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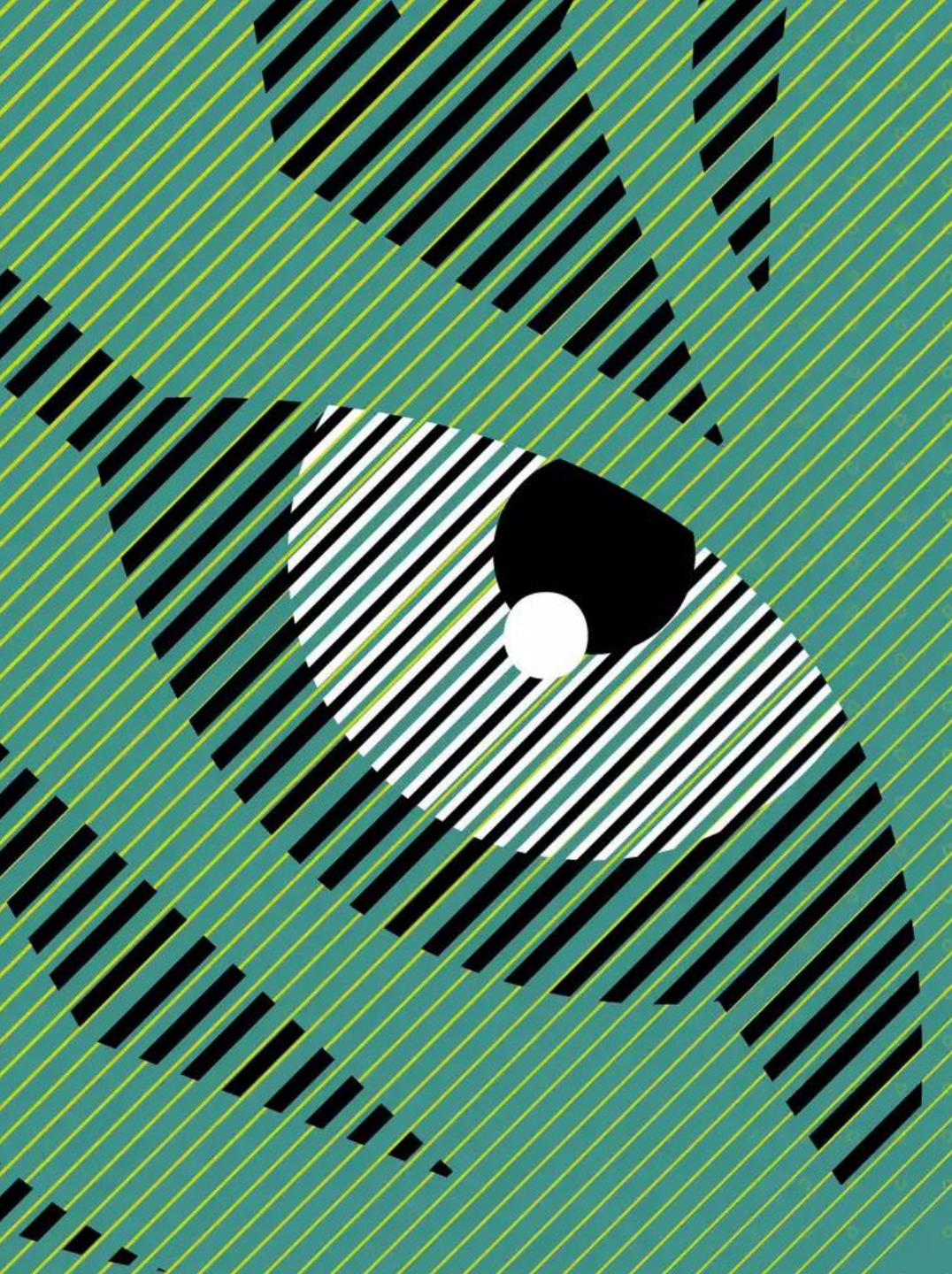


Animal Rights Law

SS 2026

Dr. Felix Aiwanger

www.mpipriv.de/aiwanger



Unit 8:

Enforcing animal rights and animal agency

Overview

1) Problems of representing animals

- The principal–agent problem applied to animal representation

*Special guest contribution by RAin Anja Popp (law firm Günther):
From the work of an animal law attorney*

- Epistemological, ethical, and political considerations (**student presentation 13**)

