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Legal Subjectivity of Chimps, or "Monkey Verdicts" in the United States

An eminent Ancient Roman jurist and public servant Aurelius Hermogenianus pointed to one of the most important features of legal systems: "Therefore, since all law is established for men's sake, we shall speak first of the status of persons and afterward about the rest".[1] Contemporary legal systems, based on the concept of human dignity, very clearly point out the differences between things and subjects of law. The issue of legal subjectivity can be simplified to the statement that the entities of civil law relations are natural persons and legal persons.[2] The law provides these entities with privileges, obligations and the ability to perform legal acts.[3] Hans Kelsen said it is necessary to "(…) bring physical and legal persons (…) on the common denominator, on the denominator of law".[4]

All animals, without any exception, are deprived of both legal capacity and personality. Animals do not enjoy constitutional freedoms and rights. Contemporary Western legal systems reserve all freedoms and rights for man.[5] The provisions relating

[1] *The Digest of Justinian*, translation edited by A. Watson, Pennsylvania 1998, p. 15.

[2] Under the Polish law there also exist unincorporated entities with legal capacity. Those units do not have legal personality, but they have legal capacity, i.e. the ability to be the subject of rights and obligations.

[3] T. Pietrzykowski, *Podmiotowość prawna – ujęcie teoretyczne*, [in:] *O czym mówią prawnicy, mówiąc o podmiotowości*, red. A. Bielska-Brodziak, Katowice 2015, pp. 15–30.

[4] S. Kirste, *Human Dignity and the Concept of Person in Law*, [in:] *The Depth of the Human Person: A Multidisciplinary Approach*, ed. M. Welker, Cambridge 2014, p. 290.

[5] O. Horta, *What Is Speciesism?*, "The Journal of Agricultural and Environmental Ethics" 2010, No. 23, pp. 243–266; R.D. Ryder, *Szowinizm gatunkowy, czyli etyka wiwisekcji*, translated by Z. Szawarski, „Etyka" 1980, Nr 18, pp. 39–47.

to things apply to them accordingly. Despite the so-called dereification of animals in most legal systems and a humanization of the law applicable to them, the status of animals, including those closest to *homo sapiens*, is still much closer to things.[6]

The paradigm of recognizing only people and legal entities as entitled to enjoy the freedoms and rights guaranteed by legal systems is beginning to change.[7] A specific confirmation of this thesis are court proceedings brought by non-governmental organizations, as well as legislative decisions granting legal personality for the natural environment (in whole or in part).[8] In the case of animals, it is usually said about the right to life and freedom. The issue of practical implementation of the right to freedom by applying the *habeas corpus* order for animals is the subject of this work.

The *habeas corpus* order has a long tradition in the common law system.[9] It was introduced in England in 1679 during the reign of Charles II and expressed public resistance against the arbitrary behavior of the ruler. The essence of the *habeas corpus* order is the judicial review of the lawfulness of detention, which still exists in the Anglo-Saxon legal system. Within one day, the detainee had the right to demand to be brought before a court to find out about the charges, and he could not be imprisoned for more than three to twenty days, which was dependent on the distance from the place of imprisonment to the seat of the court. The *habeas corpus* order was created to protect the individual against the oppressive ruler, and attempts are now being made to embrace the *habeas corpus* order also for animals.

In most cases, attempts of issuing the *habeas corpus* order on animals are unsuccessful. The article deals with four proceedings initiated by the non-profit organization the Nonhuman Rights Project.[10] The organization was founded in 2007 by the American lawyer Steven M. Wise. Its purpose is to take action to recognize animals as legal entities who are holders of a certain limited catalog of rights. According to its founder, the criterion for obtaining legal personality is related to the ability of certain species of

[6] T. Liszcz, *Zwierzęta w prawie stanowionym*, „Więź" 1997, Nr 7, pp. 46–54; W. Jedlecka, *Z problematyki własności zwierząt*, [in:] *Własność w prawie i gospodarce*, red. U. Kalina-Prasznic, Wrocław 2017, p. 148; M. Nazar, *Normatywna dereifikacja zwierząt – aspekty cywilnoprawne*, [in:] *Prawna ochrona zwierząt*, red. M. Mozgawa, Lublin 2002, p. 139.

[7] T. Pietrzykowski, *Problem podmiotowości prawnej zwierząt z perspektywy filozofii prawa*, „Przegląd Filozoficzny – Nowa Seria" 2014, Nr 2, pp. 247–249.

