essential both instrumentally and in terms of the goal pursued. This refers to a comprehensive assessment of proportionality, which, in addition to a legitimate objective, generally requires the three elements of suitability, necessity, and proportionality in the narrower sense, i.e. the balancing of the opposing interests.

In terms of suitability, the focus is on the examination of the experimental design with regard to the achievement of the immediate and – in terms of an actual benefit to society – the longer-term objective. In this context, it is also necessary to consider whether the experiment can be

reproduced and extrapolated. With regard to the question of necessity, attention is given to the current lack of application of existing alternatives to animal experiments and to insufficient efforts in the development of alternative testing methods in the field of basic research. Lastly, the study explains the general rules that apply to a correct and legally compliant balancing of interests.

Although the legislature and regulatory bodies have attached strict conditions to the authorization of animal experiments, an examination of the approval practice shows that stressful experiments on animals are routinely permitted. Even applications for animal experiments of uncertain social value – and hence ambiguity as to their indispensability – are hardly ever seriously questioned, even though a careful balancing of interests casts doubt on their eligibility for approval. This serious enforcement deficit is covered in a thick layer of bureaucratic dust, which results in even more costs for society and research, yet offers hardly any protections for the animals involved.

These enforcement weaknesses and the many reasons behind them are examined in depth in this dissertation. Special attention is paid to the oftentimes unrealistic assessment of the usefulness of experiments. It should be noted that, according to current legislation, only carefully defined interests that benefit society as a whole may be taken into account. Enhancing the benefits by intermingling societal and private - e.g. economic or publishing – interests is unacceptable, as is the overvaluing of insights gained from the experiment with respect to potential societal benefits.

As regards basic biomedical research, the question of the transferability of experimental results from animals to other species, in particular to humans, plays an important role in the balancing of opposing interests. Oftentimes, it is impossible to answer this question conclusively in the context of the suitability test. When this is the case, however, less weight must be given to the expected benefit, because there is doubt as to whether it can be realized.

The dissertation offers a guideline on how to define concise criteria, which are fundamental for weighing the benefits of animal experiments. Criteria for assessing the stress imposed on the animals have been in place for many years and they are constantly being refined and revised in light of new veterinary and ethological findings. By contrast, currently there are no mechanisms in place, which guarantee an objective assessment of the anticipated benefits and are independent of self-serving interests. They are, however, urgently needed.

This dissertation was declared a fundamental work by the competent expert committee of the University of Lucerne. It will undoubtedly serve as a valuable enforcement tool for authorities, the judiciary, and organizations interested in the protection of laboratory animals, which often find it difficult to navigate through the complex legislation in this field. In addition, the study provides suggestions for policy makers, especially in the area of research funding and quality assurance. Although the work focuses on the legal situation and practice in Switzerland, many ideas can also

be applied to other national legislations, especially with regard to benefit assessment, which, for example in the field of human research, has a strong international dimension.

The dissertation, which was awarded summa cum laude by the University of Lucerne, aims to improve the protection of animals in experiments by identifying problems and proposing solutions. Enforcement authorities and, in particular, members of committees on animal experimentation representing animal welfare organizations are provided with convincing arguments to demand a more careful weighing of interests and to thereby reduce the „consumption of animals“. The work fills a gap in court practice. In future legal proceedings, it will strengthen the position of laboratory animals and counteract the current imbalance between the parties. Last but not least, this publication, which is substantiated with countless sources, will help animal welfare organizations and interested politicians to seriously challenge the social value of animal experiments, which is often overstated, and to introduce appropriate proposals in parliament.



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