2) Mechanisms for representing animals

- Existing models of indirect animal representation
- Direct representation: animal guardianship
- Criteria for the selection of a representative

3) Animal agency

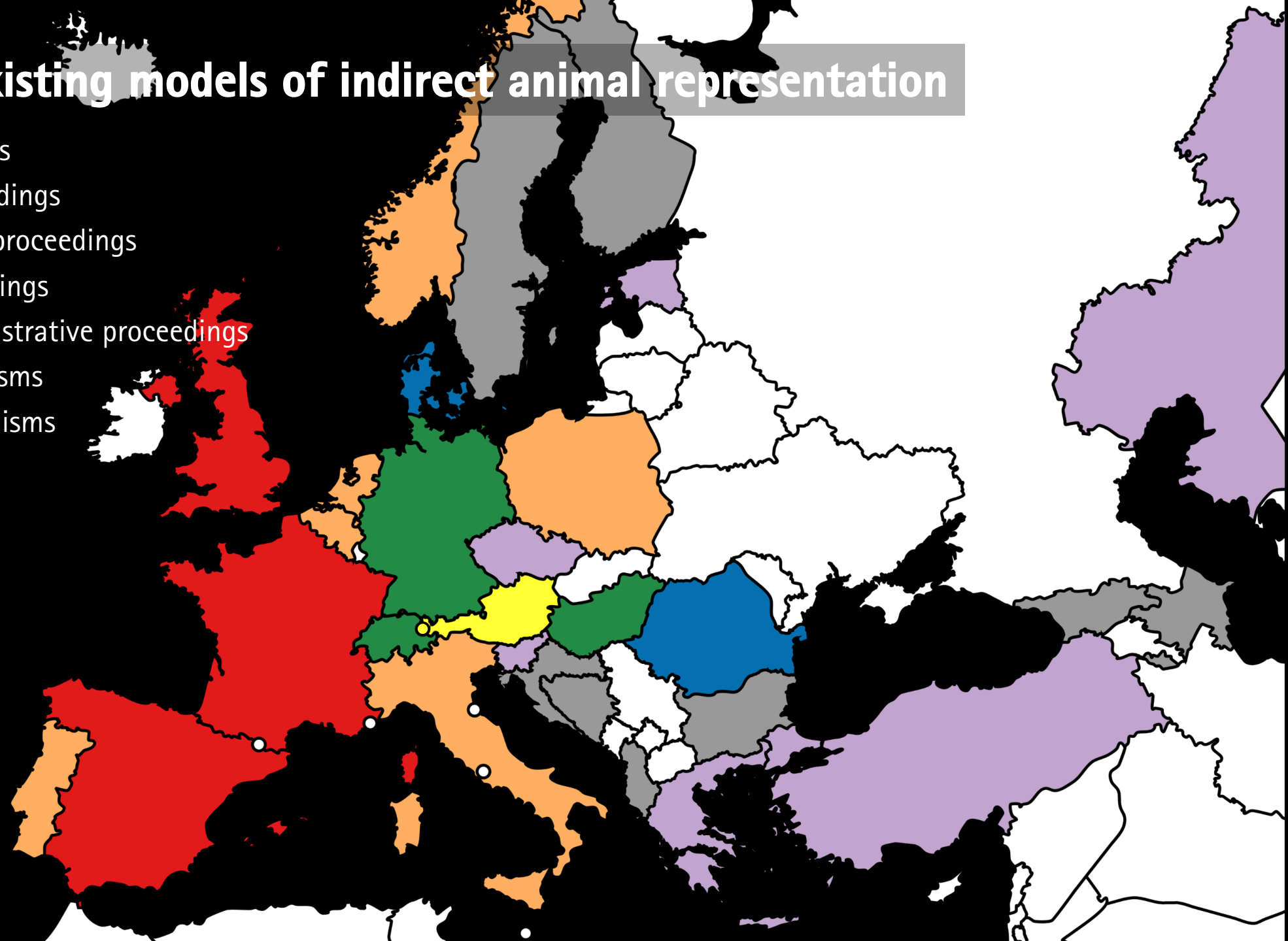
The principal-agent problem applied to animal representation



