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Natural law and the rights of nature – in search of more effective environmental protection

Abstract: The paper discusses innovative legal regulations that may contribute to increasing standards ofenvironmental protection. In the face of increasing nature degradation and climate change, current protection measures are insufficient. The dysfunction of the political system, international institutionalisation, and existing legal regulations, result in the strengthening of the global economy instead of increasing the extent of activities aimedattheprotection of nature. It is argued that the concept of natural law, which focuses on the protection of human rights, is not the same as the rights of nature. However, the analysis of the origins and axiological and legal assumptions of boththese concepts allows us to formulate the conclusion that both can form a common ethical perspective needed in order to protect the community of life on Earth. The aim of the considerations is to discuss the concept of the rights of nature, which are the basis for shaping the new environmental ethics. Appealing to common axioms, the idea of the rights of nature favours overcoming the limitations resulting from property law and the currently dominant economic and utilitarian factors. The paper arguesthat the environmentally-profiled rights of nature can become an ally in environmental protection.

Keywords: natural law, rights of nature, human rights, bioculturalism, environmental law, environmental ethics.

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Introduction

Degradation of ecosystems, loss of the biodiversity of plants and animals, and climate change, are gaining momentum every day. The effects of industrial and economic expansion lead totheerosion of the natural webs of life. The concentration of anthropogenic greenhouse gases in the atmosphere has now reached record levels.[2] The greenhouse effect has become one of the main causes of biodiversity loss in terrestrial and aquatic ecosystems. Environmental pollution disturbs the mechanisms of circulation in the atmosphere. All elements of nature are interrelated and complement each other. For this reason, causing disturbances in the biological balance in ecosystems also affects various social environments and processes. Environmental degradation leads to a rapid decline in the health of planet Earth.[3] Recently, the rights of nature have been invoked as a new basis for implementing more effective conservation measures.

In these considerations, the comparative method is used to discuss regulations from different parts of the world. It is complemented by the theoretical and legal method (source analysis) and dogmatic arguments that involve analysing legal acts and jurisprudence. The aim is determined of the main assumptions for the paradigm of the rights of nature. The paper is an attempt to answer the question whether therights of nature that were formulated in a different cultural and geographical region can provide guidance for modernising the mechanism of environmental protection in Western countries. This research area lends itself to further detailed questions, such as whether the rights of nature and natural law are the same philosophical and legal concepts. Do the aims of natural law and the rights of nature focus on a common axiological perspective? What is their role in the face of the growing global environmental crisis? The above points touch on many complex issues on the borders of various fields of science and knowledge, including law, environmental engineering, molecular biology, geochemistry and biophysics. Interdisciplinary

2 World Economic Forum, *The Global Risks Report 2023. Insight Report*. Geneva, 2023, 21.
3 World Wildlife Fund, *Living Planet Report 2022. Building a Nature – Positive Society*. Gland, 2022, 12.

research will allow us to discuss the indicated matters in a broader light with a view to the practical application of environmental norms.

Natural law and the rights of nature - one or two different routes?

Since prehistory, humans have been striving to organise society using models of the order that can be observed in nature. The processes taking place in nature are correlative and run in an organised manner. Andrzej Redelbach stated that natural law is contained "in the birth and death of creatures, in the sequences of sunrises and sunsets, in the repetition of the seasons, in the permanence of the world marked by the variability of species."[4] In this view, natural law does not come from humans, unlike positive law which is established by a human legislator. The harmonious functioning of nature is ensured by forces and processes that are independent of humans. Richard Hooker argued that "God being the author of Nature, her voice is but the instrument."[5] Hence, it can be assumed that the natural law and the rights of nature have a common pragenesis, which results from the nature of the universe. For somepeople, these are supernatural forces identified with the divine Creator.[6] From the beginning of time, humans have been looking for a just law based on a solid and lasting axiological foundation. Natural law (*ius naturale*) began to emerge as an objective law, a set of fixed constellations,[7] so to speak, that showed the ethical route amidstthe vicissitudes of human uncertain and changing fate.

