

SECTION VIII FISHINGWATER – CONTRACTS

102. Private Law – Public Law

It is a main concept in private law in Germany that people can rent or sell their belongings under the conditions that they chose. But this principle ends where the rights of others, especially of the general public, begin. Fishing waters are part of our natural environment, which we try to preserve for our children. Compared to the USA with its wide landscapes and fishing waters Germany has only very few fishing-waters for the many fishers e.g. Bavaria has about 230.000 people who fancy fishing.

That is why Germany has special provisions for fishing-water-contracts in state fishing laws for Bavaria, Baden Wuerttemberg and Hessen. Civil law (law of contracts) and public law (fishing law of the states) is relevant.

The main aim of these provisions in public law is to maintain a fishing-practice according to the fishing law, which preserves the natural environment (specially the fish) even if a leaseholder uses the fishing water for fishing purposes. As long as the contractors follow these special provisions and as long no other German or Bavarian law is violated, they are principally free with their own provisions in the contract.

Fishing laws are released by German federal states in the Federal Republic of Germany. Every federal state can have its own legislation, which might be different from the relevant law of the other federal states in Germany.

103. What is a fishing-water contract?

The fishing water contract is a contract, which sets up rights and duties for the lessor and the leaseholder in which both parties are in agreement of duties and obligations.

The owner/lessor transfers his whole right to fish to the leaseholder for the duration of the existing contract. (It is still possible that the contract allows the owner to go fishing during the lease time of the contract).

If the owner of the fishing water sells the fishing water or the fishing right, the existing contract continues and the new owner is obligated to take the place of the former owner who sold the fishing water or fishing right.

104. Fishing Permits

Baden-Wuerttemberg and Bavaria: The right to give out fishing permits is not automatically included in a fishing water contract. The owner has to give his permission to the leaseholder. The owner can also keep the right to issue fishing permits himself. If the leaseholder gives out fishing permits without authorization, he can be fined (in Bavaria). The fee would be between 5,- and EURO 500 this fee can be higher if required by the economic interest involved.

Hessen: The right to issue fishing permits is automatically included in the fishing water contract if it is not explicitly excluded in the contract. No special agreement is necessary.

If the leaseholder has the right to give out fishing permits, he has to do that according to the relevant legal provision. In Bavaria, e.g. he needs the authorization of the "Kreisverwaltungs-behoerde" (public administration office of the area).

105. Rights included in the Fishing Right.

The fishing right includes:

- the right to catch fishes and “own” it, that means to take the fish home and eat it.
But: Not the right to sell the fish. This right is reserved to professional fishermen
- the right to look after the fish and the other species which live in and at the water
- the right to walk in and drive to the fishing water according to the law
- the right to follow the fish if the land beside the fishing water is flooded
- the right to go to the fishing water and stay at the fishing water
- the right to take somebody along with oneself to help with the fishing
- the right to take up to 3 persons fishing as guests.

106. Duties of the Lease Holder

The leaseholder usually has to pay the lease charge. He has the very important duty to look after and preserve fish and nature according to the law. The leaseholder has to preserve or create good healthy living conditions for the fish.

The obligation to look after the fish is an important duty. In Germany it is called “Hegepflicht” (Conservation Obligation) if the leaseholder does not fulfill his obligation, he can be fined in Baden Wuerttemberg up to EURO 5.000. The leaseholder has to exercise the fishing according to the law and to the contract. He has e.g. to respect the preservation rules and the closed seasons. That means: Not to fish smaller fish than permitted and not to fish at times when it is forbidden (e.g. nighttime and special seasons).

107. Important Provisions for Fishing Contracts.

Minimum Duration of a Fishing Water Contact: The contract has to last at least 10 years in Bavaria, in Baden Wuerttemberg and Hessen at least 12 years. If the contract says a shorter period of time it is not valid, it is invalid.

Maximum Numbers of Lease Holders:

In Bavaria only up to 3 persons are allowed to be on the renting-side of the contract as lease holders (If the owner wants to go on fishing also, it is one person less).

