dirittoesalute
Rivista di sanità e responsabilità medica

Chimpanzees, Hippos, and Rivers before German Courts? Party and Legal Capacity of Natural Resources and Animals in Anthropocentric Private International Law.

di Lukas Rademacher*

Abstract EN: A number of states – mostly in South America – have granted legal capacity or a status similar to legal capacity to animals, or more broadly, to natural resources. This usually includes the capacity to be a party under procedural law, enabling them to assert their legal positions in civil court proceedings. How do European legal systems react when such an entity, equipped with legal capacity under foreign law, brings a claim before a European court? The capacity to be a party in civil court proceedings is usually tied to legal capacity. In cases involving a foreign element, a European court must therefore determine the law applicable to legal capacity based on conflict-of-law rules. The same determination of the applicable law is also required when the court assesses the merits of the case under substantive law. It is submitted that none of the existing anthropocentric conflict-of-law rules under German law – whether written or unwritten – on the legal capacity of individuals, partnerships, or legal entities can be directly or analogously applied to the legal capacity of such non-human entities. Instead, a new rule of private international law is submitted according to which the legal capacity of an animal or a natural resource is governed by the substantive law of the state in which it is located. Legal capacity once acquired shall not be affected by a temporary change in location. The representation of such non-human entities shall be governed by the law applicable to its legal capacity. Until such a provision is established, courts should close the existing legal gap through a corresponding judicial development of the law. The application of foreign law that grants legal capacity to animals or natural resources does not violate domestic public policy.

Abstract IT: Diversi Stati – soprattutto in Sudamerica – hanno riconosciuto agli animali, o più in generale alle risorse naturali, la capacità giuridica o uno

* Full Professor of Private Law, Private International Law, and Comparative Law, Kiel University, Germany. The paper is based on the author's article *Schimpansen, Flusspferde und Flüsse vor deutschen Gerichten? Partei- und Rechtsfähigkeit von natürlichen Ressourcen und Tieren im anthropozentrischen Kollisionsrecht*, in S. HOBE, H. KRIEGER, K. THORN (eds.), *Gemeinwohlinteressen in einer sich wandelnden Welt, Berichte der Deutschen Gesellschaft für Internationales Recht* 53, Heidelberg, 2026, 315 ff. – open access at https://www.dgfir.de.

status ad essa assimilabile. Ciò include di regola anche la capacità di stare in giudizio, che consente loro di far valere le proprie posizioni giuridiche nei procedimenti civili. Come reagiscono gli ordinamenti giuridici europei quando un ente di questo tipo, dotato di capacità giuridica secondo il diritto straniero, propone un'azione dinanzi a un giudice europeo? La capacità di stare in giudizio nei procedimenti civili è normalmente collegata alla capacità giuridica. Nei casi con elementi di estraneità, un giudice europeo deve pertanto determinare la legge applicabile alla capacità giuridica sulla base delle norme di diritto internazionale privato. La medesima determinazione della legge applicabile è necessaria anche quando il giudice esamina il merito della controversia secondo il diritto sostanziale. Si sostiene che nessuna delle vigenti norme antropocentriche di diritto internazionale privato del diritto tedesco – scritte o non scritte – relative alla capacità giuridica delle persone fisiche, delle società di persone o degli enti collettivi possa essere applicata, né direttamente né in via analogica, alla capacità giuridica di tali entità non umane. Si propone pertanto l'introduzione di una nuova norma di diritto internazionale privato, secondo cui la capacità giuridica di un animale o di una risorsa naturale è regolata dal diritto sostanziale dello Stato nel quale esso si trova. La capacità giuridica così acquisita non dovrebbe essere pregiudicata da un mutamento temporaneo di ubicazione. La rappresentanza di tali entità non umane dovrebbe essere disciplinata dalla legge applicabile alla loro capacità giuridica. Fino all'introduzione di una disposizione di questo tipo, i giudici dovrebbero colmare la lacuna normativa esistente mediante un corrispondente sviluppo giurisprudenziale del diritto. L'applicazione del diritto straniero che riconosce capacità giuridica ad animali o risorse naturali non viola l'ordine pubblico interno.

Sommario: 1. Introduction: Colombian Hippopotamuses before a Court in Ohio. – 2. Research Question. – 3. Comparative Survey. – 4. The Law Applicable to Party and Legal Capacity. – 5. Failed Application to Natural Resources and Animals. – 6. A New Conflict-of-Laws Rule. – 7. Public Policy. – 8. Representation. – 9. Conclusions.

1. Introduction: Colombian Hippopotamuses before a Court in Ohio.

A decision delivered by the United States District Court for the Southern District of Ohio in October 2021[1] elicited considerable enthusiasm among animal protection organisations across the globe. The Animal Legal Defense

[1] US District Court for the Southern District of Ohio, *Community of Hippopotamuses Living in the Magdalena River v. Ministerio de Ambiente y Desarrollo Sostenible et al.*, Order of 15 October 2021, Civil Action No: 1:21-mc-23.

Fund, for instance, proclaimed: "Animals Recognized as Legal Persons for the First Time in US Court."[2] Indeed, the court in Cincinnati, Ohio, recorded an unusual party to the proceedings: the applicant was identified as the "Community of Hippopotamuses Living in the Magdalena River", a watercourse situated in the western region of Colombia.

The background of the court proceedings traces back to Colombia in the 1980s. The notorious drug lord *Pablo Escobar* had, according to estimates, amassed a fortune amounting to several billion of US dollars through cocaine trade.[3] He led an extravagant lifestyle, which included constructing and maintaining a private zoo on his 3,000-hectare estate located near the Río Magdalena. For this purpose, *Escobar* had exotic animals flown in, among them tigers, lions, giraffes, elephants, rhinoceroses, zebras, camels, ostriches, and four hippopotamuses from Africa.

In 1993, *Escobar* was killed during a police raid in Medellín by a joint American-Colombian task force. Thereafter, the Colombian government took control of *Escobar's* former estate. For financial reasons, however, the authorities decided not to continue operating the zoo. Some of the animals were transferred to other zoological facilities, while the remainder were left to fend for themselves. Many of them starved to death or succumbed to disease.

The four hippopotamuses, however, managed to leave the zoo grounds and settled in and around the Río Magdalena.[4] There, they encountered ideal living conditions: an abundant and varied food supply, a consistently tropical climate, and – unlike in Africa – no natural predators such as crocodiles or lions. Their population grew rapidly. By 2007, it was estimated to number 16 individuals, and by 2014, 40. At present, their population is believed to stand at around 200, and projections suggest that, if left unchecked, it could reach 1,000 by 2035.[5] The consequences for the ecosystem of the Río Magdalena are already significant. Parts of the river and nearby lakes risk acidification due to the

---

[2] Animal Legal Defense Fund, Press Release of 20 October 2021.

[3] See, also on what follows, M. BOWDEN, *Killing Pablo: The Hunt for the World's Greatest Outlaw*, New York, 2001; J.P. ESCOBAR, *Pablo Escobar: My Father*, New York, 2014; see also P. GOOTENBERG, *Andean Cocaine: The Making of a Global Drug*, Chapel Hill, 2008, 305 f.