Over time, natural law as a philosophical and legal concept gradually moved away from its original meaning. The views of Greek philosophers be-

4 Andrzej Redelbach, *Natura praw człowieka. Strasburskie standardy ich ochrony*. Toruń, 2001, 47.

5 Quoted for: Donald R. McConnell, "The Nature in Natural Law", *Liberty University Law Review* 2, no. 3. 2008: 828.

6 McConnell, 797, 818, 831, 841; Zbigniew Orbik, "Human Rights in the Light of the Concepts of Natural Law", *Scientific Papers of Silesian University of Technology. Organization and Management Series*, no. 140. 2019: 280.

7 McConnell, 802.

gan to be reflected in the crystallisation of natural law.[8] The sophists, considered to be the first humanists, put humans at the centre of interest. In their doctrine the nature of the cosmos "moved into the shade toward the nature of man."[9] The reference point shifted from nature itself to human nature. As a consequence, natural law came to be defined as a set of norms that govern human conduct.[10] Defined in this way, natural law refers to common goals that result from human motives and personality.[11] However, it should be noted that the direction of human actions does not mean that their goals canalwaysbe morally justified. History has clearly and repeatedly shown that moving away from the original essence of natural law opens the way to attempts to justify acts that in no way can be considered moral or ethical, e.g. the immensity of the atrocities and terror experienced by prisoners in German concentration camps during World War II, or now by Ukrainians during Russia's bestial and unlawful attack on their country. Thus, human nature is not in every case consistent with the essence of natural law which is derived from outside the state apparatus and human-made structures.

Accepting humans as the measure of all things in the natural law meant that over time, the reality created by people became more and more prominent. Robert P. George pointed out that natural law theory is "a description of the constitutive aspects of the well-being and fulfilment of human persons and their communities.[12]" For this reason, it should not be accepted uncritically, because in the pursuit of the realisation of the human person one can lose the awareness that humans do not live "outside" nature, but "within" it. Egoistic striving to control other people and space can lead to the depreciation of fundamental values.

8 Lloyd L. Weinreb, *Natural Law and Justice*. Massachusetts, 1987, 15.

9 Roman Tokarczyk, *Historia filozofii prawa w retrospektywie prawa natury*. Bydgoszcz, 1999, 42.

10 Tokarczyk, 42.

11 Tokarczyk, 53.

12 Robert P. George, *Prawo naturalne, Bóg i godność ludzka. Wykład im. Leona Petrażyckiego, Wydział Prawa i Administracji UW, 4 maja 2010*, ed. M. Dybowski, trans. A. Legutko-Dybowska. Warszawa, 2010, 10.

As J. Daryl Charles evocatively put it, "heaven and earth cry out" against unbridled and unfettered human autonomy.[13] The lack of moral brakes can become a source of multidimensional lawlessness and arbitrariness. Humans are constantly trying to transform the natural environment. As a result of urbanisation and industrial and economic expansion, environmental degradation is deepening at a rapid pace. This results in the dominance of economic factors and the search for new technological solutions which often bring even greater devastation to nature instead of the intended benefits. The literature indicates the susceptibility of the theory of natural law to adaptation in terms of new challenges related to social transformations.[14] However, to ensure harmonious relations with nature, universal axioms are needed, as well as eternal forces that invariably make the processes in the universe run in an organised and orderly manner.

The rights of nature originally had a transcendental and cosmological character. They resisted the symbolism and customary norms that gave rise to a new environmental ethic. Moulding process of the rights of nature was initiated in Latin America. Ecuador was the first country to formalise the rights of nature. The diversity of species of flora and fauna found in Ecuador is referred to as the "global epicentre of biodiversity."[15] Many plant and animal species are endemic. Within the Yasuni National Park(Parque Nacional Yasuní),oil deposits have been discovered in one of the world's most biodiverse areas. The deepening devastation of nature as a result of increasing anthropopressure caused an ecological catastrophe.[16] The indigenous population was dis-

13 J. Daryl Charles, "The Natural Law and Human Dignity: Reaffirming Ethical 'First Things'", *Liberty University Law Review* 2, no. 3. 2008: 647.