[8] J.S. Kerr, M. Bernstein, A. Schwoerke, M.D. Strugar, J.S. Goodman, *A Slave by Any Other Name Is Still a Slave: The Tilikum Case and Application of the Thirteenth Amendment to Nonhuman Animals*, "Animal Law" 2013, No. 19, p. 8; S.A. Radcliffe, *Development for a Postneoliberal Era? Sumak kawsay, Living Well and the Limits to Decolonisation in Ecuador*, "Geoforum" 2012, Vol. 43, pp. 240–249; W. Bar, *Nowa dogmatyka Konstytucji Republiki Ekwadoru. Casus praw natury*, „Teka Komisji Prawniczej – OL PAN" 2010, Vol. 3, pp. 33–47; K. Pietari, *Ecuador's Constitutional Rights of Nature: Implementation, Impacts, and Lessons Learned*, "Willamette Environmental Law Journal" 2017, No. 2, pp. 37–94.

[9] Full title: An Act for the better securing the Liberty of the Subject, and for Prevention of Imprisonment beyond the Seas.

[10] See more: https://www.nonhumanrights.org/ [access: 15.10.2019].

animals, such as primates, whales or elephants to self-awareness, the ability to act consciously and the existence of basic interests – the will to live and the ability to feel pain. The author indicates in the book *Rattling the Cage*: "They are »legal things«. Their most basic and fundamental interests – their pains, their lives, their freedoms – are intentionally ignored, often maliciously trampled, and routinely abused. Ancient philosophers claimed that all nonhuman animals had been designed and placed on this earth just for human beings. Ancient jurists declared that law had been created just for human beings. Although philosophy and science have long since recanted, the law has not".[11] In the following cases, the right to freedom as well as freedom from torture is usually raised as closely related to keeping the animal in non-natural conditions. In 2013, the Nonhuman Rights Project spoke on behalf of four detained chimpanzees – Leo, Hercules, Kiko and Tommy – to courts in New York to determine the legality of their imprisonment. According to the animal representative, chimpanzees, like humans, benefit from guarantees of imprisonment control. Although the Nonhuman Rights Project has lost each case, these rulings are an important voice in the discussion about whether there are non-human entities that exercise fundamental rights.

The source of human and citizen rights is human dignity.[12] In other words, human dignity is a foundation of law. It provides an axiological basis for modern legal systems.[13] It is assumed that personal dignity is a certain inherent value of every human being and is also a synonym of humanity. In this sense, human dignity is inalienable, inherent and inviolable.[14] The source of human and citizen rights is human dignity. It provides an axiological basis for modern legal systems.[15] The law does not indicate what human dignity really is, only showing how it works. The emergence of the concept of inherent human dignity after World War II was largely dictated by a political decision. The signatory states of the United Nations Charter were not interested in creating any definition of "legal dignity", which is still a legally undefined term.

The first legal act that more broadly refers to the concept of human dignity is the Universal Declaration of Human Rights,[16] proclaimed by the United Nations General

[11] S.M. Wise, *Rattling the Cage. Toward Legal Rights for Animals*, Cambridge 2014, p. 4.

[12] M. Zubik, *„Wolność" a „prawo" (pięć hipotez o stosowaniu pojęć konstytucyjnych dotyczących praw człowieka)*, „Państwo i Prawo" 2015, Vol. 9, pp. 3–19.

[13] More on problems related to the relationship of dignity and law, see: S. Kirste, *A Legal Concept of Human Dignity as a Foundation of Law*, [in:] *Human Dignity as a Foundation of Law*, eds. W. Brugger, S. Kirste, Stuttgart 2013, pp. 7–13; M. Granat, *Godność człowieka z art. 30 Konstytucji RP jako wartość i jako norma prawna*, „Państwo i Prawo" 2014, Nr 8, p. 6.

[14] L. Bosek, W. Borysiak, *Art. 30*, [in:] *Konstytucja RP*, t. 1: *Komentarz do art. 1–86*, red. L. Bosek, M. Safjan, Warszawa 2016, pp. 723–751.

[15] L. Garlicki, *Rozdział II: Wolności, prawa i obowiązki człowieka i obywatela. Zasady ogólne*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, t. 3, red. L. Garlicki, Warszawa 2003, pp. 11–12.

[16] The first references to the term appeared in Art. 151 I of the German Weimar Constitution of 1919 and in the Preamble to the Irish Constitution of 1937.

Assembly on 10 December 1948.[17] The Declaration begins with the following words: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world (…)".