[4] See, also on what follows, A.L. SUBALUSKY, S.A. SETHI, E.P. ANDERSON, G. JIMÉNEZ, D. ECHEVERRI-LOPEZ, S. GARCÍA-RESTREPO, L.J. NOVA-LEÓN, J.F. REÁTIGA-PARRISH, D.M. POST, A. ROJAS, *Rapid population growth and high management costs have created a narrow window for control of introduced hippos in Colombia*, in *Scientific Reports*, 13, 2023, 6193; E. DOORNBOS, *Colombian Hippos and Species Management: Exploring the Legal Case Surrounding the Management and Control of the Colombian Hippos from a Species Justice Perspective*, in *Laws*, n. 12, 2023, 29; E. DOORNBOS, *In the interest of hippos: Reflecting on the interests of the Colombian hippo population and their management*, in *Revista de la Academia Colombiana de Ciencias Exactas, Físicas y Naturales*, 48, 2024, 413 ff.; see also BBC, 26 June 2014, *Pablo Escobar's hippos: A growing problem*; National Geographic, 31 January 2020, *Could Pablo Escobar's escaped hippos help the environment?*; BBC, 11 February 2021, *Pablo Escobar: Why scientists want to kill Colombia's hippos*.

[5] New York Times, 18 November 2023, *Colombia to Sterilize Pablo Escobar's 'Cocaine Hippos'*.

particularly active metabolism of the hippopotamuses, leading to algal blooms and the death of native aquatic species. There have also been isolated incidents of hippopotamuses attacking humans.

Unsurprisingly, the Colombian authorities have repeatedly sought to curb the population of hippopotamuses – now widely known as the “cocaine hippos” and considered a tourist attraction in Colombia. When one hippopotamus was shot in 2009 and a photograph of its carcass was published, it provoked a public controversy both domestically and abroad.[6] Less drastic measures to reduce the population proved, however, to be either too complicated or too costly. Capturing a male hippopotamus for castration and subsequent release, for instance, is estimated to cost around 50,000 US dollars.[7] Consequently, in early 2020, relying on a conservation biology report,[8] the Colombian government again considered simply shooting the animals.[9]

In July 2020, an application for interim relief was lodged before the Administrative Court of Bogotá to prevent the imminent measure.[10] The respondent in those proceedings was the Colombian Ministry of the Environment. The applicant was not an animal protection organisation, but rather the community of hippopotamuses living in the Río Magdalena itself.[11] At that time, the question of whether animals could, under Colombian law, act as a party to judicial proceedings was still open, though it has since been rejected by a majority of the judges of the Colombian Constitutional Court.[12] One of the principal arguments in the administrative interim relief proceedings put forward by the community of hippopotamuses – represented by an animal protection organisation – was that chemical contraceptives were available which could effectively limit the population without the need to kill any of the animals.

[6] BBC, 11 July 2009, *Colombia kills drug baron hippo*.

[7] The Politic, 8 March 2017, *Zoo Gone Wild: After Escobar, Colombia Faces His Hippos*.

[8] N. Castelblanco Martínez, R.A. Moreno Arias, J.A. Velasco, J.W. Moreno Bernal, S. Restrepo, E.A. Noguera Urbano, M. Baptiste, L.M. García Loaiza, G. Jiménez, *A hippo in the room: Predicting the persistence and dispersion of an invasive mega-vertebrate in Colombia, South America*, in *Biological Conservation*, 253, 2021, 108923.

[9] Thus ran the submission in the application initiating the proceedings before the court in Ohio.

[10] Tribunal Administrativo de Cundinamarca, case 25000234100020200044400.

[11] Such, at any rate, was the submission in the application to the court in Ohio. In the published Colombian decision rejecting the application for interim relief, the named applicant is an animal rights activist, accompanied by the designation “Y OTROS” (“and others”).

[12] Corte Constitucional, SU016, Sentencia of 23 January 2020. See also E. Mussawir, *On the juridical existence of animals: the case of a bear in Colombia’s Constitutional Court*, in A. Alvarez-Nakagawa, C. Douzinas (eds.), *Non-Human Rights. Critical Perspectives*, Cheltenham, 2024, 20 ff.; M. Montes Franceschini, *Legal Personhood: The Case of Chucho the Andean Bear*, in *Journal of Animal Ethics*, 11, 2021, 36 ff.

It is here that the connection between the Colombian hippopotamuses and the US state of Ohio can finally be explained, as well as the reason why the District Court for the Southern District of Ohio was required to issue a decision concerning them. Two biologists residing in Ohio possessed specialised knowledge regarding contraception in large mammals. The applicants in the Colombian proceedings sought to obtain written extrajudicial statements – depositions – from these two experts. To achieve this, they filed a civil action before the United States District Court for the Southern District of Ohio. The court granted the application and authorised the issuance of the relevant subpoenas, thereby permitting the experts to be summoned.[13]

The decision explicitly designates the "Community of Hippopotamuses Living in the Magdalena River" as the applicant. Did the court in Cincinnati, therefore, as the Animal Legal Defense Fund proclaimed, recognise the procedural and legal capacity of the community of hippopotamuses? The brief reasoning provided by the American court refers to the key provision upon which it relied. Title 28 of the United States Code (Judiciary and Judicial Procedure), § 1782(a), contains a rule on judicial assistance for foreign proceedings ("Assistance to foreign and international tribunals and to litigants before such tribunals").[14] Under this provision, any "interested person" is entitled to make such an evidentiary request in the United States. As the US Supreme Court stated in a ruling in 2004, when applying this provision, it is not permissible to examine whether it would be possible to obtain the relevant evidence under domestic US law.[15] The purpose is solely to facilitate the foreign proceedings on the basis of *comitas gentium*. Accordingly, the District Court did not need to determine whether the "Community of Hippopotamuses" possessed full legal or procedural capacity.[16] It did, however, accord them the status of an "interested person", albeit without providing any further reasoning in its very brief decision.

---

[13] US District Court for the Southern District of Ohio, *Community of Hippopotamuses Living in the Magdalena River v. Ministerio de Ambiente y Desarrollo Sostenible et al.*, Order of 15 October 2021, Civil Action No: 1:21-mc-23.

[14] See F. KLEIN, *Die Verwertbarkeit gem. 28 USC § 1782(a) erlangter Beweismittel im deutschen Zivilprozess*, Tübingen, 2019, 22 ff.

[15] Supreme Court, *Intel Corp. v. Advanced Micro Devices, Inc.*, Decision of 21 June 2004, 542 US 241, 2004.

[16] United States courts have thus far denied legal personality to animals; see United States District Court for the Southern District of California, *Tilikum et al. v. Sea World Parks & Entertainment Inc.*, Decision of 8 February 2012, 842 F.Supp.2d 1259, 2012; State of New York Supreme Court, Appellate Division, *Tommy the chimpanzee*, Decision of 4 December 2014, 518336.

