

Ombudsman: Commission has to properly examine Austrian ban on wild animals in circuses

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The European Ombudsman, **P. Nikiforos Diamandouros**, has called on the European Commission to evaluate whether the Austrian ban on wild animals in circuses is proportionate. This follows a complaint from the European Circus Association alleging the Commission did not properly handle its infringement complaint against Austria. According to the Association, the ban is contrary to the free movement of services in the EU.

The Commission decided to drop the case on the grounds that national authorities are best placed to decide on matters of animal welfare. During his investigation, the Ombudsman concluded that, although national authorities are entitled to a wide margin of discretion, the Commission cannot abdicate its supervisory role as regards the free movement of services. He called on the Commission to evaluate the Austrian authorities' position and either pursue infringement proceedings against Austria or give valid reasons for not doing so.

Circus Association: Ban on wild animals is contrary to free movement of services

In May 2005, the European Circus Association submitted a complaint to the Commission against the Austrian authorities' decision to ban wild animals in circuses. According to the complainant, the ban is contrary to the free movement of services in the EU. Furthermore, the Association argued that the ban is discriminatory because wild animals are allowed, for example, on film sets in Austria. According to the complainant, other Member States, such as Germany and the United Kingdom, had successfully regulated the well-being of wild animals. The Austrian ban was thus, in its view, disproportionate.

At first, the Commission started infringement proceedings against Austria. It considered that a total ban is a very restrictive measure which should only be applied if there are no alternatives. Following its contacts with the Austrian authorities, the Commission changed its mind and decided to leave the issue of protection of wild animals to the national authorities. It stressed that every Member State has the right to restrict the free movement of services for overriding reasons of general interest, such as animal welfare.

As the Guardian of the Treaty, the Commission is obliged to supervise the correct application of EU law in the Member States. After his investigation, the Ombudsman concluded that the Commission had abdicated its role as Guardian of the Treaty. According to him, it should have



determined whether the complete ban imposed by the Austrian law constituted a proportionate restriction of the right of free movement. If it were to conclude that this is not the case, the Commission should either continue infringement proceedings or provide the complainant with a valid reason for closing the case.

To read the Ombudsman's recommendation, please go to:

<http://www.ombudsman.europa.eu/cases/draftrecommendation.faces/en/4068/html.bookmark>
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