On the Phenomenon of the Rights of Nature

Ágnes Tahyné Kovács[*]

Abstract

To protect natural environment effectively, humanity is constantly on the move. It is looking for solutions beyond the current anthropocentric regulatory models. A novel concept of environmental regulation, the Rights of Nature (RoN), was launched in Europe (2022). A previous EU study (2021) showed that the RoN concept alien to the European regulatory environment is not yet feasible on the continent. Our study highlights a very narrow slice of contemporary legal history. One of the slices of the current 50-year history of environmental law is the emergence and spread of the concept of rights of nature regulation around the world. The aim of this study is to draw attention to this recent phenomenon. Its method is descriptive-demonstrative. This paper is structured according to the geographical location of each phenomenon. It situates the phenomenon of the rights of nature within the regulatory concepts of environmental law and illustrates their common features with examples from around the world. The paper also highlights common features of the RoN concept with EU environmental legislation that make its introduction in Europe unnecessary. At the same time, these global examples show a number of lessons that can contribute to making European environmental law more effective.

Keywords: sustainability, environmental law, Rights of Nature concept, Mar Menor, legal personality

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1. Introduction – the Mar Menor Act

Facing the triple crises of global warming, biodiversity loss and severe pollution, humanity is constantly looking for ways to protect the environment effectively. In our study, we present iconic manifestations of the Rights of Nature (RoN) concept, a relatively new phenomenon that is spreading globally. The phenomenon would reach Europe in 2022. Although its effectiveness cannot yet be measured, it may provide important lessons for the development of EU environmental law.

For the first time in Europe, a court in Spain applies the Law of Legal Personality of Mar Menor[1] that grants rights to the Mar Menor – thus treating this coastal lagoon as a legal person.[2] The court case is investigating discharges from hazardous mining waste pools at the Los Blancos landfill into the coastal lagoon, thereby possibly violating the rights of Mar Menor. In accordance with the provisions of the Law, the court summoned Mar Menor's Committee of Representatives to appear in the legal proceedings.

In the court order, dated 31 August 2023, the judge informed Mar Menor of its right to appear in the proceeding as a private prosecutor, and offered a civil action in order to claim its right to reparation of damages. The court order was communicated to the Mar Menor Committee of Representatives, who are considered by the judge as Guardians. Following this court order, the Mar Menor representatives could act at the criminal case. The court order also offers actions to several NGOs (Greenpeace, ANSE, and SOS Mar Menor) and 7 city councils to appear and take action.

This marks the first ecosystem in Europe to be enshrined with legal rights under a Western legal system. Sections III and IV of the law assign legal guardianship and representation for the Lagoon to Public Administra-

1 Law No. 19/2022 adopted on 30 September 2022, *see* at www.boe.es/diario_boe/txt.php?id=BOE-A-2022-16019 or https://ecojurisprudence.org/wp-content/uploads/2022/02/Spain-Rights-of-Mar-Menor-Law.pdf.

2 In 2020, Prof. Teresa Vincente Giménez, backed by several NGOs, helped draft and propose a law recognizing "that the Mar Menor and its basin have rights to protection, conservation, maintenance, and, where appropriate, restoration." The law gives the Mar Menor – a lagoon located in Murcia, Spain – a legal personality. By August 2021, the advocates collected half a million signatures to gain a parliamentary vote on the initiative. In April of 2022, the Spanish parliament voted 274 to 53 to ratify the law granting Mar Menor legal personhood. On 13 July 2022, the Commission of Ecological Transition and Demographic Challenge of the Congress of Deputies approved the law, sending it to Spain's Senate for ratification. The Senate overwhelmingly approved the law on 21 September 2022, by a vote of 230 in favor and 3 against, officially making the Mar Menor lagoon and its basin a legal person.

tion, with support from the local community, scientific committees, and a monitoring committee, in addition to empowering any natural person to enforce the enumerated rights of Mar Menor.

2. The Environmental Crisis Resulting in a New Phenomenon of Environmental Protection

Faced with the triple environmental crisis resulting from climate disruption, rapid biodiversity loss and widespread pollution, humanity is engaged in a long quest to protect creation. Man's relationship with nature needs to be renewed, both on an individual and on a societal level. In the course of history, depending on one's worldview, legal cultures have shaped man's relationship to nature, as shown by the legal regulation of nature conservation and environmental protection, agricultural legislation and, in many cases, international legal documents. The failure of environmental protection is mostly driven by economic profit orientation, which also strengthens the role of specific environmental law instruments. In the choice of the social regulatory instruments that are most effective for the protection of nature, the legal-philosophical consensus that underpins the legislation plays a major role. This consensus is also a function of the social processes, traditions, worldview, institutional history, geography and, last but not least, the legal family of a people or nation.

3. Control Concepts in Environmental Codifications

In recent decades, three main types of regulatory philosophies for nature conservation and environmental protection have emerged. These 'philosophies' also characterize the evolution of regulation, from narrow interpretation to more complex and perspective approaches. To a certain extent, these regulatory philosophies are also reflected in legislation, otherwise they would remain only theoretical considerations.[3]

Of the three theories with conceptual differences, the first and most widely accepted is the traditional anthropocentric. It focuses on the interests of the present generations and tries to measure everything against the recognized (and acknowledged) human interests. It regards man as separate

3 Gyula Bándi, *Környezetjog*, Szent István Társulat, Budapest, 2022, pp. 10–11.

from and superior to nature, and considers every animate or inanimate component of nature to be valuable, as long as it serves man's actual interests.

Another step towards expanding the human-centered approach was the recognition of the protection of future generations. This philosophy is based on the principle that no generation has the right to deprive future generations of the environmental goods it possesses.[4]

Another group of regulatory philosophies are those relating to the protection and preservation of the environment or certain environmental factors per se. Unlike anthropocentrism, biocentrism puts the natural world at the top of the priority list and considers all living things in the world to be equally important, *i.e.* the lives of animals are just as important as those of humans. One of the first recognized examples of this was the Convention on Biological Diversity, adopted in Rio de Janeiro in 1992.[5]

Although it cannot be defined as a legal regulatory concept, it is an approach that is present in society and therefore ecocentrism, which gives priority to the ecosystem as a whole, also deserves mention in this context. Both living and non-living components are considered important. It deals with humans insofar as it deals with the question of how humans influence the ecosystem as a whole. The effectiveness and practical results[6] of the predominantly global anthropocentric legal regulatory approaches are now highly questionable – despite the numerous international (multilateral) conventions, declarations, obligations and institutional protective measures of the states.[7] The evaluation of the results inspires new goals while humanity is in the last hours of change, of ecological conversion.[8] A fourth variant of the consideration of the relationship between man and nature is also emerging,[9] although it is not yet consciously expressed in legislation. The protection of creation, which is also recognized and called