In Baden Wuerttemberg according to Par. 18 FischG (Fishing Law) up to 6 persons including no more than 2 legal entities.

In Hessen the lessor is free to limit the number of leaseholders.

Valid Fishing License: Only persons who have a valid fishing license can rent fishing waters or fishing rights (exclusion in Bavaria: fishpond Fischteiche). Otherwise the contract is not valid, it is invalid. It has to be a fishing license of the German Federal state where the fishing water is located, or a fishing license issued at one of the other German Federal states which is accepted at the federal state where the water is located. A fishing license from USA is not sufficient. The fishing license is an obligation, which is necessary for the validity of the contract. The fishing license has to be valid when the contract is signed and it has to be valid for the whole time the contract lasts.

Legal Entries: If a legal entity leases fishing water, in Bavaria at least one authorized representative of the legal entity has to have a valid fishing license. It has to be stated in the contract, that only up to 3 persons (with valid fishing licenses) are allowed to fish without extra fishing permits and these 3 persons must be identified in the contract. In Baden Wuerttemberg and Hessen fishing water contracts with legal entities are also possible.

No Fishing License: If the fishing license is withdrawn from the lease holder during the time frame of the existing contract, the lessor can dissolve the contract, if no other lease holder accepts the obligation of the dismissed lease holder. It is also possible to have this clause in the contract already that automatically the contact is terminated if the fishing license is withdrawn from the leaseholder during the time period of the contract.

If no other lease holder can be obligated, the clause was not stated in the contract and the owner of the fishing water does not terminate the contract, in Bavaria the County Administrative Authority (Kreisverwaltungsbehoerde) must take the necessary steps to ensure that someone looks after the fish according to the conservation law (Hegepflicht). This is similar in Baden Wuerttemberg, if the leaseholder cannot get a fishing license or the fishing license is withdrawn without the chance to receive it back again.

Whole Fishing Right: Only the whole fishing right of the lessor can be rented, not parts of it. Otherwise the contract in Bavaria is not valid it is invalid. If the lessor owns an unrestricted fishing right. The lessor cannot restrict the leaseholder, for example to fish only for special species nor to use only specific catching tools.

Splitting of fishing right: The fishing right can not be split up with the purpose of renting it in parts. For example, if the lessor has fishing right in the Danube River, which is 3 Km long; he cannot rent 1 Km to one person and the other 2 Km to another person.

Written Contract: To be valid, the whole fishing water contract has to be in writing. This is also necessary if the contract is only extended or if only some provisions are changed.

In Bavaria it is mandatory to take a copy, which must be signed by all contractors, to the District Administrative Authority (Kreisverwaltungsbehoerde) located at the county offices (Landratsamt) or Kreisfreie Gemeinde where the water is located. The lessor or leaseholder can do this between 8 days after the contract was signed by all concerned. Bavarian Fishing Law (Par 33 FiG). This procedure applies also if provisions or the duration of the contract are changed.

There are two reasons for this procedure:

There should be no doubt who is responsible for fishing.

The administrative authority has to check, if the contract includes all provisions and if it is valid.

Therefore no exceptions can be made.

If the contract is not brought to the Administrative Authority in Bavaria there are special administrative measures (Verwaltungszwang, Art. 88 I 3 FiG, Art 29 ff. VwZVG) that can be taken to induce the lessor to bring the contract to the authority. The authority can issue:

- an order to pay a special amount of money in between EURO 15 and EURO 5,000 depending on the economic interest involved) if the contract is not brought in time,
- the order to pay for someone who is instructed by the authority to get the contract,
- in very special cases: prison

In Baden Wuerttemberg as similar rule exists. Here the authority has to be informed about the contract by the lessor "without delay". If the lessor does not follow his obligation, he can be fined up to EURO 5.000. In addition fishing is only permitted 2 months after the authority has been notified about the contract. If the administrative authority objects to the contract, the leaseholder is not allowed to fish until the objection is lifted or a court has decided that the contract is not objected. The objection of the administrative authority is possible during 2 months after the contract is received at the administrative authority.