Stephan Kirste mentioned earlier states: "From these patterns, a rather systematical conception emerged, holding that it is impossible to define human dignity positively, but only negatively through possible violations of it. The negative approach thereby replaces the question of what human dignity is by the question when and under what conditions it is violated".[18]

The functional rather than the material nature of human dignity is of paramount importance for actions brought by the Non Human Rights Project. This organization referred to those features of humanity that could be related to animals to some extent. Although the word "dignity", understood as "human dignity", is not mentioned in chimp lawsuits. First of all, according to the current state of research presented by the claimant, the chimpanzee is an autonomous entity with very well-developed cognitive abilities. Chimpanzees show self-awareness, agency, abstract thinking ability, and self-criticism. They feel pain and emotions, intentionally plan and take action, and its behavior cannot be qualified as simple instincts. This statement is not made in the texts of the lawsuits, but the plaintiff's representatives show that, in fact, chimpanzees enjoy their rights, at least to a limited extent, just like humans, because they are basically equipped with a set of features very similar to people.

In the case of chimpanzee Kiko,[19] the court refused to issue the *habeas corpus* order because it considered that its issuing was pointless. The chimpanzee was kept on his private property by his owners. The Non Human Rights Project, which intervened on behalf of the chimpanzee, requested the animal to be moved to a sanctuary specially created for this purpose. In a laconic ruling, the court stated that: "It is well settled that a *habeas corpus* proceeding must be dismissed where the subject of the petition is not entitled to immediate release from custody". The court, even without refusing a certain legal personality to the animal, decided that issuing a *habeas corpus* order was unacceptable, because in this case it would not lead to his release. According to the court, a chimp would only be transferred from one prison to another. The court, probably due to the controversy of the issues it had to consider, did not refer in any way to the legitimacy of granting fundamental rights to animals, and in this particular case, the human rights of a chimpanzee.

[17] United Nations General Assembly Resolution 217A.

[18] S. Kirste, *A Legal*…, p. 69.

[19] *Nonhuman Rights Project, Inc., on Behalf of Kiko, Appellant, v Carmen Presti, Individually and as an Officer and Director of the Primate Sanctuary, Inc., et al., Respondents*, 2015 NY Slip Op 00085 [124 AD3d 1334], http://www.courts.state.ny.us [access: 15.10.2019].

In the case of Tommy,[20] the court ruled on the inadmissibility of issuing a *habeas corpus* order, considering that it was impossible to relate the concept of a person to a chimpanzee who was being held in a caravan settlement in New York State. The court took the position that a person within the meaning of the law constitutes the subject of rights and obligations and the guarantees under Art. 70 New York Civil Practice Law and Rules apply only to man. An animal, being unable to bear specific duties or responsibilities, cannot be the subject of freedom and rights as much as a human being. The court noted that case-law had always noticed a correlation of rights with obligations, referring to the traditional understanding of legal personality presented by *Black's Law Dictionary*: "So far as legal theory is concerned, a person is any being whom the law regards as capable of rights and duties. (…) Persons are the substances of which rights and duties are the attributes. It is only in this respect that persons possess juridical significance, and this is the exclusive point of view from which personality receives legal recognition". In its ruling, the court unfortunately did not refer to the most frequently raised arguments, which are opposed to the statements of supporters of not granting animals any legal status.

In the summary of the judgment, the court stated that the human rights paradigm does not deprive the animals themselves of protection. What is more, modern legislation aims to ensure the fullest possible protection for animals. This is confirmed by the prohibitions of torture or unreasonable killing of animals, their transport in a cruel and inhuman way, or the ban on having animals without providing them with food and water. As a solution to the applicant's doubts, the court indicates taking action to further extend the protection of chimpanzees.

In the case of Leo and Hercules,[21] the organization sued New York State University. Both chimpanzees were held for research by Stony Brook University. As in previous cases, the organization referred primarily to the similarity of chimpanzees to people: "They share with humans similarities in brain structure and cognitive development, including a parallel development of communications skills, as shown by their use and understanding of sign language. (...) Chimpanzees also demonstrate self-awareness, recognizing themselves in mirrors and photographs and on television, and have the capacity to reflect on their behavior".

The most significant part of the judgment concerns the legal subjectivity of chimpanzees. As the court rightly points out – legal subjectivity is not closely related to

[20] *The People of the State of New York ex rel. The Nonhuman Rights Project, Inc., on Behalf of Tommy, Appellant, v Patrick C. Lavery, Individually and as an Officer of Circle L Trailer Sales, Inc., et al., Respondents*, 2014 NY Slip Op 08531 [124 AD3d 148], http://www.courts.state.ny.us [access: 15.10.2019].