4 Id. p. 10.
5 Id. p. 11.
6 *See* in general Katie McShane, 'Anthropocentrism vs. Non-Anthropocentrism: Why Should We Care?', *Environmental Values,* Vol. 16, Issue 2, 2007, pp. 169–186.
7 Orsolya Csapó, 'A környezeti károkért való felelősség kérdése az Európai Unióban', *Iustum Aequum Salutare,* Vol. 3, Issue 3, 2007, pp. 139–157.
8 *See also* Márió Nobilis, 'Isten hozott ökológia?', *Vigília,* Vol. 81, Issue 5, 2016, pp. 343–352.
9 Pope Francis in his papal encyclical Laudato' Si! (2015) and in the ecclesiastical teachings that preceded it.

upon to be implemented in Christian religious social teachings,[10] but also other religions[11,12] sets a similar focus on values and thinks similarly about nature,[13] which they identify with the created world.[14] The place and role of man is a key issue in the care of creation.[15] His responsibilities and duties for the created world as a whole encourage him to reap its benefits.

This thesis is not about comparing the philosophies behind different approaches and environmental codifications. Nor does it examine whether the failure of environmental protection is a sign of short-term (or even longer-term) economic interests prevailing over environmental interests, or whether the reasons for this lie in the ineffectiveness of legal instruments. The aim of this paper is to show that regional and global environmental protection is a central issue and that in the search for means to make it more effective in many parts of the world, a relatively new phenomenon related to the third regulatory philosophy outlined above emerges: the concept of the rights of nature. The study presents in chronological order the legal milestones at which the phenomenon has developed into an instrument of environmental protection. Finally, the similarities between the cases presented are summarized.

4. The Concept of Rights of Nature

The Rights of Nature (RoN) school of thought is wide, containing a variety of different concepts. First of all, there is a legal-philosophical aspect, where it is highlighted that RoN means a paradigmatic shift in attitudes towards nature, from today's anthropocentric approach to an ecocentric one. Closely linked to this discourse is environmental constitutionalism, whose proponents argue that RoN should be included in an overarching

10 Emese Lilla Nagy, 'Teremtésvédelem a katolikus egyház szemszögéből', *Keresztény szó,* Vol. 23, Issue 3, 2012, pp. 1–6.

11 Benedek Jávor, 'A kereszténység ökológiai küldetése', *Iustum Aequum Salutare,* Vol. 3, Issue 2, 2006, pp. 1–2.

12 Endre Béla Huff, 'Az ökoetika eredetéről', *Economica,* Vol. 9, Issue 1, 2018, pp. 57–63.

13 István Kuzmányi, '(Nem) érteni Ferenc pápát', *Keresztény szó,* Vol. 27, Issue 9, 2016, p. 5.

14 Mátyás Mérő, 'A védikus gazdasági rendszer megvalósítása a Krisna-völgyben' *in* László Zsolnai *et al.* (eds.), *Gazdaság és vallás: a gazdasági spiritualitás innovatív modelljei,* Budapest, 2022, p. 169.

15 Gyula Bándi, 'A Teremtés védelme és az emberi jogok', *Acta Humana,* Vol. 8, Issue 4, 2020, pp. 9–33.

piece of legislation in order to give a long-lasting constitutional and ethical value to the protection and conservation of nature. (An illustration of this is Article 71 of the 2009 Ecuadorian Constitution proclaiming the right of *Pacha Mama*.) Another key component of the RoN discourse is to award natural entities 'legal personhood' in order to allow for litigation and a wider consideration of natural scientific evidence in making decisions on environmental matters. Such examples exist in the legislation and jurisprudence of Latin America, New Zealand, India and other countries. However, most of these cases have been given in specific cultural and anticolonial contexts, and the outcomes are a mix of failures and successes.

Other scholars focus on the representation issue, arguing that if natural entities were granted legal personhood, this would not only give nature standing in court, but would also give courts a wider scope to take natural scientific evidence into consideration in deciding on precaution and remediation. Finally, RoN is described as a means for indigenous peoples to uphold their rights to traditional use of natural resources, while still preserving biodiversity.[16]

The concept is an initiative, a phenomenon in many countries around the world, a regulatory concept that fundamentally rethinks the relationship between humans and nature, building on a number of local social traditions. In a rather extreme approach, radical adherents of the movement derive[17] the phenomenon directly from the emergence of human rights.

The idea that natural phenomena should have rights was first put forward half a century ago by Christopher D. Stone, a law professor at the University of Southern California.[18] In the famous *Sierra Club v Morton* case,[19] while the party that challenged the decision to build a ski resort on behalf of the valley lost, Judge William O. Douglas pointed to Stone's position in favor of conservation in his dissenting opinion. Stone developed the bioethical background for this theory.[20] He took the view that, in order

16 Jan Darpö, *Can Nature Get it Right? A Study on Rights of Nature in European Context,* Study of the European Parliament, 2021, at www.europarl.europa.eu/RegData/etudes/STUD/2021/689328/IPOL_STU(2021)689328_EN.pdf.

17 Linda Sheehahn & Wilson Grant, *Fighting for our shared future: Protecting both human rights and nature rights,* Earth Law Center, 2015, p. 1.

18 Christopher D. Stone, 'Should Trees Have Standing? Towards Legal Rights for Natural Objects', *Southern California Law Review,* Vol. 45, 1972, pp. 450–501.

19 *Sierra Club v Morton,* 405 U.S. 727 (1972).

20 *Cf.* Holmes Rolston III, *A new environmental ethics: the next millennium for life on Earth,* Routledge, 2020.

to protect nature, trees, rivers, mountains and natural formations should have certain rights so that a designated guardian could represent their interests in court.[21]

The resurrection of RoN ideas came at the beginning of the 2000s, when the Community Environmental Legal Defense Fund (CELDF) – from the beginning, a traditional public interest law firm – launched a campaign for the adoption of a 'bill of rights' for nature at a local level in the US. In this regard, the small community of Tamaqua Borough in Pennsylvania was the first to pass a Rights of Nature Law in order to prevent the dumping of toxic waste into the community in 2006. Having evolved into an organization bringing together public interest litigators and various actors such as communities, civil society and governments, CELDF, together with the Pachamama Alliance in San Francisco, an organization for the empowerment of indigenous tribes in the Amazon, joined forces with radical and anti-colonial oriented politicians in Ecuador for the introduction of rights for nature in the Constitution in 2008. To date, this is the only Constitution in the world that has introduced the RoN.