- Principal-agent problem: **conflicts of interests** between represented principal and representing agent (eg managers of firms, employees, attorneys, politicians)
 - ⇒ Human representatives of animals may be guided by other interests than the interests of the represented animals (eg strategic interests, financial interests)
- **Information asymmetry**: Principal lacks information on the agent's performance
 - ⇒ Animals lack any capacities to monitor and influence representatives
- **Agency costs**: Losses as result of diverging interests/misaligned decisions of agents
 - ⇒ Suffering of animals or misallocation of resources designated for animals
- Solutions: Minimising agency costs by
 - **aligning the interests** of principal and agent
 - **supervisory and monitoring** mechanisms, checks and balances
 - **financial incentives** for agents correlative to their compliance with the principal's interests
 - ⇒ Guidelines for design of animal representation

Existing models of indirect animal representation

- NGOs in civil proceedings
- NGOs in criminal proceedings
- NGOs in administrative proceedings
- NGOs in various proceedings
- Ombudsperson in administrative proceedings
- Various weaker mechanisms
- No indication of mechanisms
- No data



Existing models of indirect animal representation

- Representative actions by NGOs in *administrative* proceedings (eg Germany: Baden-Württemberg, Berlin, Bremen, Hamburg, Lower Saxony, Rhineland-Palatinate, Saarland, Schleswig-Holstein):
 - **Associations/foundations** committed to animal protection: **accreditation** by state governments
 - Access to **information** and **participation** in administrative proceedings
 - **Right to appeal** administrative decisions before administrative courts
 - Limited to certain types of proceedings, short preclusion periods, difficulties to obtain information
- Victim representation by NGOs in *criminal* proceedings (eg France):
 - **Associations/foundations** with animal protection as statutory purpose
 - Status of representative of victim: entitlement to **monetary compensation** for suffering
- Civil litigation by NGOs **against private parties** (eg Netherlands)
- Animal Ombudspersons (eg Austria: all substates):
 - Public officer **appointed by state governments**
 - **Party status** in administrative proceedings and **right to appeal** administrative decisions
 - Access to **information** in criminal proceedings

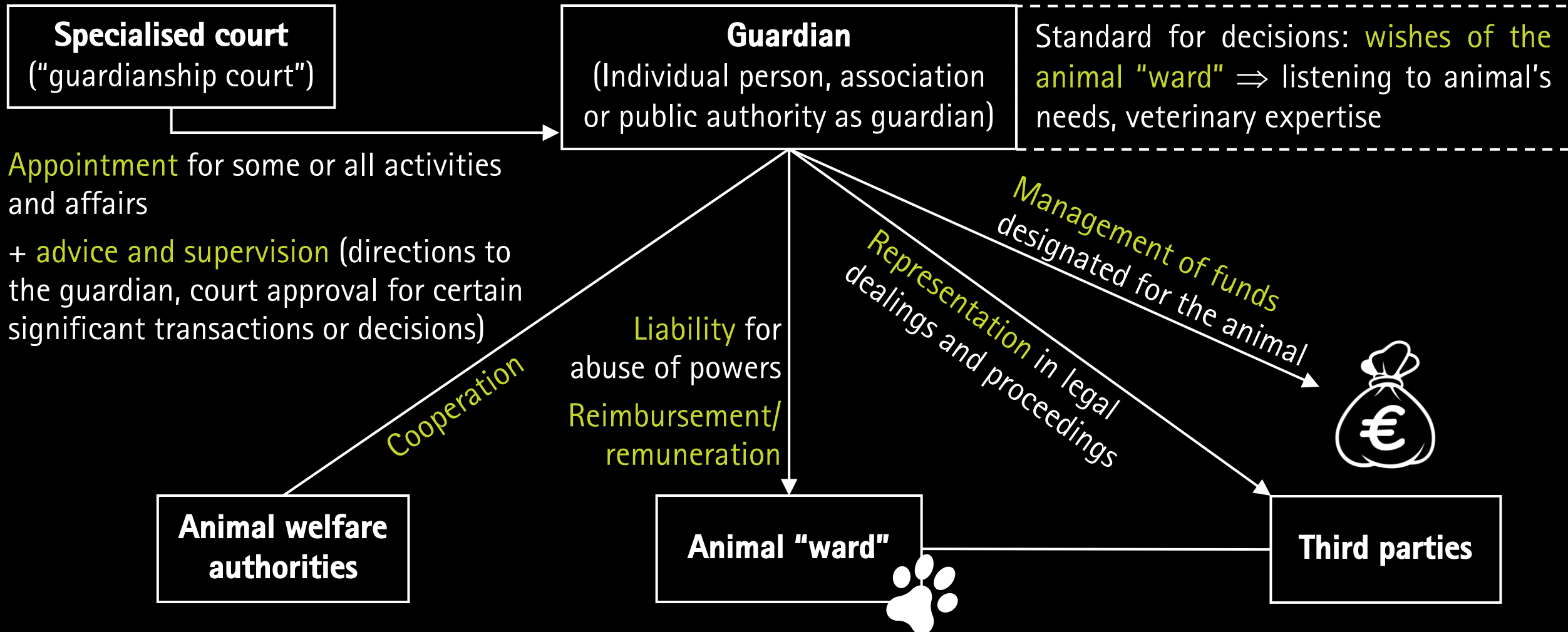
Existing models of indirect animal representation

