Max Planck Institute
for Social Anthropology
Department 'Law & Anthropology'

Culture as a Normative Argument Illustrated by the Example of the Classification of Animals as Pets in Residential Tenancy Law

Question(s) at stake:

Whether keeping chickens is part of the contractually agreed use of a rented apartment in a German city.

Outcome of the ruling:

The keeping of chickens is not part of the contractually agreed use of a rented apartment in the city. The defendant is ordered to remove the chickens from his apartment and is prohibited from acquiring chickens again in the future without the plaintiff's permission.

Topic(s):

- Liability: contractual and non-contractual

Keywords:

- Landlords
- Tenants
- Contracts
- Interpretations of behaviour

Tag(s):

- Kulturkreis
- Duty of Considerateness
- Social conditions
- Animal welfare

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Country:

Germany

Official citation:

Local Court Cologne, Judgment of 16 June 2010, 214 C 255/09 (AG Köln, Urteil vom 16. Juni 2010, 214 C 255/09)

Link to the decision:

https://openjur.de/u/2199572.html

ECLI:

ECLI:DE:AGK:2010:0616.214C255.09.00

Date:

16 June 2010

Jurisdiction / Court / Chamber:

Local Court Cologne

Remedy / Procedural stage:

Judgment (final)

Previous stages:

None

Subsequent stages:

None

Branches / Areas of law:

Private Law, Residential Tenancy Law

Facts:

The defendant had been renting an apartment in an apartment building owned by the plaintiff in a residential area of downtown Cologne for 13 years. It was a one-room, open-plan, 39-square-metre apartment with a small balcony. The defendant had kept two chickens in the apartment for some time and did not agree to get rid of them. The plaintiff then sued the defendant to get rid of the chickens, arguing that the rental contract only allowed him to keep animals with the prior consent of the landlord and that keeping chickens did not fall within the contractually agreed use of a rented apartment. The defendant rejected this, arguing that he was entitled to keep animals in his rented apartment and that they did not cause any particular disturbance to the other tenants.

Ruling:

The court ruled that the defendant was not entitled to keep chickens in the apartment, either on the basis of the tenancy agreement or other circumstances. The court therefore considered the claim well-founded and ruled that the plaintiff was entitled to have the chickens removed.

This was justified by the fact that, firstly, the plaintiff had not granted permission to keep animals and that, secondly, keeping chickens was not part of the contractually agreed use of an apartment. Additionally, the defendant would thus be in breach of his duty of considerateness, which arises due to his integration into the community of an apartment building. This was emphasized by the fact that he lived in a rather small and open-plan apartment.

The court further explained that these duties of considerateness depend on the location and condition of the rented property and the social circumstances of the residents. In this context, superordinate public interests such as animal welfare must also be incorporated. Chickens were farm animals, which in the local culture (“*unser Kulturkreis*”) are typically not kept in city apartments but in the countryside and in separate coops. A cramped city apartment with only a small balcony did not meet the requirements of species-appropriate animal keeping, as the chickens could not run freely in the garden. And in addition, the aversion to

the dirtiness associated with keeping chickens alone would lead to a disturbance of domestic peace and therefore be a breach of the duty of considerateness. The court added that it did not matter whether the other tenants actually had objections to keeping chickens, as there could be a change of tenants.

For these reasons, the defendant had to refrain from keeping chickens in the apartment, and the plaintiff was entitled to have the chickens removed.

Main quotations on cultural or religious diversity:

- “The integration of the tenant into the house community also gives rise to duties of considerateness for the defendant. The content of these duties of considerateness depends on the location and conditions of the rented property and the social circumstances of the other tenants. In this context, overriding public interests such as animal welfare must also be taken into account (cf. Schmidt/Futterer, *Mietrecht*, 9th edition, § 535 para. 493 ff). Chickens are animals, which in our culture are typically not kept in city dwellings, but in rural areas and furthermore in separate coops. In the present case, there is also the fact that the defendant’s apartment, a 1-room apartment which is already very small and open-plan, only has a small balcony, so that the animals cannot even run freely in a garden.” (para. 12)

Main legal texts quoted in the decision:

- Section 535 of the German Civil Code (BGB)
- Section 541 of the German Civil Code (BGB)

Cases cited in the decision:

None

Commentary

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This rather short ruling by the Cologne Local Court is neither a landmark decision, nor does it upturn any established case law. Although it is probably the first case to deal with the keeping of chickens in municipal rental apartments, what is interesting about the decision is that it exemplifies how a cultural explanation can be given to justify forbidding something in a rented apartment – even if, in all likelihood, the more accurate explanation is that it is forbidden because it is not "normal". This commentary will analyze the court's reasoning step by step in order to show how the normative cultural argument functions.