The phenomenon of natural law is present in many parts of the world, and many lawsuits have been filed, some of which have been successful. The new paradigm has been recognized at the national, local, and judicial levels in Bolivia, New Zealand, Mexico, Brazil, India, Africa, and the US. On the South American continent, several states have elevated the law of nature to the rank of law. In 2008, Ecuador elevated the concept to constitutional status.[22] The legal personality accorded to ecosystems has so far been mainly symbolic, and it remains highly doubtful and uncertain how successful these actions can be in ensuring adequate, long-term protection of ecosystems.

While the concept has been accepted by some legal systems, it has also opened up new areas of political and legal-philosophical discourse. According to a deep-rooted – and in this sense radical – conceptualization of the relationship between humans and nature, ecosystems such as rivers, lakes, and mountains can have rights similar to those of humans as natural

21 *Cf.* Laura Schimmöller, 'Paving the Way for Rights of Nature in Germany: Lessons Learnt from Legal Reform in New Zealand and Ecuador', *Transnational Environmental Law,* Vol. 9, Issue 3, 2020, pp. 569–592.

22 The Universal Declaration of the Rights of Mother Earth (UDRME) and Article 71 of the Ecuadorian Constitution of 2009, which proclaims the right of Pacha Mama (2009).

subjects. This entitlement is linked to the possibility of suing for the protection of nature. The movement in many parts of the world[23] is striving for a paradigm shift in which nature is at the center and humans are not dominant, but dependent on nature. In terms of weighting, this school of thought is a possible variant of the third group of regulatory philosophies mentioned above. According to this doctrine, the ecosystem has a right to the following.

First, it could acquire a certain legal personality status and, as such, have the right to 'defend itself' in court against damage and harm, including a particular development project or even environmental degradation caused by climate change. The ecosystem would be declared a 'legal entity' that has the right to be legally represented by an appointed guardian – similar to how a nonprofit organization appoints a trustee – who acts on its behalf and in its interest. This guardian is usually a person or group of people who are familiar with the condition, care and management of the ecosystem. On the other hand, they recognize that the ecosystem has the right to exist, thrive, reproduce its life cycles, and evolve naturally without human interference.[24]

As the proponents of the concept point out, the rights conferred on nature aim to ensure the 'highest level' of environmental protection, also emphasizing the link with the right to a clean and healthy environment.[25] In most cases, it is also noted that the right of the indigenous population to their habitat and culture may be affected. While efforts in the name of nature's rights are explicitly aimed at protecting natural values, they can also be used indirectly to prevent and remedy human rights violations caused by climate change, although their effectiveness has not been proven compared to traditional legal instruments.

The concept is embedded in legal cultures that are completely different from European legal cultures. According to the values that prevail, especially in Latin America, not only the relationship between man and nature has a different meaning, but also the entire social, economic, educational and legal environment. The phenomenon is often described as a means by which indigenous peoples can preserve their right to traditional use of natural resources while protecting and preserving biodiversity. Without

23 Mainly in South American countries, and India, New Zealand, Canada.

24 *See* Roderick Frazier Nash, *The rights of nature: a history of environmental ethics,* University of Wisconsin Press, 1989.

25 Rafi Youatt, 'Personhood and the rights of nature: the new subjects of contemporary earth politics', *International Political Sociology,* Vol. 11, Issue 1, 2017, pp. 39–54.

undertaking a detailed sociological and economic analysis, we consider it necessary at this point in our study to shed light on the social processes that preceded and triggered the 2008 constitution in Ecuador. The reason for highlighting this example is that it was this state that elevated the concept to the top of the legislative hierarchy, to the constitutional level. In addition, the case of Ecuador shows many common features for Latin American states in the region.

5. What About Europe? "Can Nature Get It Right?"

Although RoN is not recognized in the EU, the preservation and protection of the environment and the notion of sustainable development has a strong constitutional position in the Treaties of the EU. We can also find the most important environmental principles on this hierarchic level of the legal system. Moreover, in secondary EU law we find all kinds of environmental issues covered by directly applicable regulations and directives that leave room for the Member States to implement them.

However, this national discretion may be limited in two ways by the doctrine of direct effect developed in the case law of the CJEU. First, national courts are called upon to disregard any national legislation that is inconsistent with clear, precise and unconditional obligations under EU law. Secondly, the public concerned, including recognized ENGOs, must be given the opportunity to bring administrative decisions under certain provisions before national courts for review. In the wake of Aarhus and the development of the principle of judicial protection of EU law, the possibilities for the public concerned to have access to justice to challenge administrative measures and inactions have been significantly enhanced in recent years. However, the situation is quite the opposite as regards the possibility to challenge such acts of the EU institutions by direct action before the CJEU. Compared with the generous attitude towards the requirements of open access to national courts, it is not too much to speak of a Janus face for the CJEU.[26]

However, the Spanish example mentioned in the introduction above shows that RoN has reached our continent. The examination of the concept in a European context preceded the Spanish case.

26 Darpö 2021, p. 58.

In 2021, a study was published and commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the JURI Committee, which explored the concept of Rights of Nature and its different aspects in legal philosophy and international agreements, as well as in legislation and caselaw on different levels. The aim of the study was to analyze RoN from a legal-scientific viewpoint in order to see whether this new concept might bring added value to the field of EU environmental law. Each of the aspects of RoN was analyzed with a view to determining its key elements.

The study delves on the ideas of rights of nature in comparison with rights to nature, legal personhood and standing in court for natural entities, and analyses ECtHR and CJEU case law on access to justice in environmental decision-making. It emphasizes, in particular, the need to strengthen the requirements for independent scientific evaluations in certain permit regimes under EU law. The study also highlights the crucial importance of promoting the role of civil society as watchdog over the implementation of EU environmental law by way of a wider access to justice via both the national courts and the CJEU, which is also in line with the political priorities for delivering the European Green Deal.[27] Chapter 4 of the study deals with environmental protection in substantive EU law, both at the constitutional level (TEU and TFEU) and in secondary legislation, in regulations and directives. It is contended that the 'intrinsic value of nature' – although not found in an express provision at the constitutional level in the EU – is contained in the nature conservation directives and the case-law of the CJEU. Chapter 5 is finally the operative part of the study where the RoN concept is evaluated from the perspective of EU law on the environment. On a general level, the RoN concept is criticized for being mostly symbolic and built on anecdotal evidence. What is more important, though, is that the proponents of RoN do not succeed in showing that this is a paradigmatic shift in environmental regulation. Instead, the history of RoN shows that it faces the same reality and problems as the ordinary laws on the environment, most importantly weak enforcement. Further, the idea of giving natural entities 'legal personhood' is compared with the EU model of protecting environmental interests through ENGO representation, and it is found that there are no systematic advantages from a European perspective. Having reached this conclusion, however, the study also emphasizes the crucial importance of strengthening the role of civil society as watchdogs

27 Id.

over the implementation of EU law in environmental matters by way of a wider access to justice via both the national courts and the CJEU.