2. Research Question.

Even though the case of the Colombian hippopotamuses features numerous peculiarities and arose under specific circumstances, it vividly illustrates the central question addressed in this article: how should a European civil court proceed when an entity that possesses legal personality under foreign law – whether a natural resource or an animal – appears before it as a party to proceedings? What, for instance, would apply if a court in Milan or Munich were to receive a claim filed by the "Community of Hippopotamuses Living in the Magdalena River" against a pharmaceutical company, in which the claimant seeks information regarding the composition and effectiveness of a contraceptive for large mammals developed by the defendant?

In a recent issue of the *Rivista di diritto internazionale privato e processuale*, *Stefano Dominelli* has masterfully explored these questions with a focus on animals from the perspective of Italian law.[17] The following article will try to add the view of German law. Its sole aim is to determine whether, in the scenario described, the procedural requirement of party capacity would be fulfilled, and how legal personality should be ascertained. The likelihood that European courts – particularly in connection with climate protection litigation – will be confronted with such questions is increasing,[18] as more and more countries, including one in Europe, have conferred legal personality or a similar status upon natural resources and animals.

Accordingly, the first step will be to summarise, by way of selective examples, the legal position in certain states that have already recognised the legal personality of natural resources or animals, in order to illustrate the growing significance of this phenomenon. Against this background, the second step will address the international procedural and conflict-of-laws questions arising therefrom.

3. Comparative Survey.

Most examples of the recognition of legal personality for natural resources and animals can be found in South American states. Colombia is among the pioneers in recognising the inherent rights of nature. In a 2016 decision, the Colombian Constitutional Court granted one of the country's largest rivers, the Río Atrato, its own rights to protection, preservation, and restoration.[19] Two

---

[17] S. DOMINELLI, *A New Legal Status for the Environment and Animals, and Private International Law: Tertium Genus Non Datur? Some Thoughts on (the Need for) Eco-Centric Approaches in Conflict of Laws*, in *Riv. dir. int. priv. e proc.*, 2024, 1165 ff., 1167.

[18] For a current example from Switzerland, see N. KERSTENSTEINER, F. AIWANGER, *Personhood Across Borders*, in *Verfassungsblog*, 5 September 2025.

[19] Corte Constitucional, Sentencia of 10 November 2016, T-622/16; see also I. VARGAS-CHAVES, G. RODRÍGUEZ, A. CUMBE-FIGUEROA, S.-E. MORA-GARZÓN, *Recognizing the Rights of Nature in Colombia: the Atrato River case*, in *Revista Jurídicas*, vol. 17, 2020, 13 ff.; P. WESCHE, *Rights of*

years later, Colombia's Supreme Court of Justice conferred legal personality upon the entire Amazon region.[20] In both instances, the courts relied on constitutional guarantees of a healthy environment and emphasised that rivers and ecosystems may act as subjects of rights, thereby ensuring more effective protection against deforestation, pollution, and climate change. The decisions also designated representatives for the respective natural resources – comprising state authorities as well as members of indigenous and Afro-Colombian communities – who may act in a fiduciary capacity on behalf of the river or ecosystem and assert its rights in court. As previously noted, however, the Colombian Constitutional Court, in a 2020 decision, denied legal personality to animals.

Having already discussed hippopotamuses and rivers, it now takes a chimpanzee to complete the trilogy referenced in the title of this paper. In an Argentinian case from 2016, an Argentinian animal protection organisation brought an action on behalf of a chimpanzee named *Cecilia*, who was being kept under precarious conditions in a zoo. The case took the form of a *habeas corpus* petition seeking *Cecilia's* release. The trial court ruled that *Cecilia* was not property capable of ownership but rather a "non-human subject" possessing its own rights. The court based its reasoning on the Argentinian Constitution, international human rights norms, and philosophical concepts of animal rights and concluded that the chimpanzee be removed from the zoo and transferred to a wildlife sanctuary.[21] However, as far as can be ascertained, this remained an isolated ruling, and it is unclear to what extent it reflects the prevailing legal position in Argentina.[22]

The situation in Ecuador is more straightforward. The country enshrined the rights of nature in its 2008 Constitution.[23] Under the relevant provision, natural resources themselves are rights-bearing entities, and any individual – whether a private citizen, a community, or a state authority – has standing to

Nature in Practice: A Case Study on the Impacts of the Colombian Atrato River Decision, in *Journal of Environmental Law*, n. 33, 2021, 531 ff., 538-554; W. RICHARDSON, C. BUSTOS, *Implementing Nature's Rights in Colombia: The Atrato and Amazon Experiences*, in *Revista Derecho del Estado*, n. 54, 2023, 227 ff., 237-240.

[20] Corte Suprema de Justicia, Sentencia of 4 April 2018, 4360-2018; see L. GÓMEZ-BETANCUR, *The Rights of Nature in the Colombian Amazon: Examining Challenges and Opportunities in a Transitional Justice Setting*, in *UCLA Journal of International Law and Foreign Affairs*, n. 25, 2020, 41 ff., 65-70; A. FISCHER-LESCANO, *Nature as a Legal Person: Proxy Constellations in Law*, in *Law & Literature*, n. 32, 2020, 1 ff.; RICHARDSON–BUSTOS (fn. 19), 240-243.

[21] Tercer Juzgado de Garantías de Mendoza, Sentencia of 3 November 2016, P-72.254/15. See M. MONTES FRANCESCHINI, *Animal Personhood: The Quest for Recognition*, in *Animal & Natural Resource Law Review*, n. 17, 2021, 93 ff. and 123 f.

[22] See C.B. BEVILAQUA, *Deliberate legal equivocations: making non-human persons, multiplying differences*, in A. ALVAREZ-NAKAGAWA, C. DOUZINAS (eds.), cit., 118 ff.

[23] Also on what follows G. PRIETO, *The Los Cedros Forest has Rights*, in *Verfassungsblog*, 10 December 2021.

bring actions on their behalf.[24] In a 2011 case, a river damaged by a road construction project brought a claim for restoration, with a public authority acting as its representative.[25] In a 2022 decision, the Constitutional Court of Ecuador further clarified that individual wild animals also fall within the protective scope of the constitutional rights of nature.[26] The court recognised that a woolly monkey captured illegally was a rights-bearing subject whose right to live in accordance with its species had been violated.

Beyond the South American continent, attention turns primarily to New Zealand, which became the first country to confer legal personality by statute upon certain natural resources regarded in Māori tradition as living ancestors.[27] In 2014, the Te Urewera Act transformed Te Urewera – a vast forest and lake district – into a legal person, thereby abolishing its prior status as a national park. In 2017, the Whanganui River followed suit, and, as recently as early 2025, Mount Taranaki was granted the same status.[28] Each enactment simultaneously established a co-governance structure in which representatives of the Māori and of the government jointly exercise the guardianship of these natural entities.[29]

Within Europe, Spain occupies a pioneering role. In 2022, the Spanish Parliament enacted legislation granting legal personality to the Mar Menor lagoon in the region of Murcia.[30] The law designates the lagoon and its catchment area as a legal person, endowed with rights to protection, preservation, and ecological regeneration. Of particular note is the provision on standing (Art. 3(1) 1 Ley 19/2022): the law empowers a committee composed of representatives from various interest groups, recognising the lagoon itself as the directly affected entity. This structure aims to ensure that violations – such as pollution or unlawful interventions – can be prosecuted

---

[24] Corte Constitucional del Ecuador, Sentencia of 8 September 2021, No. 22-18-IN/21.