The ruling is based on an interpretation of the "contractually agreed use" of a rented apartment within the meaning of Section 535 of the German Civil Code (BGB). Correspondingly, Section 541 of the German Civil Code (BGB) entitles the landlord to a prohibitory injunction if the tenant continues to use the rented property in breach of the contract despite a warning. The court then explains that when interpreting the contractually agreed use, it must be considered that the tenant is obliged to show consideration for the other tenants within the community of the building. The scope of this duty of considerateness is then explained further, with two distinct lines of reasoning emerging in the court's argumentation:

(1) Firstly, the individual content of the duty of considerateness depends on the location and condition of the rented apartment and the social circumstances. With regard to the location and condition, the court only describes that it is a rather small one-room apartment, which has an open layout and is located on the second floor of an apartment building. What exactly the court means by social conditions is not entirely clear, but from the context it can be inferred that what is probably meant here is the tenants' close cohabitation in the apartment building, not their social – in the sense of class affiliation – or cultural characteristics. The court concludes from this that numerous other tenants would be affected by the keeping of chickens, and goes on to say that the peace of the house would be disturbed by the fact alone that the other tenants could have an aversion to the unavoidable dirtiness caused by the keeping of chickens. It does not matter, in the court's view, whether the neighbours actually consider the chickens a

disturbance. However, it is easy to question whether the two chickens are noticeably dirtier than other pets that are frequently kept in apartments, such as cats, rabbits, or birds. In any case, no reference is made in the judgment to an actual disturbance. Moreover, it is not clear from the judgment if the chicken in question is a cock (a male), which would of course also cause a certain amount of noise.

(2) Secondly, when interpreting the scope of the duty of considerateness, animal welfare was considered by the court to be a superordinate public interest. For this interpretation, the court refers to a commentary on tenancy law, which is interesting in that this is the only place where the court explicitly refers to legal literature. This suggests that the judge had to read up on the topic and was thus able to find an additional argument. This is explained in more detail by stating in the next sentence that chickens are seen as farm animals in the local culture and are therefore more likely to be kept in the countryside and in coops. The court continues that the tenant's small apartment therefore does not offer suitable conditions, as the chickens cannot run freely in a garden. The court thus uses the cultural normative argument that here, in "our culture", chickens are farm animals, and then deduces the appropriate husbandry conditions from this argument. However, if you compare the conditions under which the two chickens were kept in this case – in a 39-square-metre apartment with a balcony – with the conditions under which chickens are kept in industrial factory farming in Germany, this argument is not convincing: a chicken in small-group housing is currently permitted 0.11 square metres of space and no access to fresh air (information from the Federal Ministry of Food and Agriculture), and in 2010 even narrower cages were still permitted.

On closer inspection, neither line of argument is entirely convincing. Rather, it gives the impression that the court, presumably like the landlord, simply considered keeping chickens in an apartment not "normal" or appropriate. Or alternatively the judge had a feeling that chickens, unlike rabbits, guinea pigs, dogs, cats, or birds, are not usually kept in a city apartment and was looking for a reason to explain this. Therefore, the ruling relies on the cultural normative

argument that chickens are kept in coops and in the countryside in “our culture”. This normative argument thus fills a gap in the reasoning and is an example of the limits of interpretation and reasoning that courts face when a certain behaviour or use deviates from the norm, while at the same time it is difficult to explain why what is normal is also the right thing to do. Because it is also conceivable that such practices could be different elsewhere, which the court itself indicates by referring to “our local culture”. But of course, the case does not indicate that the tenant in question was non-German.

It can therefore be summarized that the court resorts to a cultural argument in order to explain what most people – of the same “*Kulturkreis*” – are likely to consider common sense anyway. It would have been possible to base the argument much more convincingly on an actual perceived disturbance of the other tenants, or a measurable increase of noise or pollution. If such disturbances are not significant, there is probably no reason to ban the keeping of chickens (similar Blank 2007: 731).

Literature related to the main issue(s) at stake:

Specific legal publications addressing the case:

- *Münch, Joël B. 2023.* “§ 535 BGB rec. 104”. In Maximilian Herberger et al. (eds). *jurisPK BGB*. 10th ed. Saarbrücken: Juris.

General legal literature on the topic:

- Blank, Hubert. 2007. “Tierhaltung in Eigentums- und Mietwohnungen”. *NJW* 11/2007: 729–733.
- Häublein, Martin. 2023. “§ 535 BGB rec. 112 – 117”. In Franz J. Säcker et al. (eds), *Münchener Kommentar zum BGB*, 9th ed. München: C.H. Beck.
- Hülsmann, Hans-Bernd. 2004. “Tierhaltung im Mietrecht – Ein Rechtsprechungsspiegel 1998–2003”. *NZM* 22/2004: 841–845.

- Lehmann-Richter, Arnold. 2024. “§ 535 BGB rec. 622–628”. In Wolfgang Schmidt-Futterer and Ulf P. Börstinghaus (eds), *Mietrecht*, 16th ed. München: C.H. Beck.
- Siegmund, Astrid. 2023. “§ 535 BGB rec. 488–494”. In Ulf P. Börstinghaus and Astrid Siegmund (eds), *Miete*, 7th ed. München: C.H. Beck.

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