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ABSTRACT

My topic concerns the different treatment of wild animals in the European Union. Currently, three regimes are applicable, depending on the type of animal. The Birds Directive applies to wild bird species, the Habitats Directive applies to wild animal species and the Regulation on invasive alien species (IAS) applies to wild invasive animal species.

I shall confine myself to two aspects: different treatment with regard to keeping animals and the trade in animals. For each of these aspects, I will demonstrate the different treatment on the basis of the existing case law. Examples are the Vergy case, the Gourmetterie Van den Burg case, the German Crayfish case and the Bluhme case.

The central research question is whether different treatment is justified. To investigate this, I have formulated two hypotheses.

The first hypothesis is that different treatment with regard to the Birds Directive and the Habitats Directive may not be justifiable. To support this hypothesis, I will investigate the possible reasons that could explain different treatment. Arguments put forward to justify different treatment include the fact that birds are a common heritage and also the fact that it is mainly birds that are kept. I will examine these arguments and consider whether there may be other explanations for the different treatment, (e.g., the point in time at which each directive was drawn up).

The second hypothesis states that different treatment with regard to the Birds and Habitats Directives on the one hand, and the Regulation on IAS on the other hand, may be justifiable. The starting point here is that the overarching principle of the Regulation on IAS is the invasive or non-invasive character of an animal, regardless of the type of animal, (i.e., bird or non-bird).

In a third and final step, I will advocate harmonisation and discuss the arguments in favour and those against. Since the harmonisation of the Habitats Directive is minimal in comparison with the Birds Directive, this creates a tangle of national legislation. If each Member State enacts national legislation protecting certain animal species, it may be advisable to regulate this at EU level and thus transpose de facto harmonisation into de jure harmonisation.

Another issue that harmonisation can resolve is the ECJ's casuistical approach to cases that fall under the Habitats Directive. For example, in the German Crayfish case an import ban was not accepted, whereas in the Bluhme case, an import ban was permitted and this was based on the doctrine of quantitative restrictions in each case, (i.e., Article 36 TFEU).

With regard to the Regulation on IAS, the fact that different treatment may be justified does not alter the fact that harmonisation may also be appropriate here. The Regulation on IAS focuses exclusively on 'IAS of Union concern' and allows Member States to adopt stricter rules. A proliferation of such national lists can also create obstacles to free movement.

The objective of harmonisation must always be weighed up against the principle of subsidiarity, so that it becomes clear when harmonisation should take precedence over subsidiarity.