[25] Sala de la Corte Provincial de Loja, Sentencia of 30 March 2011, No. 11121-2011-0010.

[26] Corte Constitucional de Ecuador, Sentencia of 27 January 2022, No. 253-20-JH/22.

[27] J.D.K. MORRIS, J. RURU, *Giving Voice to Rivers: Legal Personality as a Vehicle for Recognising Indigenous Peoples' Relationships to Water?*, in *Australian Indigenous Law Review*, n. 14, 2010, 49 ff.; G.J. GORDON, *Environmental Personhood*, in *Columbia Journal of Environmental Law*, n. 43, 2018, 49 ff., 55-58; M. KRAMM, *When a River Becomes a Person*, in *Journal of Human Development and Capabilities*, n. 21, 2020, 307 ff.

[28] CNN, 30 January 2025, A New Zealand mountain has been granted personhood. Here's why that matters.

[29] See sec. 16-37 Te Urewera Act 2014.

[30] Ley 19/2022 of 30 September 2022, para el reconocimiento de personalidad jurídica a la laguna del Mar Menor y su cuenca, BOE-A-2022-16019; see B. SORO MATEO, S. ÁLVAREZ, *The Mar Menor Lagoon Enjoys Legal Standing: and now, what?*, in *Verfassungsblog*, 14 October 2022; M.-C. FUCHS, *Rights of Nature Reach Europe: The Mar Menor Case in Spain in the Light of Latin American Precedents*, in *Verfassungsblog*, 24 February 2023.

even where state authorities fail to act. In November 2024, the Spanish Constitutional Court confirmed the constitutionality of this legislation.[31]

Other European states remain cautious in recognising natural resources as legal persons. Instead, they continue to protect the environment primarily through public law statutes, without treating nature itself as a bearer of rights. With regard to animals, numerous European jurisdictions – specifically France, Germany, Italy, the Netherlands, Portugal, Austria, and Switzerland – stick to the position that animals are not things, but the provisions applicable to things apply to them *mutatis mutandis*.[32] Under these legal systems, animals do not possess individual rights enforceable in court; rather, their interests are safeguarded by public authorities.[33]

Whenever reference is made here to the legal personality of natural resources and animals, it must be noted that what is generally meant thereby is not full legal capacity in the civil-law sense recognised under European law, which is reserved for natural persons, legal persons, and partnerships. Rather, in the aforementioned foreign legal systems, animals and natural resources are accorded the capacity to hold certain civil-law rights, in particular claims for injunctions and damages. This constitutes a specific form of partial legal capacity. Accordingly, legal personality is not a uniform concept; its meaning may vary considerably depending on the legal and contextual framework in which it is employed.[34]

4. The Law Applicable to Party and Legal Capacity.

To be a party to civil proceedings means to seek judicial protection in one's own right, or to be the person against whom such protection is sought. This refers to party capacity, which denotes the ability to be a claimant or defendant in legal proceedings. Where it exists, the party may act as claimant, defendant, or intervenor in proceedings by judgment, as applicant or respondent in proceedings by order, and as creditor or debtor in enforcement proceedings. Pursuant to § 50 of the German Code of Civil Procedure (ZPO), party capacity depends on legal capacity: "Any person who possesses legal capacity may be a party to legal proceedings." Party capacity on both sides constitutes a prerequisite for a valid decision on the merits and must be examined *ex officio*

[31] Tribunal Constitucional, Sentencia of 20 November 2024, 142/2024.

[32] E.B. KEMPERS, *Neither Persons nor Things: The Changing Status of Animals in Private Law*, in *European Review of Private Law*, n. 29, 2021, 39 ff.; M. MICHEL, *Moving Away from Thinghood in Law. Animals as a New Legal Category*, in *Journal of Animal Law, Ethics and One Health*, 2023, 29 ff., 35-41.

[33] From the perspective of German administrative law, N. KERSTENSTEINER, *Tiere vor Gericht? Strukturelles Durchsetzungsdefizit im Tierschutzrecht und die Rolle der strategischen Prozessführung*, Tübingen, 2024.

[34] C. VON BAR, *Rechtsfähigkeiten*, in C. VON BAR, O.L. KNÖFEL, U. MAGNUS, H.-P. MANSEL, A. WUDARSKI (eds.), *Gedächtnisschrift für P. Mankowski*, Tübingen, 2024, 877 ff.

(§ 56(1) ZPO). Where it is lacking, the claim or application must be dismissed. An entity lacking party capacity cannot validly perform or receive procedural acts.

In cases without any foreign element, legal capacity – that is, the capacity to bear rights and obligations – is governed by German substantive law. Under German law, natural persons, legal persons, and partnerships possess legal capacity. In contrast, animals, natural resources, and artificial intelligences are, under current law, not considered to possess legal or party capacity.[35]

Where a case involves a foreign element, it becomes necessary to determine the law governing party capacity. Two principal approaches can be identified, which in practice often lead to similar results, though by different reasonings. Some courts and scholars apply the conflict-of-laws rules determining legal capacity under the *lex fori*, thereby identifying the applicable substantive law which governs legal capacity.[36] This typically results in the application of the party's national law – through Art. 7(1) of the Introductory Act to the Civil Code (EGBGB) in the case of natural persons, or through the seat or incorporation for companies and legal persons. Other authorities, by contrast, advocate supplementing German international procedural law with an unwritten conflict rule according to which party capacity should be determined by the procedural law of the party's home jurisdiction.[37] Since, however, in most legal systems procedural party capacity is tied to substantive legal capacity,[38] the practical differences between these approaches are minimal. For this reason, a third – and now predominant – view in the literature suggests that a person or

[35] W. HAU, in T. RAUSCHER, W. KRÜGER (eds.), *Münchener Kommentar zur Zivilprozessordnung mit Gerichtsverfassungsgesetz und Nebengesetzen*[7], Munich, 2025, § 50 ZPO, n. 47; A. SPICKHOFF, in F.J. SÄCKER, R. RIXECKER, H. OETKER, B. LIMPERG, C. SCHUBERT (eds.), *Münchener Kommentar zum Bürgerlichen Gesetzbuch*[10], Munich, 2025, § 1 BGB, n. 13 f.; see also J.-E. SCHIRMER, *Von Mäusen, Menschen und Maschinen – Autonome Systeme in der Architektur der Rechtsfähigkeit*, in *JuristenZeitung*, 2019, 711 ff.

[36] BGHZ 51, 27; BGH, *Neue Juristische Wochenschrift* 2003, 1461; KG, *Neue Juristische Wochenschrift* 2014, 2737; C. ALTHAMMER, in *Zöller, Zivilprozessordnung*[35], 2024, § 50 ZPO, n. 2.

