

NATURSCHUTZ UND VERFASSUNGSRECHT

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Summary

Nature Conservation and Constitutional Law in Germany Germany's federal structure is mirrored in its constitutional law consisting of the federation's Basic Law and the constitutions of the federal states subject to conformity with the former. "Nature conservation" in the constitutional context means the "protection of the natural basis of existence" comprising all natural values such as flora, fauna, soil, water, air, climate, landscape and their interdependencies. The process of incorporating provisions on nature conservation in the constitutions of both state levels intensified in the 1970's and 1980's leading to the amendment of the constitutions in several federal states (adopting for example state aim definitions, locus standi for nature conservation NGO's, individual rights to enjoy nature, municipal responsibilities and so forth), revived with the unification of Germany and came to a first halt with the amendment of the Basic Law in 1994, introducing Article 20a. Nature conservation directly or indirectly is subject of different categories of constitutional provisions - competences, state aims, fundamental rights and through disputed fundamental duties.

As to legislative powers the federation itself enjoys only a framework competence (see Federal Nature Conservation Act), which is unfavourable especially to the implementation of international commitments. This framework is complemented by the nature conservation legislation of the federal states to which also the executive powers in this field are allocated.

Article 20a of the Basic Law provides that "The state protects [...] the natural basis of existence ...". As a state aim ("Staatszielbestimmung") it addresses the state bodies which thus are legally bound to always respect and perform to the end of the constitutionally prescribed objective. As a provision of mere objective law, the individual has no locus standi to enforce its implementation. Its role therefore must be seen as a means of interpretation of enacted law to ensure conformity with the constitution, as a guideline for discretionary decisions and as a support in planning processes for weighing up interests. Under the latter aspect Article 20a can be understood as a principle of non-deterioration regarding the environmental situation, as a "guideline for integrity" and as a decision in favour of raising the standards of protection and implementing them.

Academic discussion on a fundamental right related to nature conservation calls for abandonment of the anthropocentric approach inherent in the constitution (human dignity). A first promising step would be to adopt an "ecological minimum standard" vested as fundamental right. However, in practice a right of nature itself is denied. Instead nature's interests are represented by the state (for example protection of certain sites and biotopes by law) and by NGO's (with locus standi in German administrative courts in most states (Länder)). Claims of individuals against the state to avert a destruction of nature are also denied. Nature conservation as fundamental duty is materialized in the principle of social commitment of property. To this extent nature conservation also amounts to an "ecological" limit for the exercise of individual freedoms guaranteed under the constitution. A respective limitation of nature conservation by these freedoms as well as the scope of any limit to nature conservation are disputed issues.