The RoN concept offers new ideas that can be adapted to the present institutional or legal scope of the EU system. One example of an idea borrowed from the RoN school of thought is to introduce a provision on the constitutional level in the EU about the intrinsic value of biodiversity and some basic principles of ecological integrity.

As for secondary legislation, it is proposed that stronger adaptivity requirements be introduced in the relevant directives, as well as stricter environmental and ecological standards. The idea of 'ecological impact tracing' also seems interesting. A comprehensive overview of the nature conservation directives ought to be performed, and the requirements for independent scientific evaluations should be strengthened in certain permit regimes under EU law. The creation of national funds for the remedying of damage to biological biodiversity could solve the protection of natural environment. As for enforcement, it is suggested that the Commission tighten up the demands on the Member States' courts to fulfil their obligations under Article 267 TFEU to ask for preliminary rulings from the CJEU. Stricter criteria for the enforcement of environmental provisions and the creation of independent enforcement authorities should also be further investigated.

Another idea that is discussed is the establishment of the position of an Environmental Ombudsman on both the EU and national levels. One could also contemplate different measures both to strengthen the position of science in the administration and courts, and to improve the education and competence of the courts. It is finally of vital importance to introduce strict sanctions for administrative inertia in relation to obligations under EU environmental law.

RoN does not entail a shift of paradigm in law that has the capacity to save the environment from the challenges we face today. Many of the deficits that this movement criticizes modern environmental law for are general problems that have been discussed for years and which will not be remedied by introducing new labels in a system that still must be handled by humans. The dichotomy between RoN and modern European environmental law is therefore partly artificial, a symbolic construct. In the legal order of the EU – with advanced environmental law and clear obligations for the administration – we have chosen a different avenue for enabling civil society to act as a watchdog of environmental decision-making, namely to award standing in court for the public concerned and for recognized

ENGOs. There is little reason to deviate from this system, although it needs to be strengthened in certain aspects.

Even so, the RoN school of thought contains fresh insights in its critique of current environmental law and presents ideas that can be developed within our conventional legal notions. Such an idea may be to introduce the general principle of non-regression on the constitutional level in EU law, meaning a prohibition on the Member States to undertake measures entailing environmental degradation or the weakening of environmental laws. Other principles that are lacking are at that level is those concerning environmental or ecological integrity, as well as the recognition of the 'intrinsic value of biodiversity'.

In addition, many ideas in the RoN concept can be used to improve secondary EU legislation on the environment. Most importantly, these ideas concern the improvement of the enforcement possibilities and the implementation of the Union obligations in the Member States.

6. RoN Examples

6.1. Ecuador: Appearance at Constitutional Level

On 28 September 2008, the Ecuadorian people, led by President Rafael Correa, voted overwhelmingly in favor of a new constitution that grants nature – mountains, rivers, forests, air and islands – the right to exist, flourish and develop. Ecuador is thus the first country in the world to enshrine the rights of nature in its constitution. How did this come about, one wonders? The following is a brief overview of the social processes that led to this specific instrument for the protection of nature being at the top of the Ecuadorian legal hierarchy. To understand this, we will shed light on the socio-economic dilemmas of Ecuador in the 21st century, which will show not only the relationship of the inhabitants to nature, but also the general dilemmas of Latin America in the 21st century. These challenges were largely economic.

The fate of the South American continent was strongly influenced by the world cocoa price in the 20th century, followed by the economic crisis of 1929 and the boom in banana exports from the 1950s onwards. Although Ecuador has never been one of the world's major oil producers, it has become an attractive investment destination over time. However, over time, the rich oil reserves were depleted, production became unprofitable, and

only traces of environmental damage remained. A powerless, commodity-exporting economy that relied on oil production to overcome its economic dependence struggled with the lack of a national currency when it faced sovereignty problems after the introduction of the dollar in 2000. Intensive oil production has had a negative impact on the environment since the 1970s.

The arguments of the environmentalists, the dissatisfied natives [with the creation of the Confederation of Indigenous Nationalities and Peoples of Ecuador (CONAIE) in 1986] and the resistance of the peasantry clashed, and the demand for an alternative model of development was voiced.[28] After the natural disaster caused by El Niño (1987–1999), the economic crisis reached its peak, and in January 2000 the national currency, the sucre, was abolished and the US dollar became the national currency. Sovereignty, economic development, and ecological arguments pointed in the same direction, namely towards the realization of an alternative model of civilization, which took shape in the concept of '*sumak kawsay*' or 'living right/well'. President Raphael Correa used this intellectual trend to build an intercultural and multi-ethnic state.

> "The peculiarity of the Ecuadorian situation is that it combines the Venezuelan challenge of overcoming dependence on oil with the Bolivian need to integrate the indigenous population, thus creating a convergence of economic and social conditions of development that, within the given framework of capitalism, highlights the urgency of change in Latin America."

6.2. Some Examples of the Declaration of the RoN

The phenomenon of nature's rights can be felt in many parts of the world today. The intensity of its acceptance varies due to differences in history, ideology, philosophy of law, and legal systems. It is present in South America, Canada, India, Australia and New Zealand through various legal acts.

28 *See* Fabio Louis Bardosa dos Sandos, 'Rafael Correa kormányának dilemmái Ecuadorban: Ökológia kontra kapitalizmus, Változatok egy témára', *Eszmélet,* 2013, Issue 98, pp. 104–114.