[37] BGH, *Neue Juristische Wochenschrift* 1992, 627 (628); BGH, *Praxis des Internationalen Privat- und Verfahrensrechts* 2000, 21 (22); OLG Karlsruhe, *Neue Zeitschrift für Gesellschaftsrecht* 2018, 757 (n. 13); M. PAGENSTECHER, *Werden die Partei- und Prozessfähigkeit eines Ausländers nach seinem Personalstatut oder nach den Sachnormen der lex fori beurteilt? Ein Beitrag zur Lehre von den zivilprozessualen Kollisionsnormen*, in *Zeitschrift für Zivilprozess*, n. 64, 1950/51, 249 ff., 260-275; G. WAGNER, *Grundprobleme der Parteifähigkeit*, in *Zeitschrift für Zivilprozess*, n. 117, 2004, 305 ff., 363; P. GOTTWALD, in *Nagel–Gottwald, Internationales Zivilprozessrecht*[9], Cologne, 2025, n. 5.15, 5.20; H. SCHACK, *Internationales Zivilverfahrensrecht*[9], Munich, 2025, n. 648.

[38] W. HAU (fn. 35), n. 63, with a reference to the corresponding rule in the *Model European Rules of Civil Procedure* authored by the European Law Institute and UNIDROIT.

ISSN 2532-1862

entity shall have party capacity if it possesses party or legal capacity under its personal law.[39]

Nonetheless, it best accords with § 50 ZPO to treat party capacity not as an independent attribute but as one directly dependent on legal capacity. The applicable law governing legal capacity is then determined in accordance with the relevant conflict-of-laws rule. There is therefore no need for an additional, unwritten reference within German international procedural law to the procedural law of the party's home state. An exception to the *lex fori* principle (*forum regit processum*), by referring to foreign procedural law, is neither necessary nor justified. Instead, the decisive factor is whether the relevant foreign substantive law attributes to the entity the capacity to bear rights and obligations. Whether, under foreign procedural law, the entity also possesses the capacity to assert such rights as a party to civil proceedings is irrelevant to its legal capacity, though such a limitation could, depending on the substantive classification, be regarded within the *lex causae* as a restriction on standing or enforceability. In this way, problems of adjustment sometimes invoked as an argument for applying the foreign *lex fori*[40] can be readily resolved.

It follows that both party capacity and legal capacity are to be determined according to the law governing legal capacity under the relevant conflict-of-laws rules. It must therefore be examined how the law applicable to legal capacity of natural resources and animals is to be determined. The starting point for this inquiry must be the existing conflict-of-laws provisions on legal capacity.

The European Union's conflict-of-law regulations exclude legal and contractual capacity from their respective scopes (Art. 1(2)(a) Rome I Regulation; Art. 1(2)(b) Succession Regulation; Art. 1(2)(a) Matrimonial Property Regimes Regulation). From the perspective of German law, the relevant national conflict rules treat both legal capacity and capacity to contract as matters distinct from the substantive law governing the principal issue (the *lex causae*). Separate conflict rules determine the law governing the legal capacity of natural persons, on the one hand, and of associations and legal persons, on the other.

For natural persons, Art. 7 EGBGB – revised with effect from 1 January 2023 – now provides differentiated connecting factors. Under paragraph 1, sentence 1, the connecting factor for legal capacity is nationality. In cases of multiple nationality, the effective nationality takes precedence under Art. 5(1), sentence

---

[39] W. HAU (fn. 35), n. 63; R. GEIMER, *Internationales Zivilprozessrecht*[9], Cologne, 2024, n. 1936, 2203; H. LINKE, W. HAU, *Internationales Zivilverfahrensrecht*[9], Cologne, 2024, n. 8.3; F. LOYAL, in R.A. SCHÜTZE, M. GEBAUER (eds.), *Wieczorek–Schütze, Zivilprozessordnung und Nebengesetze*[5], Berlin, 2022, § 50 ZPO, n. 45, 47; O. FURTAK, *Die Parteifähigkeit in Zivilverfahren mit Auslandsberührung*, Heidelberg, 1995, 159 ff.; M. BRINKMANN, *Das lex fori-Prinzip und Alternativen*, in *Zeitschrift für Zivilprozess*, n. 129, 2016, 461 ff. and 488 f.

[40] In particular by H. SCHACK (fn. 37), n. 648.

1 EGBGB, meaning the law of the state with which the person is most closely connected applies. If one of several nationalities is German, it prevails irrespective of effectiveness considerations (Art. 5(1), sentence 2 EGBGB). For stateless persons, refugees, and those granted asylum, the law of their domicile or habitual residence applies instead (Art. 5(2) EGBGB, Art. 12(1) Refugee Convention).

The legal capacity of companies and legal persons is governed by the *lex societatis*, a conflict rule neither codified in European nor in German statutory law. Two connecting factors are possible: the registered (or statutory) seat and the administrative seat. The former is decisive within the European Union[41] and in relation to the United States,[42] whereas, in all other cases, the latter applies.[43]

5. Failed Application to Natural Resources and Animals.

Turning to the law governing the legal capacity of natural resources and animals, the first question is whether the existing system of conflict-of-laws rules offers a solution. This requires, as a preliminary step, the conflict-of-laws characterisation of the legal capacity of natural resources and animals. Characterisation determines which connecting rule is to be applied.[44] It follows a functional and teleological approach, taking the *lex fori* as its starting point.[45]

As the comparative survey has shown, natural resources that are recognised as legal persons under foreign law are frequently immovable property or integral parts thereof – that is, "things" within the meaning of §§ 90 and 94 of the German Civil Code (BGB). This applies, for example, to mountains or areas surrounding a particular river. However, where an entire ecosystem is granted legal personality under foreign law, the limits of the concept of a "thing" under

[41] BGHZ 154, 185 (189 f.); BGH, *Neue Juristische Wochenschrift* 2007, 1529 (1530); P. KINDLER, in F.J. SÄCKER, R. RIXECKER, H. OETKER, B. LIMPERG, C. SCHUBERT (eds.), *Münchener Kommentar zum Bürgerlichen Gesetzbuch*⁹, Munich, 2025, *Internationales Handels- und Gesellschaftsrecht*, n. 317-378.

[42] Art. XXV(5), sentence 2 of the Treaty of Friendship, Commerce and Navigation between the United States of America and the Federal Republic of Germany, signed on 29 October 1954.

[43] BGHZ 97, 269 (271); BGHZ 178, 192 (n. 21); KINDLER (fn. 41), n. 379 ff.

[44] H.-P. MANSEL, *Privatrechtsdogmatik und Internationales Privatrecht*, in H.C. GRIGOLEIT, J. NEUNER, J. PETERSEN (eds.), *Privatrechtsdogmatik im 21. Jahrhundert: Festschrift für C.-W. Canaris*, Berlin, 2017, 739 ff., 745-767; J. VON HEIN, in F.J. SÄCKER, R. RIXECKER, H. OETKER, B. LIMPERG, C. SCHUBERT (eds.), *Münchener Kommentar zum Bürgerlichen Gesetzbuch*[9], Munich, 2024, *Einleitung zum Internationalen Privatrecht*, n. 109-116; D. LOOSCHELDERS, in *Staudinger, BGB*, Cologne, 2024, *Einleitung zum Internationalen Privatrecht*, n. 1080-1087.