Subject of the objection can be that there are too many leaseholders, that the contract is not in writing, or that the duration is shorter than 12 years. Subject can also be that a preservation of an appropriate amount of fish is not secured by the contract.

In addition, the contract might be objected because the contract does not respect the fish management plan (Hegeplan) which is to be set up in Baden Wuerttemberg by the owner or the lease holder and which has to be accepted by the administrative authority.

In case of an objection the contractors have to change the contract during an appointed time. If they don't change the contract according to the objection or if they don't ask for a court-decision during this time, the contract is not valid it is invalid.

During legal proceeding the administrative authority can order to secure the fishing and the preservation of fish. If lessor or leaseholder do not follow these directions they can be fined up to EURO 5.000.

In Hessen the contract has to be shown to and accepted by the administrative authority. If the administrative authority does not explicitly accept the contract, the contract is considered as valid after 1 month has passed. If the contract is not shown to the authority for acceptance, the contractors can be fined up to EURO 5.000. In case of legal proceedings concerning the contract the legal authority takes the necessary measures for the fishing. If the contractors do not follow these directions, they can be fined up to EURO 5.000.

108. Why a written contract and why are the administrative authorities involved?

There are 3 main reasons:

- First there is the public interest that in the case of a fishing water contract the fishing practice confirms to the relevant legal provisions in order to preserve the natural environment.
- It prevents the contractors from agreeing to a contract prematurely and unreflected. To sign a contract means to have to think about it.
- A written contract is also important for purposes of evidence. Especially there should be no doubt who is responsible for the fishing and the control of the lease through the administration should be facilitated.

Still there is no rule without exceptions:

In Bavaria the responsible county authority (Kreisverwaltungsbehoerde) can make exceptions for the duration (10 years) and for the obligation not to split up the fishing right if it is necessary. As long as the administrative authority has not released the exception, the contract cannot be fulfilled, the leaseholder is not allowed to fish. Exceptions can only be given if there are no apparent disadvantages for the fishing water.

In Baden Wuerttemberg exceptions are possible concerning the number of leaseholders or the duration of the fishing water contract by the administrative authority if really necessary.

In Hessen exceptions could be made concerning the duration and the fishing license.

109. Lease by the Lease Holder

In Bavaria the leaseholder can sublease only the whole fishing right and only for the whole remaining duration of the contract to someone else. But he must have the authorization from the lessor. All rules and provisions from the original contract are still valid.

In Bavaria and Hessen it must be stated in the contract that the leaseholder is permitted to lease the fishing water to a third party.

Important Facts:

- If the contract is not in writing it is not valid it is invalid!
- If the prescribed number of leaseholders is exceeded, the contract is not valid, it is invalid!
- If the leaseholder has no valid fishing license when the contract is signed, the contract is not valid!
- If there are more then one lease holders, at least one has to have a valid fishing license!

- In Bavaria the whole fishing right of the lessor has to be leased to the leaseholder otherwise the contract is invalid!
- If the contract is invalid, the leaseholder is not allowed to fish in the fishing water. If he still fishes, he can be fined in Bavaria EURO 5 – 500, if necessary more. In Baden-Wuerttemberg and Hessen up to EURO 5.000; fishing equipment can be taken away.
- If the contract is not brought to the administrative authority, in Bavaria there are special measures like the order to pay an amount between EURO 30 and EURO 50.000.
- The law for a fishing water contract is also valid if the leaseholder leases the fishing water to some other persons. The leaseholder has to be authorized for this by the lessor. If the lease by the leaseholder does not last for the whole remaining period of validity of the original contract, in Bavaria this lease is not valid, it is invalid.

Important conditions for fishing contracts

	Bayern	Baden- Wuerttemberg	Hessen
minimum duration (years)	10	12	12
maximum number of leaseholders	3	6	no special rule
fishing license	yes	yes	yes
whole fishing right	yes	?	?
written contract	yes	yes	yes
information to the administr. authority	yes	yes	yes