Another representative of the common South American geo-sociological background described above was Bolivia.[29] In 2009, a new environmental law was adopted there,[30] which gives every citizen the right to protect the environment suitable for the development of living beings. Although the Bolivian Constitution does not declare the concept of the rights of nature, it paved the way for the 2009 Law on the Rights of Mother Earth *(Madre Tierra)*.[31]

One of the first partially successful natural rights lawsuits in Ecuador was brought against a construction company in 2011 by the NGO Global Alliance for Rights of Nature (GARN) (and others). They sued on behalf of the Vilcabamba River in Ecuador because the construction company had built a road on the river and polluted it with construction debris. The Provincial Court of Loja recognized the plaintiffs' legitimate claims on behalf of the river, but the construction company did not comply with the obligations imposed on it by the judgment and they were no longer able to carry out further lobbying.[32]

In 2017, four rivers around the world filed lawsuits and won legal claims to natural phenomena.[33] The lawsuit was filed on behalf of the Whanganui River in New Zealand,[34] the Rio Altrato in Colombia and the Ganga and Yamuna rivers in India. The New Zealand case is essentially unique because Parliament passed the Te Awa Tupua Act,[35] which appointed two guardians of the river: a representative of the indigenous Maori people and a repre-

29 Cf. Paola Villavicencio Calzadilla & Louis J. Kotzé, 'Living in harmony with nature? A critical appraisal of the rights of Mother Earth in Bolivia', *Transnational Environmental Law,* Vol. 7, Issue 3, 2018, pp. 397–424.

30 The Bolivian Law *Ley Marco de la Madre Tierra y Desarrollo Integral para Vivir Bien*, Ley No. 300, 2012.

31 *See* Nohely Guzmán, 'Tierra, agroindustria y transgénicos: Conflictos sociales populares en la Bolivia de la Madre Tierra', *Perspectivas Rurales Nueva Época,* Vol. 15, Issue 30, 2017.

32 Maria Valeria Berros, 'Defending rivers: Vilcabamba in the South of Ecuador', *RCC Perspectives,* Issue 6, 2017, pp. 37–44.

33 Jerzy Bieluk, 'River as a legal person', *Studia Iuridica Lublinensia,* Vol. 29, Issue 2, 2020, pp. 11–23.

34 In March 2017, the Whanganui River in Aotearoa, New Zealand, became the first river to officially receive legal entity status. This legal personality is based on an ontological understanding of the river as an indivisible and living whole and on the spiritual lineage of the Whanganui iwi (a Maori tribe).

35 Christopher Rodgers, 'A new approach to protecting ecosystems: the te awa tupua (Whanganui River Claims Settlement) Act 2017', *Environmental Law Review,* Vol. 19, Issue 4, 2017, pp. 266–279.

sentative of the government, who must work together to reconcile their positions with the common goal of protecting the river and its ecosystem.[36]

6.3. Local Level Appearance – the Example of the US

In the United States, the phenomenon has manifested itself at the local level. In 2010, the City Council of Pittsburgh, Pennsylvania, unanimously passed an ordinance recognizing the rights of nature as part of a ban on shale gas drilling.[37]

In 2019, the city of Toledo, Ohio, passed the Lake Erie Bill of Rights, a city ordinance[38] that gave the lake its own rights.[39] A farmer representing the Drewes Farms Partnership filed a federal lawsuit in court, claiming that his farm was liable under the ordinance for the fertilizer applied to his fields because he could not guarantee that the pollution would not enter the Lake Erie watershed. A short time later, the state of Ohio itself joined the lawsuit, arguing that it was not primarily the residents but the state that was held liable for its environmental regulations. The reasoning behind the ruling was that the law itself was 'unconstitutionally vague' and exceeded the powers of municipalities. The plaintiffs had unsuccessfully sought to uphold the Lake Erie Bill of Rights in state court.[40]

36 Tony Collins & Esterling Shea, 'Fluid Personality: Indigenous Rights and the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 in Aotearoa New Zealand', *Melbourne Journal of International Law,* Vol. 20, Issue 1, 2019, p. 197–221.

37 Oliver A. Houck, 'Noah's Second Voyage: The Rights of Nature as Law', *Tulane Environmental Law Journal,* Vol. 31, Issue 1, 2017, pp. 1–50.

38 *Cf.* Devon Alexandra Berman, 'Lake Erie bill of rights gets the ax: Is legal personhood for nature dead in the water', *Sustainable Development Law and Policy,* Vol. 20, Issue 1, 2019, Article No. 3.

39 Kenneth Kilbert, 'Lake Erie bill of rights: Stifled by all three branches yet still significant', *Ohio State Law Journal Online,* Vol. 81, 2020, pp. 227–237.

40 *See* at www.michiganpublic.org/environment-science/2020-02-28/lake-erie-bill-of-rights-declared-unconstitutional.

6.4. Uganda

Uganda enacted its National Environmental Protection Act[41] (referred to in this section as the Act) in 2009. Section 3 of the Act provides for the right to a dignified environment.[42,43] Section 4 of the Law on the Rights of Nature states that nature has the right to exist, survive, maintain and renew itself in terms of its life cycles, structure, functions and evolutionary processes. A person has the right to bring an action in a court of competent jurisdiction if the right of nature according to the law is violated. The government takes precautionary and restrictive measures in case of activities that could lead to the extinction of species due to permanent changes in ecosystems or natural cycles. In the case of sites to which the rights referred to in paragraph 1 apply, the Minister shall require the conservation of the site by means of a regulation.

6.5. Bangladesh

In 2009, the Supreme Court of Bangladesh also issued a decision[44] that affects the rights of nature.[45] The Ministry of Environment and Forests enacted a law in 1995 requiring all industrial establishments to use sewage

41 The National Environmental Act of Uganda, 2019, at https://nema.go.ug/sites/all/themes/nema/docs/National%20Environment%20Act,%20No.%205%20of%202019.pdf.

42 Section 1 states that all people in Uganda have the right to a clean and healthy environment in accordance with the Constitution and the principle of sustainable development. Section 2 states that everyone has a duty to create, maintain and improve this environment, including the duty to prevent pollution. A person who has a right under Section 1 and is threatened by an act or omission of a person that could cause harm to human health or the environment or interfere with the performance of the obligation under Section 2 may bring a civil action against that person.

43 The petition may require the court to prevent, stop or remedy an act or omission that harms human health or the environment; to require a social and environmental risk assessment and impact assessment, an environmental assessment, monitoring, measures taken by public authorities to prevent or remedy the damage or danger; to oblige other persons to […] take measures to ensure that human health or the environment is not endangered. Id. Section 3(5).

44 *See* at www.centerforenvironmentalrights.org/news/bangladesh-supreme-court-upholds-rights-of-rivers.