[21] *The Nonhuman Rights Project, Inc., on behalf of Hercules and Leo, Petitioners, against Samuel L. Stanley, Jr., M.D., as President of State University of New York at Stony State University of New York at Stony Brook aka Stony Brook University*, 2015 NY Slip Op 25257 [49 Misc 3d 746], http://www.courts.state.ny.us [access: 15.10.2019].

being human. The applicant organization considered that the appropriate form of protection was the adoption of legal fiction, as was the case with corporations or local governments. Then the protection of animals is ensured by a political decision and not by science. This is related to the existence of the above-mentioned personality elements of chimpanzees. Granting them freedom and equality characteristic of people is a requirement of justice.

The court did not accept this position. Legal personality cannot be compared with the status of animals, because legal personality was created by people and for people. Legal persons are a form of human activity, they are an expression and reflection of human rights and freedoms. In its ruling, the court rightly notes that the concept of legal personality has evolved throughout history, giving the example of the fate of slaves in the United States and women who were denied full rights, often treated as the property of a husband or other male family members. The court states that: "The past mistreatment of humans, whether slaves, women, indigenous people or others, as property, does not, however, serve as a legal predicate or appropriate analogy for extending to nonhumans the status of legal personhood. Rather, the parameters of legal personhood have long been and will continue to be discussed and debated by legal theorists, commentators, and courts, and will not be focused on semantics or biology, or even philosophy, but on the proper allocation of rights under the law, asking, in effect, who counts under our law".[22] The court also cited the view expressed by the panel in the case of the chimpanzee Tommy, and thus the inadmissibility of extending the guarantee from the *habeas corpus* order to animals. It applies only to people in a narrow sense. In the lawsuit, the plaintiff noted that, in fact, legal personality and rights arising therefrom are not always correlated with the existence of obligations, and such solutions exist in some common law countries. After considering the arguments put forward by the applicant, the court finally refused to issue the *habeas corpus* order, noting however: "The similarities between chimpanzees and humans inspire the empathy felt for a beloved pet. Efforts to extend legal rights to chimpanzees are thus understandable; some day they may even succeed. Courts, however, are slow to embrace change, and occasionally seem reluctant to engage in broader, more inclusive interpretations of the law, if only to the modest extent of affording them greater consideration. As Justice Kennedy aptly observed in *Lawrence v Texas*, albeit in a different context, »times can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress«".[23]

The Federal Court of Cassation of Argentina came to the opposite conclusion that the Sumatran orangutan was a "non-human person".[24] The proceedings in the case

[22] *Ibidem.*

[23] *Ibidem.*

[24] A. Alvarez-Nakagawa, *Law as Magic. Some Thoughts on Ghosts, Non-Humans, and Shamans*, "German Law Journal" 2017, No. 5, pp. 1264–1267.

of orangutan held at the zoo were initiated on the motion of the Lawyers for Animal Rights. The attorney of the orangutan, Andres Gil Dominguez referred in the lawsuit to the intellectual and cognitive abilities of the orangutan and the fact that the animal's long-term detention at the zoo causes serious damage to the animal's psyche. The court took the view that the orangutan was a "non-human person" and that: "[N]othing impedes that the rights to life and dignity, proper of living beings, and that are consecrated to human persons in the legal system, be extended analogically to Sandra, who is a sentient being".[25] The court also considered that pursuant to Art. 10 of the Civil Code, "the law does not protect abuse of rights", and such should be considered the long-term detention of an orangutan in conditions that do not correspond to its cognitive and intellectual abilities. Noteworthy is the summary of the court's consideration of the animal's subjectivity: "The categorization of Sandra as a »non-human person« and, in consequence, as a subject of rights should not lead to a rushed and decontextualized claim that Sandra is therefore a possessor of the rights of the human persons. This is in no way transposable. On the contrary, as the expert Hector Ferrari says, »putting clothes on a dog is also abuse«".[26]

As the court further observes, the law does not distinguish any intermediate category between "subjects" and "entities" of law, which implies treating sentient beings as things. The dynamic interpretation of the law, according to the court, leads to noticing more legal entities that contradict the classical division into "things" and "persons". The notable exception is basically the French Civil Code, which introduces the legal category of "sentient beings". The court further notes that the relationship between man and animal has been shaped as a relationship of subordination, and the role of the animal is to serve man. In conclusion, the court confirms the recognition of the rights of orangutans and refers to expert opinions according to which the empirical evidence is that orangutans are a thinking, sentient, intelligent species, genetically similar to humans, with similar thoughts, emotions and sensitivities, and with the ability to self-reflect.[27]

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[25] *Ibidem*, p. 1265.