- Animal prosecutor in *criminal* proceedings (1992–2010 in Zurich, Switzerland):
 - **Attorney** appointed by cantonal government at the suggestion of NGOs
 - **Automatic information** about criminal investigations
 - **Victim rights** in criminal proceedings and **right to appeal** penal judgments
- Animal advocate in *criminal* proceedings ("**Desmond's law**", Connecticut, USA):
 - Separate advocate **appointed by court** in a proceeding regarding the welfare or custody of a **cat or dog** to represent the "**interests of justice**"
 - Selection of advocate from a **list of attorneys** with knowledge of animal issues and the legal system and a **list of law schools** that have students with an interest in animal issues and the legal system
 - Monitoring, consultation, access to information, attendance of hearings, recommendations to the court
- Civil remedy for the protection of animals (North Carolina, USA):
 - Civil legal action by **any citizen** against owner/possessor of animal to protect and ensure the humane treatment of animals, independently of any criminal charges

⇒ *Indirect models*: representatives act in their own right, not in the name of animals

Direct representation: animal guardianship

⇒ Parallel to guardianship of humans **unable to represent themselves in legal dealings**



Case 10: A guardian for Hiasl?

In 1982, poachers acting on behalf of the company Immuno shot the mothers of the young chimpanzees Hiasl and Rosi in Sierra Leone; the chimpanzees were then transported to Europe to be used in a research laboratory and to help establish a primate centre. However, at the airport Hiasl and Rosi were seized for breach of the Convention on International Trade in Endangered Species (CITES). After being reared by a private family, the two found refuge in an animal shelter. However, in 2006, the shelter ran into financial difficulties; there was a threat that the two chimpanzees would be sold abroad.

Animal rights organisation V seeks a court ruling that the chimpanzee Hiasl (H) must be granted fundamental rights on the basis of his intellectual abilities and close kinship to *Homo sapiens*, and that he must therefore not simply be sold abroad. To ensure these rights are upheld, V is applying to the competent court to appoint a guardian for Hiasl, who could collect and manage donations for H's upkeep.

Will V's application be successful?



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§ 1814 Civil Code (Germany)

(1) If a person of full age is legally unable to take care of their affairs, either in whole or in part, and this is due to an illness or disability, the guardianship court shall appoint a legal guardian (guardian) for them.

Case 10: A guardian for Hiasl?

(adapted from [*District Court Mödling, 18 April 2007*](#))