45 The decision of Supreme Court of Bangladesh High Court Division (31 January 2019) is available (in Bengali) at http://nrcc.gov.bd/sites/default/files/files/nrccb.portal.gov.bd/notices/4569e59a_762b_41a2_95ca_0c462408f25c/JUDGEMENT%20OF%20HIGHCOURT.pdf.

treatment plants to protect the rivers from pollution, but owners often ignored the law. The public interest litigation was initiated under the empowerment of Article 102 of the Constitution of Bangladesh when a lawsuit was filed by Human Rights and Peace for Bangladesh (HRPB) on 7 November 2016.[46] As a result, the judicial commission of inquiry prepared a report on illegal constructions on the banks of the Turag River. Subsequently, these persons and representatives of the buildings were made parties to the proceedings. The defendants in the proceedings were the National Government, represented by the Secretary of State, the Ministry of Shipping, represented by the Chairman of Bangladesh Inland Waterways, the Transport Authority represented by the Director-General, and the Director of the Deputy Commission of Gazipur in charge of environmental affairs.

In its judgment of 30 January 2019 and its decision of 3 February 2019, the court stated:

> "Governments around the world enact laws to protect their rivers, and courts issue guidelines. Had the courts in Bangladesh not done so, the Buriganga River could have been built on with multi-storey buildings, or the Turag River would have become a location for illegal housing associations."[47]

The Council of the Supreme Court, consisting of Justices Moyeenul Islam Chowdhury and M. Ashraful Kamal, ruled in one of its rulings that Bangladesh and humanity are in danger[48] if the rivers are not protected from the problems of navigability caused by human intervention.

In its decision, the court pointed out that no trial would have been necessary if the authorities had complied with the law, but noted that the Tureg is a living being with legal personality.[49] In its ruling, which is based on the doctrine of public trust, it stated that the role of the approximately

46 Human Rights and Peace for Bangladesh concerning the Turag River, Writ Petition No. 3503 of 2009.

47 In the days leading up to the decision, civilians protested in Kuakata, Patuakhali, demanding that the river be recognized as a living organism.

48 According to the World Bank study, four major rivers near Dhaka – Buriganga, Shitalakhya, Turag and Balu – are polluted daily with 1.5 million cubic meters of wastewater from 7,000 industries in the area and another 0.5 million cubic meters from other sources.

49 A river is a living being, a legal entity.

450 rivers[50] is of paramount importance to the people who live there, as their livelihoods depend on them.

To implement the ruling, the court appointed the National River Conservation Commission (NRCC)[51] as the legal guardian (person *in loco parentis*), responsible for the legal protection of the river from pollution and unlawful interference (construction work).

The court ordered the state to amend the National River Protection Commission[52] (NRCC) Act (2013) to strengthen the NRCC's investigative and enforcement powers as an effective and independent institution by creating new criminal offenses and taking prompt action. The court has issued a number of enforcement provisions, such as freezing loans for construction projects, the role of education, and education to preserve the river's natural state. It has issued detailed guidance on how to inform the public about the state of rivers and biodiversity through communication and education.

Following the appeal, on 17 February 2020, the Appeals Division of the Supreme Court of Bangladesh upheld the verdict with some minor changes and dismissed the appeal. The consequences of the ruling also pave the way for cross-border cooperation, *i.e.* joint action in common river basins, in particular with regard to rivers from India.

6.6. India[53]

On 23 March 2017, the court of Uttarakhand in the Indian city of Nainital declared[54] the Yamuna and Ganges rivers to be living organisms on similar grounds as the court in Bangladesh. The activities to pollute and damage

50 South Asia is surrounded by hundreds of rivers, most of which cross borders. They are the natural contribution of the people of Bangladesh, India, Nepal and Myanmar and are closely linked to their lives.

51 The Court appointed the National River Conservation Commission (NRCC).

52 National River Conservation Commission, at http://nrcc.gov.bd/.

53 *Mohamed Salim v State Uttarkhand and others,* Writ Petition (PIL) No. 126 of 2014, 20 March 2017.

54 The decision of the Court of Uttarakhand was seen as a measure to protect India's highly regarded but heavily polluted rivers. The Ganges – revered in Hinduism as Ganga Mata or Ganga Ayya – is the lifeline for more than 500 million people in India. This river and its tributary, the Yamuna, are the two largest rivers in the country, but both are heavily polluted by industrial waste, sewage, and even the remains of corpses burned on their banks.

the rivers were legally compared to assault and murder. The decision came about five days after the New Zealand parliament passed a bill recognizing the Whanganui River as a legal entity.[55]

The decision was made against the backdrop of the Central Government's obligation under Section 80 of the Uttar Pradesh Reorganization Act, 2000 to establish the Ganges Management Council and register Uttarakhand as a member of the Upper Yamuna Council. However, the Uttarakhand High Court found that none of the legal requirements were met.

The court ordered the government to stop illegal development of the area and ordered the central government to establish a Ganges Management Council within three months and include the state of Uttarakhand in the Upper Yamuna Council. Finally, the court banned mining in the Ganges basin and its uppermost floodplain with immediate effect.

Subsequently, on 20 March 2017, the Uttarakhand High Court issued a series of binding additional instructions, citing violations by the governments of Uttar Pradesh and Uttarakhand in cooperating with the central government in establishing the Ganges Board. The court also found that the individuals violating the state's land had not been evicted and issued an eviction order to be implemented within seven days of the date of the order. The court emphasized that the critical situation requires extraordinary protection and conservation measures for the survival of the two rivers, the Ganges and Yamuna. In this context, the court declared the Ganges and the Yamuna to be legal persons.

The resolution emphasizes the spiritual importance of these two rivers. Following the development of the Supreme Court of India's jurisprudence on the personality of Hindu deities and temple idols, the Supreme Court affirmed that the recognition of a Hindu deity or idol as a legal entity should be undertaken by those "who are entrusted with the possession and management of property". Citing the spirituality and religious beliefs of Hindus, the court noted that these rivers "support and contribute to the life and natural resources, health and well-being of the entire community". The Ganges and Yamuna rivers breathe, live and sustain communities from the mountains to the sea. Citing Articles 48A and 51A(g) of the Constitution, the court ordered that the focus of the Ganges Water Management Council, including its statutes, should be on irrigation, rural and urban water supply, hydroelectric generation, shipping, and industry.

55 Te Awa Tupua Act.

Article 48A is the guiding principle of public order and obliges the State to protect the environment. It states that "The state is committed to protecting and enhancing the environment, as well as protecting the country's forests and wildlife."[56] Citing the fundamental obligations enshrined in the Indian Constitution, the court referred to Article 51A(g), which provides that every Indian citizen has a fundamental duty to "protect and enhance the natural environment, including forests, lakes, rivers and wildlife, and to have compassion for living beings."[57]

The court declared the natural entities to be legal persons in a certain sense: accordingly, the rivers Ganges and Yamuna and all their tributaries, streams, all their natural waters that flow continuously or intermittently, are declared legal persons, living organisms. The status of a legal person is equivalent to the rights and obligations of a living person for the protection and conservation of the Ganges and Yamuna rivers. The court's decision declares the Director of the Ganges, the Secretary-General of the State of Uttarakhand and the Advocate General of the State of Uttarakhand NAMAMI as the 'in loco parentis' (deputy) guardian for the protection, conservation and conservation of the river.