[26] *La categorización de Sandra como "persona no humana" y en consecuencia como sujeto de derechos no debe llevar a la afirmación apresurada y descontextualizada de que Sandra entonces es titular de los derechos de las personas humanas. Ello de modo alguno es trasladable. Por el contrario, tal como lo señala el experto Héctor Ferrari "ponerle vestido a un perro también es maltratarlo"*, Juzgado Nº 2 en lo Contencioso Administrativo y Tributario de la CABA, A2174-2015/0, "Asociación de funcionarios y abogados por los derechos de los animales y otros contra GCBA s/amparo", translated by S. Gruda, unpublished translation, Warszawa 2020.

[27] The Supreme Court of India and High Courts also issued several interesting judgments regarding the legal status of animals, e.g. *Animal Welfare Board of India v A. Nagaraja & Ors*, (2014) 7 SCC 547; *N. Adithayan v Travancore Devaswom Board and Others*, (2002) 8 SCC 106; *People For Animals v Md Mohazzim & Anr*, CRL. M.C. NO.2051/2015 (The Delhi High Court), https://indiankanoon.org [access: 15.10.2019]. In the case *Animal Welfare Board of India v A. Nagaraja & Ors* the court stated: "All living creatures have inherent dignity and a right to live peacefully and

The court's view that animal rights existis crucial, not the mere recognition of the animal as a new category of legal entities. Recognizing the legal subjectivity of an animal is extremely important given the traditional division into "things" and "persons". However, the court's argument referring to the intellectual value of the orangutan is more important than simple recognition of existence of abstract rights. It seems that the court consciously does not use the term "dignity" understood as "human dignity", speaking only of "living in dignity", because reference to this term would directly cause even greater controversy. Despite this, the court justifies the existence of fundamental rights for the sake of certain orangutan features, which are essentially no different from human traits and although the word "dignity" is not mentioned in relation to them, it is the occurrence of "dignity traits" such as the ability to feel emotions, pain or broadly understood sensitivity, that leads to the approximation of the status of an orangutan to a human. The court's recognition of the special qualities of an orangutan also means that it deserves protection by itself.

The lawsuits initiated by the Nonhuman Rights Project, although ended with the dismissal or rejection of lawsuits by the New York State Courts, should be considered a success, especially from the point of view of animal interest. Firstly, they force discussions about animal rights, their welfare, ethical aspects of their use, etc. Secondly, some court decisions in animal cases, although outside the US, are beneficial to them. An example of such a decision is the above-mentioned judgment of the Argentine's court or a number of judgments issued before the Indian courts. Thirdly, there is a tendency to slowly deviate from the purely anthropocentric perception of law in general not only in terms of environmental law, but also in the scope of granting for animals a certain catalog of rights previously reserved for people.

The issue of legal subjectivity of animals raises a lot of controversy and there is no answer that would satisfy even the majority of people involved in the discussion. However, the law cannot run away from this problem. The best summary for a number of doubts this issue raises should be the statement of judge Fahey who was involved in the Kiko case: "In the interval since we first denied leave to the Nonhuman Rights Project, I have struggled with whether this was the right decision. Although I concur in the Court's decision to deny leave to appeal now, I continue to question whether the Court was right to deny leave in the first instance. The issue whether a nonhuman animal has a fundamental right to liberty protected by the writ of *habeas corpus* is profound and far-reaching. It speaks to our relationship with all the life around us. Ultimately, we will not be able to ignore it. While it may be arguable that a chimpanzee is not a »person« there is no doubt that it is not merely a thing".

right to protect their well-being which encompasses protection from beating, kicking, over-driving, over-loading, tortures, pain and suffering, etc. Human life, we often say, is not like animal existence, a view having anthropocentric bias, forgetting the fact that animals have also got intrinsic worth and value".

On the other hand, it is unjustified to talk about the existence of some universal catalog of animal rights corresponding to human rights, or about their legal subjectivity, even to a limited extent. However, there are isolated cases of giving animals the rights that people have. At the moment, it is difficult to say whether these are only isolated cases or a prelude to extend human rights to animals. We must wait for new legislators' decisions and court rulings.