[45] BGHZ 29, 137; BGH, *Neue Juristische Wochenschrift* 2016, 2953, n. 13; H.-P. MANSEL (fn. 44), 753 f.; J. VON HEIN (nn. 44), n. 121; D. LOOSCHELDERS (fn. 44), n. 1091-1098. For a discussion of the adequate rule for the legal capacity of animals in Italian conflict-of-laws, see S. DOMINELLI (fn. 17), 1167-1176.

§ 90 BGB – which requires a tangible object – are exceeded, and with it the limits of the concept relevant for conflict-of-laws purposes.[46] An ecosystem is more than the parcel of land on or around which it exists. It constitutes a complex network and system of interrelations between organisms of various kinds and sizes within their inanimate environment.[47] Accordingly, only parts of a natural resource can fall within the notion of a "thing."

Where the legal capacity of animals is at issue, § 90a sentence 1 BGB expressly provides that animals are not "things." Nevertheless, pursuant to § 90a sentence 3 BGB, the provisions applicable to things apply to them *mutatis mutandis*. The conflict-of-laws rules governing things – Art. 43 to 46 EGBGB – however, concern only rights *in rem*. Their subject matter is the property's status as an object of rights;[48] they do not determine the rights or legal capacity of things themselves.

Art. 7(1) EGBGB only governs legal capacity of human beings. An assessment of the legal capacity of natural resources and animals on the basis of this provision is therefore excluded from the outset, even though they must ultimately be represented by human agents in order to act in civil and procedural matters. An analogous application of this provision is equally problematic. The connecting factor underlying Art. 7(1) sentence 1 EGBGB – nationality – refers to a status that only human beings can possess. Its application to natural resources or animals would thus be devoid of meaning. It is true that international property law under Art. 45(1) sentence 2 no. 1 EGBGB recognises a form of "nationality" for certain objects, namely aircraft. Yet this refers to the registration of an aircraft in a public register maintained by a state,[49] as required by Art. 17 of the 1944 Chicago Convention on International Civil Aviation. Since no comparable register exists for specially protected natural resources or animals, this concept cannot be transposed. Art. 7(1) EGBGB is therefore neither directly nor by analogy applicable to the legal capacity of natural resources or animals.

The very fact that Art. 7(1) EGBGB is the only written conflict rule addressing legal capacity reflects the anthropocentric orientation of private international law. Human beings and their mutual legal relations constitute its object of regulation, and its connecting factors are accordingly designed.

If one continues to search for a connecting factor applicable to the legal capacity of natural resources and animals, the direct or analogous application of the conflict rules for companies and legal persons must also be excluded.

---

[46] H.-P. MANSEL, in *Staudinger, BGB*, Cologne, 2015, Art. 43 EGBGB, n. 2; C. WENDEHORST, in F.J. SÄCKER, R. RIXECKER, H. OETKER, B. LIMPERG, C. SCHUBERT (eds.), *Münchener Kommentar zum Bürgerlichen Gesetzbuch*[9], Munich, 2025, Art. 43 EGBGB, n. 14-16.

[47] C.R. TOWNSEND, M. BEGON, J.L. HARPER, *Ökologie*[2], Berlin, 2009, 428; M. SCHAEFER, *Wörterbuch der Ökologie*[5], Heidelberg, 2012, 204 f.

[48] H.-P. MANSEL (fn. 46), n. 502; A. SPICKHOFF, in W. HAU, R. POSECK (eds.), *Beck'scher Online-Kommentar, BGB*, Munich, 1 August 2024, Art. 43 EGBGB, n. 7.

[49] H.-P. MANSEL, in *Staudinger, BGB*, Cologne, 2015, Art. 45 EGBGB, n. 101-103.

The subject matter of international company law concerns organised associations of persons or organised pools of assets created by legal act.[50] The relevant organisation must have an outwardly recognisable structure.[51] Legal relationships lacking such an external organisation (notably silent partnerships) are to be characterised as contractual in nature and are therefore governed by the Rome I Regulation.[52] Natural resources and animals, by their very nature, lack such a human-made organisational structure. The underlying interests are thus entirely different and necessitate a distinct characterisation.

6. A New Conflict-of-Laws Rule.

To determine the law applicable to the question of legal capacity, it is therefore necessary to create a new conflict-of-laws rule – one that is distinctive in that it would exist solely to address a phenomenon of foreign law that has no equivalent under German substantive law. This raises the issue of identifying an appropriate connecting factor. In keeping with the general principles of private international law, the chosen connecting factor should indicate the legal system with which the matter has the closest connection. The objective is to identify the "most spatially appropriate" law by weighing the abstract interests at stake.[53] The German Federal Court of Justice *(Bundesgerichtshof)* has articulated the purpose of conflict-of-laws rules as serving "to realise conflict-of-laws equity in the sense that legal relationships with a foreign element should be governed by that substantive legal order to which they are most closely connected in view of the facts of the case."[54] In this context, predictability of the connection and legal certainty are of particular importance. Moreover, if a connecting factor can be identified that is likely to be adopted in the conflict-of-laws systems of other jurisdictions, this promotes international harmony of decisions, ensuring that comparable factual scenarios are resolved according to the same substantive law irrespective of jurisdiction.

A first conceivable connecting factor for the subject matter under consideration could be the locus of recognition – that is, the place where the

---

[50] G. MÄSCH, in W. HAU, R. POSECK (eds.), *Beck'scher Online-Kommentar, BGB*, Munich, 1 February 2025, Art. 12 EGBGB, *Anhang II: Internationales Gesellschaftsrecht*, n. 36; P. KINDLER (fn. 41), n. 247.

[51] W.-H. ROTH, *Internationalprivatrechtliche Aspekte der Personengesellschaften*, in *Zeitschrift für Unternehmens- und Gesellschaftsrecht* 2014, 168 ff. (176); P. KINDLER (fn. 41), n. 248.

[52] D. MARTINY, in F.J. SÄCKER, R. RIXECKER, H. OETKER, B. LIMPERG, C. SCHUBERT (eds.), *Münchener Kommentar zum Bürgerlichen Gesetzbuch*[9], Munich, 2025, Art. 1 Rom I-VO, n. 74; G. MÄSCH (fn. 50), n. 38.

[53] H.-P. MANSEL (fn. 44), 748 f.; J. VON HEIN (fn. 44), n. 28-32.

[54] BGHZ 75, 32, 41.

legal capacity of the natural resource or animal concerned is recognised. As noted earlier, only a small number of states have thus far accorded legal personality to non-human entities. It may therefore seem plausible to allow the law of such a state to determine the question of legal capacity. This would effectively amount to a form of registration principle. However, a conflict rule framed in this way would carry inherent risks if states were to recognise the legal capacity of natural resources or animals located outside their own territories. Such a result would constitute an excessive intrusion into the sovereign and regulatory authority of other states.