14 Orbik, 282.

15 Norman Myers, "Threatened Biotas: "Hot Spots" in Tropical Forests", *The Environmentalist* 8, no. 3. 1988: 194. See: Judith Kimerling, "Disregarding Environmental Law: Petroleum Development in Protected Natural Areas and Indigenous Homelands in the Ecuadorian Amazon", *Hastings International and Comparative Law Review* 14, no. 4. 1991: 851; Ginés Haro Pastor, Georgina Donati, and Troth Wells, *Yasuní Green Gold. The Amazon Fight to keep Oil Underground*. Oxford, 2008, 16.

16 More broadly: Steven R. Donziger, "Rainforest Chernobyl: Litigating Indigenous Rights and the Environment in Latin America", *Human Rights Brief* 11, no. 2. 2004: 1–4.

placed fromthe occupied territories. The disturbance of the social and biological structure was caused bytheimposition of different patterns of behaviour on indigenous peoples and by depriving them of the possibility to function on the basis of coexistence with nature. Wanting to protect their rights, the inhabitants adopted the name "Ome Gompote Kiwigimoni Huaorani" (in English: "We Defend Our Huaorani Territory").[17] Considering the traditional knowledge and lifestyle of indigenous peoples, one's attention is drawn to bioculturalism as one of the key elements of the paradigm of the rights of nature. In bioculturalism, there is an interdependence between biological and social diversity and the cultural landscape. On October 20, 2008, the rights of nature were given the status of constitutional norms in Ecuador.[18] Regulations in this regard have been included in Articles 71–74 of the Constitution. The goal was to create a new form of social coexistence based on respect for diversity in harmony with nature.[19] The term "well-being" (in Spanish:*buen vivir*; English: *the good way of living*) has been used in this context. The concept, known in Ecuador as *sumak kawsay*, is derived from the traditions and cosmological ideas of the indigenous population. It is based on the belief in the interdependence of the community of people and nature.[20] According to the Constitution of the Republic of Ecuador, humans are part of Mother Earth (Pacha Mama) [Preamble]. In Ecuador, the sumak kawsay concept is inferred from an ethical philosophy of life and defence against foreign domination and extractivism. Over time, it has provided numerous arguments in favour of searching for an

17 Judith Kimerling, "Habitat as Human Rights: Indigenous Huaorani in the Amazon Rainforest, Oil and Ome Yasuní", *Vermont Law Review* 40, no. 3. 2016: 501.

18 Kelly Swing, Jaime Chaves, Stella de la Torre, Luis Sempértegui, Alex Hearn, Andrea Encalada, Esteban Suárez, and Gonzalo Rivas, "Outcomes of Ecuador's Rights of Nature for Nature's Sake", *Advances in Environmental and Engineering Research* 3, no. 3. 2022: 2.

19 Preamble, Constitution of the Republic of Ecuador, National Assembly, Legislative and Oversight Committee, Publisher in the Official Register October 20, 2008.

20 Carmen Amelia Coral-Guerrero, Jorge Guardiola, and Fernando García-Quero, "An Empirical Assessment of the Indigenous Sumak Kawsay (living well): the Importance of Nature and Relationships" in *Handbook on Wellbeing, Happiness and the Environment*, eds. D. Maddison, K. Rehdanz, and H. Welsch. Cheltenham-Northampton, 2020, 394.

alternative to the neoliberal vision of economic growth.[21] The introduction of the rights of nature into the generally applicable law opened the way to the development of innovative protection mechanisms.

To elaborate, the idea of rights of nature assumes that there is a physical, spiritual and genealogical bond between society and the natural world. On the basis of the traditional narrative, indigenous people also consider the creations of nature as ancestors.[22] In Bolivian law, the term "Mother Earth" (Madre Tierra)refers to a dynamic living system consisting of an indivisible and mutually complementary community of all living beings.[23]In the light of the above, people are obliged to protect the creations of nature, in which human existence is also anchored. This corresponds to Thomas Berry's view that the universe is a community of entities, not a collection of objects.[24] According to this viewpoint, devastation of natural areas is tantamount to causing damage to a living person.