References

Alvarez-Nakagawa A., *Law as Magic. Some Thoughts on Ghosts, Non-Humans, and Shamans*, "German Law Journal" 2017, No. 5.

Bar W., *Nowa dogmatyka Konstytucji Republiki Ekwadoru. Casus praw natury*, „Teka Komisji Prawniczej – OL PAN" 2010, Vol. 3.

Bosek L., Borysiak W., *Art. 30*, [in:] *Konstytucja RP*, t. 1: *Komentarz do art. 1–86*, red. L. Bosek, M. Safjan, Warszawa 2016.

Garlicki L., *Rozdział II: Wolności, prawa i obowiązki człowieka i obywatela. Zasady ogólne*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, t. 3, red. L. Garlicki, Warszawa 2003.

Granat M., *Godność człowieka z art. 30 Konstytucji RP jako wartość i jako norma prawna*, „Państwo i Prawo" 2014, Nr 8.

Horta O., *What Is Speciesism?*, "The Journal of Agricultural and Environmental Ethics" 2010, No. 23.

Jedlecka W., *Z problematyki własności praw zwierząt*, [in:] *Własność w prawie i gospodarce*, red. U. Kalina-Prasznic, Wrocław 2017.

Kerr J.S., Bernstein M., Schwoerke A., Strugar M.D., Goodman J.S., *A Slave by Any Other Name Is Still a Slave: The Tilikum Case and Application of the Thirteenth Amendment to Nonhuman Animals*, "Animal Law" 2013, No. 19.

Kirste S., *A Legal Concept of Human Dignity as a Foundation of Law*, [in:] *Human Dignity as a Foundation of Law*, eds. W. Brugger, S. Kirste, Stuttgart 2013.

Kirste S, *Human Dignity and the Concept of Person in Law*, [in:] *The Depth of the Human Person: A Multidisciplinary Approach*, ed. M. Welker, Cambridge 2014.

Liszcz T., *Zwierzęta w prawie stanowionym*, „Więź" 1997, Nr 7.

Nazar M., *Normatywna dereifikacja zwierząt – aspekty cywilnoprawne*, [in:] *Prawna ochrona zwierząt*, red. M. Mozgawa, Lublin 2002.

Pietari K., *Ecuador's Constitutional Rights of Nature: Implementation, Impacts, and Lessons Learned*, "Willamette Environmental Law Journal" 2017, No. 2.

Pietrzykowski T., *Problem podmiotowości prawnej zwierząt z perspektywy filozofii prawa*, „Przegląd Filozoficzny – Nowa Seria" 2014, Nr 2.

Pietrzykowski T., *Podmiotowość prawna: ujęcie teoretyczne*, [in:] *O czym mówią prawnicy, mówiąc o podmiotowości*, red. A. Bielska-Brodziak, Katowice 2015.

Radcliffe S.A., *Development for a Postneoliberal Era? Sumak kawsay, Living Well and the Limits to Decolonisation in Ecuador*, "Geoforum" 2012, No. 43.

Ryder R.D., *Szowinizm gatunkowy, czyli etyka wiwisekcji*, translated by Z. Szawarski, „Etyka" 1980, Nr 18.

The Digest of Justinian, translation edited by A. Watson, Pennsylvania 1998.
Wise S.M., *Rattling the Cage. Toward Legal Rights for Animals*, Cambridge 2014.
Zubik M., *„Wolność" a „prawo" (pięć hipotez o stosowaniu pojęć konstytucyjnych dotyczących praw człowieka)*, „Państwo i Prawo" 2015, Nr 9.

Abstract: Practical implementation of the right to freedom by applying the *habeas corpus* order for animals is the subject of this work. The article deals with four proceedings initiated in the United States by the non-profit organization the Nonhuman Rights Project. The author tries to describe attempts to change the perception of animals only as things within the meaning of the law. Four court cases were presented for this purpose. All cases concerned the issue of a *habeas corpus* order for a chimpanzee. The article describes the most important fragments of court rulings on this subject and indicates the motives that determined the refusal to issue an order. In the following, the author presents the case of an orangutan, which was detained at a zoo in Buenos Aires and basically compares the positions of the courts. Mainly, the text presents key arguments raised by parties – supporters and opponents of issuing *habeas corpus* orders for animals. At the moment, there is no dominant position among lawyers and courts. Cases were precedential and therefore it cannot be determined how they will affect the legal system or the situation of animals.

Keywords: legal subjectivity; animal rights; dereification of animals; freedom; *habeas corpus*