It is therefore preferable to adopt the *lex rei sitae* – the law of the place where the resource or animal is physically located – as the governing law. This approach offers both predictability and legal certainty. It also has the advantage of allowing each state to decide autonomously on the legal capacity of the animals and natural resources located within its own territory. Since such entities are, in most cases, things, recourse to the *lex rei sitae* aligns well with the other object-related conflict rules contained in the EGBGB. While ecosystems, as previously discussed, comprise not only a multitude of tangible elements but also the biological interrelations among diverse organisms and their inanimate environment – rendering them volatile and, at times, ephemeral – it appears possible to identify a location of presence. Frequently, however, ecosystems extend across national borders, meaning they are situated in more than one state. This phenomenon is not unknown to international property law, particularly in relation to cables, pipelines, and conduits that traverse borders. The established solution in such cases – the division of the object into territorially defined segments[55] – can be transferred to natural resources. Each state may thus determine the legal capacity of those parts of an ecosystem situated within its territory.

Accordingly, it is submitted that Art. 7 EGBGB be supplemented with a new paragraph 3, whose first sentence should read: "The legal capacity of a natural resource or an animal is governed by the substantive law of the state in which it is located."

The reference to the substantive law of the place of location and the resulting exclusion of *renvoi*, rather than a reference to the entire legal system, appears necessary to avoid legal uncertainty. Even states that have granted legal personality to natural resources or animals have, as far as can be ascertained, not yet enacted corresponding conflict-of-laws provisions. Were a *renvoi* possible, a German court might be faced with the needless and uncertain task of identifying any implicit conflict rule under the foreign law, which would likely refer to the *lex rei sitae* anyway.

However, when connecting the legal capacity of non-human entities to their location, one must consider that wild animals frequently change their place of

---

[55] H.-P. MANSEL (fn. 46), n. 387 f.; C. WENDEHORST (fn. 46), n. 109.

residence and may cross national borders, particularly when their habitat is in proximity to a border. The 1979 Convention on the Conservation of Migratory Species of Wild Animals therefore imposes specific obligations on contracting states to adopt protective measures for migratory species. A comparable issue arises in conflict-of-laws doctrine when determining the habitual residence of cross-border commuters.[56] If one state were to recognise an animal's legal capacity while another denied it, the consequence would be that the animal would gain and lose its legal capacity repeatedly – potentially several times a day. For this reason, the proposed conflict rule requires a stabilising element. The establishment of a "habitual residence" is, however, unsuitable for animals: neither a centre of life nor an intention to reside can be attributed meaningfully to them. Stability must therefore be achieved in another way. It is therefore submitted that the new Art. 7(3) EGBGB is supplemented with the following second sentence: "Legal capacity once acquired shall not be affected by a temporary change in location."

Accordingly, a wild animal would lose the legal capacity acquired under the law of its former location only if it were to remain in another state for an extended period. Admittedly, this criterion introduces a certain degree of uncertainty, particularly concerning the temporal limits of what constitutes a merely temporary change of location. It will therefore be for the courts to use the flexibility inherent in the proposed rule to achieve fairness in individual cases. From a practical standpoint, determining the place of location of an animal living in a border region may also present evidentiary challenges. Under the proposed wording of Art. 7(3), sentence 2 EGBGB, it would suffice to establish that the animal was present within the territory of the state recognising its legal capacity. Anyone contesting such capacity would then bear the burden of proving that the animal subsequently took up a sustained presence within a state that does not recognise legal personality.

Until the proposed amendment is enacted, courts should fill the existing lacuna by way of judge-made development of the law.

7. Public Policy.

Where, under the proposed provision or by means of judge-made legal development, foreign law on legal capacity concerning natural resources and animals is to be applied, one necessarily embarks – using *Leo Raape's* much-cited metaphor – on a "leap into the dark".[57] The proposed conflict-of-laws rule,

---

[56] A. SPICKHOFF, *Grenzpendler als Grenzfälle – Zum „gewöhnlichen Aufenthalt" im IPR*, in *Praxis des Internationalen Privat- und Verfahrensrechts* 1995, 185 ff.; J. CROON-GESTEFELD, *Der gewöhnliche Aufenthalt an Demenz erkrankter Personen*, in *Praxis des Internationalen Privat- und Verfahrensrechts* 2024, 184 ff. and 188 f.

[57] L. RAAPE, F. STURM, *Internationales Privatrecht*[6], Munich, 1977, vol. 1, § 13 I; but see also G. KEGEL, K. SCHURIG, *Internationales Privatrecht*[9], Munich, 2004, § 16 I.

however, would at least cast some light into that darkness, as the specific subject matter of the reference would substantially delineate the content of the foreign law thereby invoked. Moreover, a reference to foreign law does not yet mean that such law will in fact be applied. According to Art. 6, sentence 1 EGBGB, a provision of foreign law shall not be applied if its application would lead to a result manifestly incompatible with the fundamental principles of German law. Pursuant to Art. 6, sentence 2 EGBGB, this applies in particular where the application of foreign law would result in a violation of fundamental rights. In such cases, the reference established by the otherwise applicable conflict rule is suspended, and the resulting lacuna is to be filled, as far as possible, within the framework of the foreign *lex causae*.[58]

The object of the *ordre public* review is therefore not the foreign law as such[59] – domestic courts are not called upon to evaluate foreign legal systems in the abstract. What matters instead is whether the domestic court, through its decision – an act of domestic sovereign authority – would infringe fundamental principles of the domestic legal order, including constitutional rights. The review thus concerns the exercise of domestic sovereign power in cases presenting a sufficient connection to Germany. The validity of the foreign law itself is not impugned. The review is therefore confined to the result of applying that law, not the law in abstract terms – a result control, not a norm control. This standard of review permits and indeed requires consideration of the specific circumstances of the case.

Limiting the application of foreign law by reference to the domestic *ordre public* remains exceptional. Private international law is, in principle, neutral as to the substantive outcome achieved under the law designated by the relevant conflict rule. Justice in private international law demands the application of the law most appropriately connected in spatial terms, not necessarily the law that appears "substantively best."

The question thus arises whether the application of foreign law granting legal personality to animals or natural resources is compatible with the fundamental principles of justice in the German legal order. German substantive law takes a different view from the aforementioned South American and the Spanish legal system. For *ordre public* purposes, however, the decisive issue is whether this position is of such a fundamental nature that the differing approach of foreign law cannot be tolerated. It must be borne in mind that even under German law, legal capacity is not exclusively reserved for human beings or associations of persons. Legal persons in the form of corporations, institutions, and foundations possess legal capacity not as a natural or inherent right, but because the human-made legal order confers it

---

[58] J. VON HEIN, in F.J. SÄCKER, R. RIXECKER, H. OETKER, B. LIMPERG, C. SCHUBERT (eds.), *Münchener Kommentar zum Bürgerlichen Gesetzbuch*[9], Munich, 2024, Art. 6 EGBGB, n. 226-257.