One of the key assumptions of the rights of nature is the legal personhood of nature. The concept is derived from the traditional knowledge of indigenous peoples, according to which nature is "a living being composed of many other forms of life" (§ 9.27).[25] The rights of nature can therefore be a remedy for increasing utilitarianism.The High Court of Uttarakhand at Nainital has adjudicated that the rivers Ganga and Yamuna are legal entities. The judgement used the term 'legal entity' beside the formulation "living person."[26] This issue

21 Philipp Altmann, "Sumak Kawsay as an Element of Local Decolonization in Ecuador", *Latin American Research Review* 52, no. 5. 2017: 751; Sarah A. Radcliffe, "Development for a Postneoliberal Era? Sumak Kawsay, Living Well and the Limits to Decolonisation in Ecuador", *Geoforum* 43, no. 2. 2012: 242.

22 See: Catherine J. Iorns Magallanes, "Nature as an Ancestor: Two Examples of Legal Personality for Nature in New Zealand", *VertigO* 15, Special Issue. 2015: 6.

23 Article 3, Ley de Derechos de la Madre Tierra (Ley Nº 071), Ley de 21 de diciembre de 2010.

24 Cormac Cullinan, "The Rule of Nature's Law" in *Rule of Law for Nature. New Dimensions and Ideas in Environmental Law*, ed. C. Voigt. Cambridge, 2013, 105.

25 Judgment of Constitutional Court of Colombia of 10 November 2016, *Center for Social Justice Studies et al. v. Presidency of the Republic et al.*, T-622/16, The Atrato River Case.

26 Judgment of High Court of Uttarakhand at Nainital of 20 March 2017, *Mohammad Salim v. State of Uttarakhand & Others*, Writ Petition (PIL) No. 126 of 2014, § 18, 19.

was further developed in the judgement's justification by stating that the Ganga and Yamuna rivers "are breathing, living and sustaining the communities from mountains to sea."[27] Granting legal personhood creates a new imperative to protect nature resulting from respect and humility towards it. Adoption of the above way of understanding indicates the need to take action based on the protection of the integrity of ecosystems, and not reducing the function of natural resources solely to an economic one.

Hence, it should be emphasised that in the rights of nature as a novelty, nature functions as a being endowed with inalienable rights. The Universal Declaration of the Rights of Mother Earth was born in Cochabamba, Bolivia, during Earth Day, April 22, 2010. According to the Declaration, Mother Earth is considered a living being [Art. 1(1)]. Article 2 lists among the inherent rights of Mother Earth the right to life and existence; the right to continue life cycles without human interference; the right to maintain one's identity and biological integrity; the right to be free from contamination by toxic or radioactive waste.[28] The rights of nature demonstrate the multiplicity of phenomena and the biological diversity of the natural world. However, in order for the "voice" of nature to be fully heard, procedural regulations are necessary that will enable nature to "speak" in the human world.

It should be noted that one of the first court cases in which the legal representation of nature was raised was settled in Ecuador.[29] It was a precedent-setting case in the national practice of law application, as the plaintiffs acted on behalf of the Vilcabamba river. As a result of the expansion of the road, there was interference in the environment. The construction works were not preceded by expert opinions on the environmental impact of the investment.[30]

27 Judgment of High Court of Uttarakhand at Nainital, § 17.

28 Universal Declaration of the Rights of Mother Earth, April 22, 2010. World People's Conference on Climate Change and the Rights of Mother Earth, Cochabamba, Bolivia.

29 Cristy Clark, Nia Emmanouil, John Page,andAlessandro Pelizzon, "Can you Hear the Rivers Sing? Legal Personhood, Ontology, and the Nitty-Gritty of Governance", *Ecology Law Quarterly* 45, no. 4. 2018: 795.

30 Clark, Emmanouil, Page, and Pelizzon, 796.

Interference with the ecosystem of the river became more intense every day. Referring to the rights of nature, the plaintiffs argued in court that the river has the right to maintain its natural course.[31] The above position has been made viable via legal personhood, which has entered the national jurisprudence when the rights of nature were introduced to the Constitution. Article 71 of the Constitution provides that all persons and communities may call upon public authorities to enforce the rights of nature.[32] In the light of the above, representation emerges as a legal tool enabling the implementation of the rights of nature (execution and defence of rights resulting from its subjectivity).