A. Admissibility

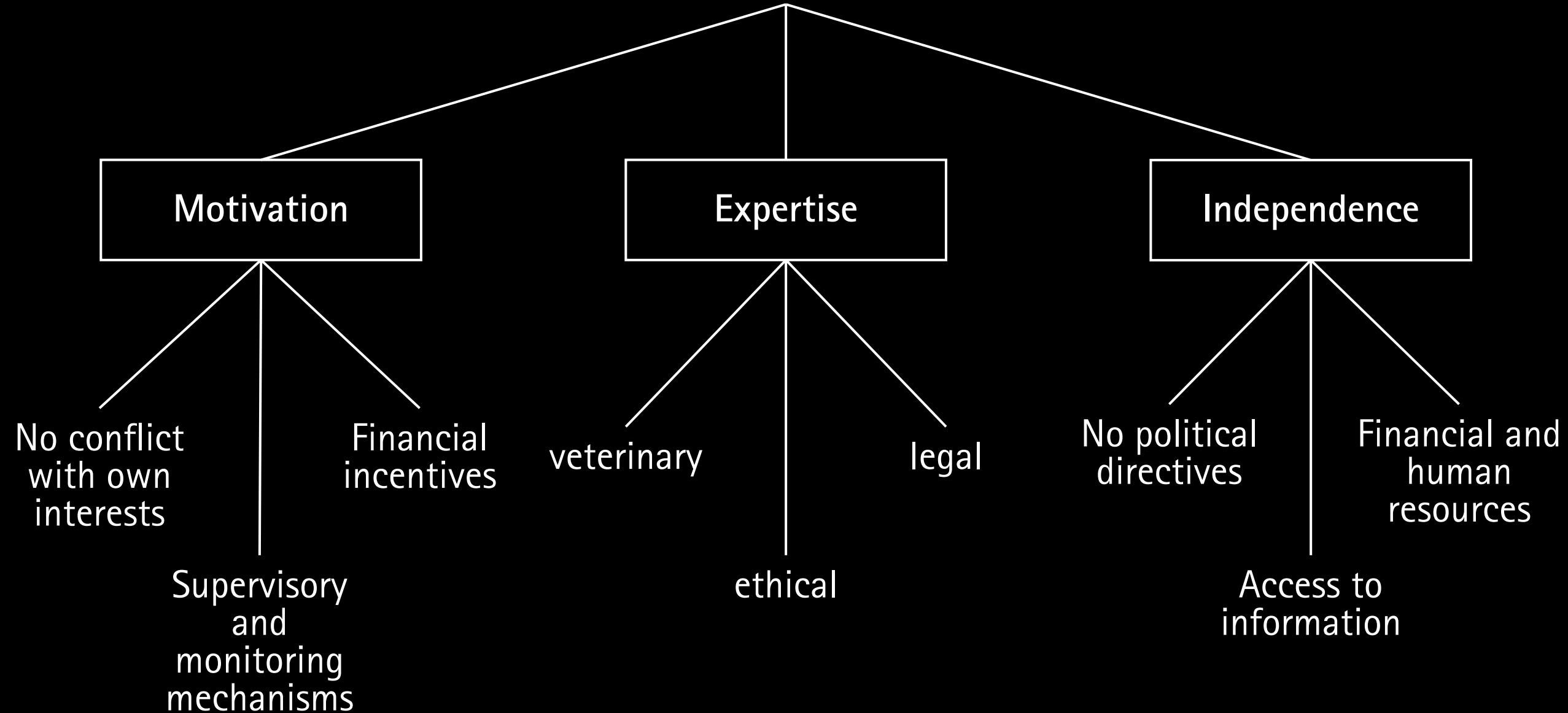
- I. Competent court: guardianship court at the district court
- II. Right to file an application
third parties (-), but **suggestion to the court** to initiate a proceeding *ex officio*
- III. Capacity of H to be a party to court proceedings $\approx$ (-)
- IV. Appointment of a **guardian ad litem** for H („Verfahrenspfleger“)
§ 276 Act on Proceedings in Family Matters and Matters of Non-contentious Jurisdiction

B. Merits

- I. Person of full age $\approx$ (-)
- II. Objective need for guardianship $\Rightarrow$ need for support in legal affairs (+)
- III. Subjective need for guardianship
 - 1. *Illness* = abnormal condition, functional disorder of a process-related nature that **may change for the better or for the worse** $\Rightarrow$ (-)
 - 2. *Disability* = long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others (Art. 1 (2) UN Convention on the Rights of Persons with Disabilities)
 $\Rightarrow$ **aimed at human disability** $\approx$ (-)

C. Result: A guardian will not be appointed for H. V's request will not be successful.

Criteria for the selection of a representative



Animal agency

- Shift from **paternalistic** approaches (humans know best what is right for animals) to **participatory** approaches
- **Supported and shared models of decision-making** (parallels to disability law)
⇒ enabling autonomous decisions of animals?
- Animals' intentions could be recognised as **non-legal, but normative** (Visa Kurki)
- **Input/reactions** from animals as relevant for legal decisions
- Experimental approaches for **interaction between humans and animals** ⇒ assessment of animals' interests
- Famous experiment by Sarah Brosnan and Frans de Waal: (Female) capuchin monkeys reject a reward in exchange for tokens if they see another monkey get a bigger reward for doing the same job
⇒ Sense of **cooperation, fairness, equality, transactions**



Dr. Felix Aiwanger

**Max Planck Institute for Comparative
and International Private Law**

Mittelweg 187, 20148 Hamburg

Tel.: +49 40 41 900 426

Email: aiwanger@mpipriv.de

Internet: www.mpipriv.de/aiwanger