

CAN NATURE GET IT RIGHT?

Rights of Nature in a European Context

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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...***

RoN in Legal Philosophy



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- **The dire situation for the environment requires new thinking** (climate, mass extinction of species, food shortages, etc)...
- **Environmental law is part of the problem, legitimizes exploitation...**
- **Earth law and Earth (Great) jurisprudence** (Nash, Cullinan, Berry), **Rule of law for nature** (Bosselmann)
- **“Subjectification”, cf development of other rights** (slaves, ethnicity, women, sexual minorities, children)...
- **Harmony, although Nature at the apex...**



Critical viewpoints on RoN

- **Deep ecology \leftrightarrow Trias politica; “electoral blackmail”...**
- **RoN rests on three main 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 (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...**



Critical viewpoints on RoN

- **The low success rate; bylaws in the USA, Vilcabamba-Mirador, Uttarakhand, Colorado River, etc...**
- **Quick fix for the enforcement; “guardians for the natural entity”; Ganges, Atrato...**
- **Competing rights and interests; hydro power/forestry \leftrightarrow biodiversity, rare earth elements \leftrightarrow Sami land rights...**
- **Different ecosystems on different scales, all species (stone marten in Sweden)?...**
- **Romantic view on indigenous peoples...**



Critical viewpoints on RoN

Obsessed with RIGHTS = “legal transplant”..?

BUT STILL (in the EU):

- 1. Representation issue...**
- 2. A Charter on Nature...**
- 3. Nature in secondary legislation**
- 4. Enforcement-enforcement-enforcement...**



“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



Direct Effect of EU Environmental Law

A forceful tool for the implementation of environmental obligations in EU law in the MS, with two main components, namely that **provisions which are unconditional and precise;**

- **Overrules national law, “dis-apply” or “set aside”, and**
- **Carries “rights” for ENGOs concerning administrative “obligations”...**



= *Wide Access to Justice in National Courts!*

Since 2007: C-240/09 *Slovak Brown* (2011) → C-873/19 *Kraftfahr-Umweltsamt* (2022)

- **A rapid and very strong development in most Member States courts...**
- **In contrast with "direct action" in CJEU...**



RoN in EU primary law..?

Would a constitutional provision on Nature make a difference?

- **Principles in a Charter on the value of Nature:**
 - ✿ **Recognition of the intrinsic value of biodiversity (CBD)...**
 - ✿ **Non-regression...**
 - ✿ **Ecological integrity...**



RoN in secondary EU law ..?

- **Stronger adaptivity requirements, for example in permits...**
- **Wider use of legal-technical standards...**
- **Reform of EU Nature directives: scientific basis for the listing...**
- **Reform of ELD; Definition of environmental damage, limitations, ENGO access, damages on behalf of the environment, remediation funds...**
- **Ecocide...**



Effectiveness and enforcement

- **Regulate the independence, competence and power of the national enforcement authorities...**
- **To avoid ping-pong; *commissario ad acta*...**
- **The experience and education of the national courts (environmental courts or benches?)...**
- **Preliminary rulings (2008-2020: DE: 38, SE 10, 6MS O), EU Ombudsman, ...**



Ley Mar Menor 2022

- **A nature reserve...**
- **Three committees: Representatives, scientific, Supervision/enforcement...**
- **Actio Popularis...**

Soro Mateo, B & Álvarez, S: ***The Mar Menor Lagoon Enjoys Legal Standing: and now, what?*** Verfassungsblog 2022/10/14

Peñalver i Cadré, A: ***The first case recognizing the rights of nature in Europé: Spanish Parliament's brave step towards ecocentrism.*** Chemins Publics 16/11/2022

Fuchs, M-C: ***Rights of Nature Reach Europe. The Mar Menor case in Spain in the light of Latin American precedents.*** Verfassungsblog 2023-02-24



....and finally...

THANK YOU FOR LISTENING..!



https://www.europarl.europa.eu/thinktank/sv/document.html?reference=IPOL_STU%282021%29689328

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