[59] BGHZ 39, 173; BGHZ 160, 332; J. VON HEIN (fn. 58), n. 126-130; S. LORENZ, in W. HAU, R. POSECK (eds.), *Beck'scher Online-Kommentar, BGB*, Munich, 1 February 2025, Art. 6 EGBGB, n. 10-13.

upon them. While the comprehensive protection of human dignity entails a requirement that the legal status of human beings be kept distinct from that of other entities, the conferral of legal capacity, as the example of legal persons demonstrates, is not itself an expression of the essence of human dignity. Conversely, environmental and animal protection are not merely legislative objectives under ordinary law; they are constitutional state objectives under Art. 20a of the German Constitution (GG). Although Art. 20a GG is primarily addressed to the legislature, it is recognised as being of interpretative relevance for the judiciary as well, including in the sphere of private law.[60] Accordingly, where foreign law seeks to promote the objectives of environmental and animal protection by recognising the legal capacity of natural resources and animals, this must be understood as a legally distinct means of achieving a goal that is also recognised in Germany. It is therefore not to be interpreted as contradicting domestic fundamental values. *Dominelli* arrives at the same conclusion for the Italian *ordre public*.[61]

Furthermore, a violation of *ordre public* can only be established where there exists a sufficient domestic connection.[62] Although this requirement is not explicitly stated in the wording of Art. 6 EGBGB, the legislative materials make clear that the legislator presupposed it, and it is universally accepted in doctrine. The degree of conflict with domestic principles of justice must be assessed in proportion to the strength of the domestic connection. The more serious the conflict, the lower the threshold for establishing a sufficient connection; conversely, where the domestic connection is strong, the tolerance for divergent foreign concepts may be reduced. The mere international jurisdiction of German courts does not, in principle, suffice to establish a sufficient domestic connection.[63] However, the defendant's habitual residence or German nationality would ordinarily be sufficient. At the same time, in the types of cases likely to arise in this context, the matter will typically be most closely connected to the state in which the animal or natural resource is located. This, in turn, argues against the likelihood that the application of a foreign law recognising legal capacity for such entities would contravene German *ordre public*.

8. Representation.

Once it has been established that, under applicable foreign law, a natural resource or an animal possesses legal and procedural capacity, a further

---

[60] H. SCHULZE-FIELITZ, in H. DREIER (ed.), *Grundgesetz-Kommentar*[3], Munich, 2015, Art. 20a GG, n. 76-80; C. CALLIESS, in *Dürig–Herzog–Scholz, Grundgesetz-Kommentar*, Munich, October 2024, Art. 20a GG, n. 144 f., 208-239.

[61] S. DOMINELLI (fn. 17), 1176-1180.

[62] J. VON HEIN (fn. 58), n. 199-212; S. LORENZ (fn. 59), n. 16.

[63] J. VON HEIN (fn. 58), n. 201 f.; S. LORENZ (fn. 59), n. 16.

ISSN 2532-1862

question arises: who represents such an entity – whether in judicial proceedings or in extrajudicial matters? The manner in which representation is exercised determines whether the substantive rights of the non-human entity can in practice be realised. This too requires clarification of the applicable law. The issue should be governed by the same law that determines legal capacity, since only within that legal system can one expect to find provisions regulating the authority of representation. A corresponding (accessory) connection is therefore necessary. Accordingly, the proposed Art. 7(3) EGBGB should include the following third sentence: "The representation of a natural resource or an animal shall be governed by the law applicable to its legal capacity." This rule will ensure consistency between the law governing legal capacity and that governing representation. It would then be the task of the representative to formulate a procedurally admissible claim. In cases where a non-human entity appears as claimant, it would, for instance, not be practicable to seek performance in the form of payment to the claimant itself.

9. Conclusions.

At first glance, the issue addressed here may appear somewhat curious. Yet it is by no means inconceivable that it will, sooner or later, acquire practical relevance for European courts. The number of states that have conferred legal personality – or a status akin to legal personality – upon selected natural resources, and in some cases upon animals, is steadily increasing. With Spain among them, a European country has already joined this development. It is therefore readily imaginable that European courts will eventually be required to adjudicate disputes brought by non-human entities, not least in the context of climate litigation. In such cases, an Italian or German court would need to adopt a position on the fact that, under foreign law, animals and natural resources may possess the capacity to hold certain civil-law rights – specifically, claims for injunctions and damages. This constitutes a special form of partial legal capacity, distinct from the full civil-law legal capacity reserved under domestic law for human beings, legal persons, and partnerships.

In these circumstances, the domestic court would first have to address the question of the party capacity of the non-human entity. Under the procedural laws of foreign jurisdictions, natural resources and animals possessing legal capacity are also typically granted the procedural capacity to assert their own rights in civil proceedings, represented by a human agent acting on their behalf. German procedural law, however, ties party capacity to legal capacity. In cases involving a foreign element, a German court must therefore determine the law governing legal capacity by reference to conflict-of-laws principles. Whether a foreign party possesses party capacity under its domestic procedural law is, contrary to a widespread view, irrelevant for party capacity under the German *lex fori*, although it may, depending on its substantive

characterisation, operate within the *lex causae* as a restriction on entitlement or enforceability.

The existing conflict rules – whether written or unwritten – governing the legal capacity of natural persons, companies, and legal persons are ill-suited to determining the law applicable to the legal capacity of natural resources and animals. Art. 7(1) of the EGBGB links the legal capacity of natural persons to the connecting factor of nationality, a concept that has no equivalent for non-human entities. Likewise, the *lex societatis* applies only to associations of persons or organised bodies of assets with an outwardly recognisable structure – requirements not met in the case of natural resources or animals.

A new conflict rule therefore seems inevitable. It could appropriately be placed in Art. 7(3) EGBGB. The most suitable connecting factor would be the location of the natural resource or animal. Legal capacity once acquired should not be affected by a temporary change of location. The issue of representation should also be linked accessorily to the law governing legal capacity, since only that law can be expected to provide rules determining who may represent the non-human entity. Until such a rule is enacted, courts should fill the existing lacuna through judicial development of the law.

The application of foreign law conferring legal capacity upon natural resources and animals does not contravene German *ordre public*. While the comprehensive protection of human dignity requires a distinction between the legal status of human beings and other entities, the conferral of legal capacity – illustrated by the example of legal persons – is not itself an expression of the essence of human dignity.

How much actual environmental and animal protection can be achieved through the recognition of legal capacity for non-human entities is a different kettle of fish.[64] Ultimately, the degree of protection always depends on human conduct. Even legally capable natural resources and animals must be represented by human beings if their rights are to be realised. In this respect, there is no essential difference from the model still prevailing under German law and in most other jurisdictions, which places the protection of the environment and nature primarily in the hands of public institutions – where, once again, everything depends on the actions of human agents.

[64] A similar conclusion is reached by S. DOMINELLI (fn. 17), 1182 f.

ISSN 2532-1862