The government of the state of Uttarakhand, where the Ganges River originates, argued in its appeal that the ruling was legally untenable – simply impractical – as it could lead to complicated legal situations, including claims against the rivers, in the event of flooding or drowning.

The Supreme Court of India has overturned the above-mentioned ruling of the Uttarakhand State Court, which had granted the two rivers the same legal status as humans, and ruled that the Ganges and Yamuna rivers cannot be considered living beings.

6.7. New Zealand

Similar local initiatives in the area of natural resource rights[58] include the Te Urewera Act of 2014,[59] and the Te Awa Tupua River Protection Act of 2017, which are examples of consensus between indigenous and land

56 Constitution of India, Article 48A.
57 Id. Article 51A(g).
58 *See also* Bieluk 2020, pp. 11–23.
59 Te Urewera Law.

management interests in New Zealand.[60] In both cases, an independent body (Whanganui iwi) was set up to represent the river.[61]

This legislation follows the 1962 decision of the Court of Appeal, which denied Maori customary ownership of the riverbed.[62] The Te Awa Tupua Act became an attempt to solve this problem, because with the 2014 Act, the Te Urewera Region ceased to be a Crown Estate National Park[63] and became a separate legal entity with "all the rights, powers, duties and liabilities" of a legal entity. Article 11(2) states that the enumerated rights shall be exercised on behalf of Te Urewera by the Te Urewera Council, which will be established specifically for the purposes of the Act. It is also stated that this advisory body is composed of members of the Tūhoe iwi and persons appointed by the Crown. The Council carries out its functions on behalf of the province it represents and may bring actions for damages or bring proceedings before the courts.

In 2017, the Whanganui River was recognized as a legal entity by the Tupua Act, bringing the historic struggle of the Whanganui iwi to a halt. The preamble to this Act states that under the Treaty of Waitangi of 1840, the Crown recognizes that ancient Māori land is the spiritual place of the Iwis. The 2017 law established the office of the Te Pou Tupua representative, with one member representing the iwi and another representing the crown.[64] The representative's responsibilities include speaking on behalf of the river and maintaining its integrity.

6.8. Canada

One of the North American examples of nature education rights is the societal will to prevent the construction of a hydroelectric power plant on a priority section of the Magpie River, which would destroy the river's ecosystem, and to stop mining activities.

In February 2021, the Muteshekau-shipu Federation announced the adoption of two parallel resolutions recognizing the river, also known as the 'Magpie River' (Muteshekau-shipu in the Innu language), as a legal

60 Bieluk 2020, pp. 11–23.
61 Te Urewera Act, Section 11(2); Te Awa Tupua Act, Section 20(1)–(2).
62 *Re the Bed of the Whanganui River,* [1962] NZLR 600 (CA).
63 Te Urewera Act, Section 51.
64 Te Awa Tupua Act, Section 19.

entity with[65] rights. The first resolution was passed by the Ekuanitshit Innu Council in January 2021, followed by another by the Regional County Municipality (RCM) of the municipality of Minganie in the Côte-Nord region (Quebec, Canada) in February. The resolutions recognized nine rights for the river, including the right to natural development and protection, pollution relief and the right to be heard in court. The members of the Ekuanitshit Innu Council have been appointed as legal guardians of the river, primarily responsible for ensuring that these rights are respected. The founding members of the Muteshekau-shipu Association were the Ekuanitshit Innu Council, the Minganie RCM, the CPAWS Quebec and the Eaux-Vives Minganie Association.[66] The Muteshekau-shipu Association is an example of local cooperation and a common legislative process.

6.9. Colombia

In 2018, young plaintiffs in Colombia filed a special lawsuit (*tutela* is the name of the legal institution)[67] against the Colombian government, Colombian municipalities, and several companies. The plaintiffs alleged that the government failed to reduce deforestation and to achieve the goal of zero net deforestation in the Colombian Amazon by 2020 (as set out in the Paris Agreement and the 2014–2018 National Development Plan), thereby affecting the plaintiffs' fundamental rights to a healthy environment, life, health, food, and water. The court dismissed the action. They argued that the form of the Tutela action was not appropriate because of the collective nature of the problem, since it can only be applied effectively if a causal link between the fundamental right and the specific infringement can be established, the person bringing the Tutela action is directly concerned, the violation of the fundamental right is evidenced and the remedy is aimed at the elimination of an individual rather than a collective violation. The plaintiffs filed an appeal on 16 February 2018, which resulted in the Supreme Court reversing the decision on 5 April 2018, recognizing that

65 The inhabitants of Mestokosho and Ekuanitshit, the Innu community in the Gulf of St. Lawrence, see the 300 km long river as one family.

66 *See* at https://ecojurisprudence.org/initiatives/recognition-of-legal-personality-and-rights-of-the-magpie-river/.

67 *See* at http://climatecasechart.com/non-us-case/future-generation-v-ministry-environment-others/.

"the fundamental rights to life, health, subsistence level, liberty and human dignity are inextricably linked and intertwined with the state of the environment and ecosystem."[68] It also recognized the Colombian Amazon as an 'object of rights', citing a decision by the Constitutional Court that had recognized the rights of the Atrato River.[69] The Supreme Court accordingly ruled that the Colombian Amazon has a right to protection, conservation, care and restoration. The court ordered the government to develop and implement action plans to counter deforestation in the Amazon. In its judgment, the court highlighted in particular the role of human responsibility.[70] In paragraphs 5.2 and 5.3 of the judgment, it also formulated environmental rights with regard to the interests of future generations, which are "based on an ethical obligation of solidarity", according to the court. Referring to the provisions of the Amazon Cooperation Agreement (TCA) and the 2015 Paris Framework Agreement on Climate Change, it emphasized the role of the Amazon ecosystem and the importance of its harmonious development. The court ordered the creation of an "Intergenerational Contract for Life in the Colombian Amazon (PIVAC)", the implementation of which was entrusted to the public authorities, the economy and the education system.

6.10. Argentina

In 2020, a group of non-governmental organizations (and a children's group) in Argentina filed a lawsuit[71] with the Supreme Court of Argentina against the governments of Entre Ríos province and the municipality of Victoria City, claiming that they had failed to protect ecologically sensitive wetlands.[72] The plaintiffs asked the court to declare the Paraná River Delta a 'rights holder' and an ecosystem important for climate change mitigation and adaptation, and to appoint a guardian for the protection of the rights of the Paraná Delta, who would be responsible for monitoring the conservation and sustainable use of the wetlands. The complaint referred

68 *See* STC4360–2018 number: 11001–22–03–000–2018–00319–01, Approved at the meeting of 4 April 2018, Bogotá, at https://judicialportal.informea.org/node/20.

69 Constitutional Court of Colombia, The Atrato River Case Judgment T-622/16, at http://files.harmonywithnatureun.org/uploads/upload838.pdf.

70 Id. p. 16.

71 *See also* at http://climatecasechart.com/non-us-case/asociacion-civil-por-la-justicia-ambiental-v-province-of-entre-rios-et-al/.

72 *See* the lawsuit, at http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2020/20200702_11820_complaint.pdf.

to conservation laws in other countries, including Bolivia, New Zealand, Colombia, Ecuador and India.

On 11 August 2020, the Court of First Instance ruled that significant and uncontrolled fires were taking place in the area examined, resulting in levels of air pollutants five times higher than the limit allowed by the normative regulation. The cumulative effect of cremation, which also follows ancient rites, requires measures in accordance with the precautionary principle. In its decision, the Court referred to the document prepared by the Ministry of Development entitled 'Comprehensive Strategic Plan for the Conservation and Sustainable Use of the Paraná Delta', which states that the delta is not only of ecological importance, but also a priority area for flood protection.

6.11. Peru

In 2019, a group of Peruvian youths filed a lawsuit against Peru, claiming that the government had failed to take the necessary measures to combat climate change. The lawsuit sought to force the president, the Ministry of the Environment, the Ministry of Agriculture and Irrigation, the Ministry of Finance, and regional governments to develop action plans to reduce deforestation in the Peruvian Amazon by 2025. The lawsuit also called for recognition of the Peruvian Amazon as an area subject to the right to protection, preservation, care and restoration, citing other conservation cases in Ecuador, Colombia and New Zealand, as well as a declaration that the environmental destruction of the Peruvian Amazon is unconstitutional. A decision on this matter is still pending.

6.12. Pakistan

In 2021, the Supreme Court of Pakistan upheld a decision by the Punjab provincial government to prohibit the construction of new or expanded cement plants in environmentally sensitive areas. The Supreme Court recognized that these cement plants could, among other things, lead to further depletion of groundwater. As part of its investigation, the court emphasized that the government must respect the precautionary principle to protect the right to life, sustainability and human dignity of the communities surrounding the project sites. In addition, the court recognized the need to protect the rights of nature by stating that "the environment as such must be protected." Peaceful coexistence requires the law to treat natural phenomena as bearers of rights.

7. Summary of International Experience

As you can see, there are some similarities in many examples of this phenomenon. In an area of great biodiversity, most of which is also inhabited by indigenous peoples, there is a kind of environmental degradation or ongoing damage of such magnitude that it not only threatens the livelihoods of the indigenous community, but also attracts the attention of the authorities. When these factors come together, specific rights for nature are enshrined in legislation. This codification solution can best be understood as a common denominator, because there is no evidence that what natural persons cannot achieve through the legal process to protect the natural environment, the institution of a conservationist can achieve more effectively. The conservationist is therefore an intermediary between nature, indigenous peoples, the authorities and the courts. This concept is usually a multipolar conflict, not only a conflict between economic and environmental interests, but also a conflict between indigenous peoples' beliefs in nature and much more. With the appearance of the phenomenon of rights to nature, different variants of these conflicts can be identified.

The example of New Zealand shows that the interests of the indigenous people are explicitly emphasized, while the environmental interests are less in the foreground. Nevertheless, the Te Urewera Act and the Te Awa Tupua Act have been adopted as the defining reform element of New Zealand's future environmental legislation, underlining that it takes a much more balanced approach to the relationship between nature and humans than has been the case in the past. In the case of Ecuadorian legislation, the proportions have also changed, but again, the balance of interests was evident.

Another interesting difference is the different level of legislation. While in Ecuador legislation is at the top of the legislative hierarchy, in New Zealand legislation is more of a preparatory piece of legislation for reform, while in the North American examples it is located at the local, regional level.

Another difference is how nature is treated in each example. Ecuador grants rights to nature in general in its constitution, so the territorial scope here corresponds to the country's borders. The other regulations focus on a specific form of nature, which is easier to manage and more transparent in terms of the impact and implementation of the legal provisions. However, there may also be questions about where the actual boundaries of a natural phenomenon lie, especially in the case of contiguous ecosystems.

8. How Successful are These Lawsuits?

The legal personality granted to ecosystems has so far been mainly symbolic, and it remains unclear how successful these lawsuits can be in achieving adequate long-term protection of ecosystems. Again and again, questions are raised about possible outcomes: What exactly does the plaintiff want to achieve on behalf of the injured party? Does the plaintiff seek to compel a public authority to compensate for the damage suffered? Does the party want to force another party to pay damages? Who can be held liable for these damages? Can an appointed guardian/guardian/representative be held liable if a river overflows and causes damage? Who has a say in the fate of a transboundary river (*e.g.* in India, where the Ganges and Yamuna rivers extend beyond the border of Uttarakhand)? If a lawsuit claims that climate change is a threat, how much responsibility does the activity of a particular industry bear in this regard?

However, the increasing number of natural rights lawsuits could set a precedent for national and local governments to take action to protect biodiversity by opposing mining projects that could prove destructive to a particular ecosystem. The lawsuits also draw attention to the environmental justice issues faced by marginalized communities, particularly Indigenous communities that care for and manage these vital natural ecosystems and whose livelihoods and cultural and spiritual practices depend on natural formations.

The European Parliament's study[73] examined the rights of nature in comparison to the legal personality and position of natural persons before the courts. In particular, it highlights the need to strengthen the requirements for independent scientific assessments in certain authorization schemes of EU law. However, there are strong doubts that the concept of the RoN can find a place in European legal culture. There are two approaches connected to RoN. The first is finding a way to facilitate the communication between science and law and how to apply this knowledge basis in court, while still upholding the procedural autonomy of each Member State as well as the effective implementation of EU law on the environment across the Union. The second is the legal philosophical discussion about the origin of 'rights'. Closely related to this is how the courts determine the needs

73 Darpö 2021.

of the environment and future generations from scientific and technical evidence presented before them by representatives for those interests.