In countries where the rights of nature have been formalised, the concept of a legal person is relatively often used. The concept refers to a form of human activity organised to achieve social and economic goals permitted by law. In nature protection, environmentally motivated factors should be emphasised above all. Therefore, it can be concluded that implementing the concept of the rights of nature may lead to implementing multifaceted and multidimensional activities, achieving the highest possible standards of environmental protection. However, in order to develop a long-term protection strategy, regulations that go beyond the classical concept of a legal person are needed. *Sui generis* rights are most clearly formed in relation to nature, which are distinguished from the classic norms concerning natural and legal persons.[33] Legal subjectivity makes nature and its components "visible" to the legal system. In turn, legal representation allows one to act on behalf of nature before courts and authorised public authorities.

Until recently, subjectivity and legal representation of nature remained only in the sphere of juridical considerations. The concept on the basis of which nature would be given legal personality and the possibility of proce-

31 María Valeria Berros, "Defending Rivers: Vilcabamba in the South of Ecuador" in *Can Nature have Rights? Legal and Political Insights*, eds. A.L.T. Hillebrecht, and M.V. Berros. Munich, 2017, 38.

32 Constitution of the Republic of Ecuador, National Assembly, Legislative and Oversight Committee, Publisher in the Official Register October 20, 2008.

33 Samanta Kowalska, *Międzynarodowe prawo roślin*. Warszawa, 2023, 152.

dural assertion of rights raised doubts, because for some people it meant granting rights similar to those enjoyed by humans. It should be pointed out that before the legal personhood of nature was formalised, years ago Christopher D. Stone pointed out that the statement that nature has rights does not mean it enjoys the same rights as people.[34] The source of human rights and freedoms is inherent and inalienable dignity. In anthropocentrism, the foundation of law is a human being[35] Inherent rights direct attention to ontic character of human rights. Marek Piechowiak emphasised "the inseparability of rights from human existence […]. Human rights, being natural rights, are not relative to the norms of positive law; but the establishment of appropriate legal norms is postulated for the sake of human rights."[36] Natural laws were designed to prevent arbitrariness in the social environment. By referring to universal axioms, natural law aims to ensure that both the construction and application of regulations occur with the rational observance of human rights borne in mind.

It should be pointed out that the rights of nature do not lead to contesting human rights, nor are they a concept competitive to natural law. Humanrights and the rightsof nature refer to the common primeval source of the existence of humanity and nature. Wojciech Urbański indicated that "the laws of the universe are general […]. All these forces constitute one inseparable whole and are but different forms of action of the same one omnipotence."[37] The conclusion is that the natural law and the rights of nature, despite the fact that they are based on different optics of actions (the purposes of human rights are framed withintheanthropocentric perspective, while the rights of nature have an ecological basis), are focused on timeless values originating in the natural order of the universe. Natural law and the rights of nature can complement each other, contributing to the prevention and reduction of the negative effects of anthro-

34 Christopher D. Stone, "Should Trees have Standing? – Toward Legal Rights for Natural Objects", *Shoutern California Law Review* 45. 1972: 457.

35 Marek Piechowiak, *Filozofia praw człowieka. Prawa człowieka w świetle ich międzynarodowej ochrony*. Lublin, 1999, 77.

36 Piechowiak, 114, 115.

37 Wojciech Urbański, *Zasadnicze prawa natury*. Lwów, 1867, 53.

pogenic activity. Guided by the rights of nature, one may obtain a balanced view of the position of humans against the background of the power and forces of nature.

Towards a new nature conservation paradigm

The processes taking place in the natural environment are inseparable and interdependent. They affect the functioning of nature and humans. The rights of nature can form an alternative to the hitherto dominant point of reference in law and international relations, according to which humans occupy a central position (anthropocentrism),and areentitled to control nature on the basis of separation of relations and not interdependence of processes and entities. This attitude is referred to as the "hegemonic mode of relationship with non-human nature."[38] Excessive exploitation leads to a deficit of natural resources, and thus to an increase in the "environmental debt". There are non-renewable resources in nature that cannot regenerate themselves. Despite cross-border threats to the environment, industrialization, wasteful economy and consumerism still prevail.

As a result of breaking the bond with nature, humans are unable to effectively react and prevent crisis situations related to negative climate change and ecosystem degradation. