

# ***CAN NATURE GET IT RIGHT?***

## ***Rights of Nature in a European Context***

Presentation at the meeting of the

***EuroLat Committee on Sustainable  
Development, Environment, Energy Policy,  
Research, Innovation and Technology***

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# ***What is RoN today?***

***A wide school of thought, containing (ao):***

- ★ Legal-philosophical aspect, from an anthropocentric to an ecocentric paradigm...***
- ★ Environmental constitutionalism...***
- ★ The representation issue, from natural object to natural subject...***
- ★ A means for indigenous peoples to uphold their rights to traditional use of natural resources...***
- ★ Linked to a Human right to a healthy environment (climate cases)***
- ★ Ecocide...***



# ***What is Rights of Nature?***

- **RoN rests on three assumptions:**
  - ✱ **Current law cannot solve the environmental challenges of today, an urgent need a shift of paradigm...**
  - ✱ **The introduction of legal personhood for natural entities is the key factor (actio popularis + scientific evidence)...**
  - ✱ **The RoN concept is better suited to solve the most pressing issues of the future, such as climate change and biodiversity losses...**



# ***Critical viewpoints on RoN***

- **A lot of political symbolism, lack of clarity:**  
*The contents of the Charter must establish the concept of a natural nested hierarchy of rights that follows the order of hierarchies in natural systems that operate to sustain life leading to a reframing of the notion of 'rights' from adversarial to 'right relationship' i.e.: synergistic and complementary.*
- **The same cases oao (anecdotal evidence, no arguments taken), omits to take into account the specific legal and cultural circumstances...**
- **...and the low success rate; bylaws in the USA, Vilcabamba-Mirador, Uttarakhand, Atrato River, etc...**



# ***Critical viewpoints on RoN***

- **Quick fix for the enforcement; “guardians for the natural entity”; Ganges, Amazon...**
- **Competing rights and interests; hydro power/forestry  $\leftarrow \rightarrow$  biodiversity, rare earth elements  $\leftarrow \rightarrow$  Sami land rights...**
- **Different ecosystems on different scales, all species (invasive species)?...**
- **Romantic view on indigenous peoples...**
- **Obsessed with rights = “legal transplant”..?**



# ***“Rights” and representation in the EU***

It follows more generally that the last sentence of the third paragraph of Article 10a of Directive 85/337 must be read as meaning that the ‘**rights capable of being impaired**’ which the **ENGO** are supposed to enjoy **must necessarily include the rules of national law implementing EU environment law and the rules of EU environment law having direct effect.**

C-115/09 *Trianel* (2011), para. 48

**Aarhus + Art 47 of the EU Charter (CFR)**

**= the principle of judicial protection +  
direct effect**



# ***RoN in EU law ..?***

- **Constitutional protection?**
- **Stronger adaptivity requirements, for example in permits...**
- **Wider use of legal-technical standards...**
- **Reform of EU Nature directives: scientific basis for the listing...**
- **Enforcement**
  - ✱ **Better means (*commissario ad acta*)...**
  - ✱ **Administrative independence and resources...**
  - ✱ **Specialization and education of courts...**
  - ✱ **Damages on behalf of the environment...**
  - ✱ **Preliminary rulings...**





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**....and finally...**

**THANK YOU FOR LISTENING..!**



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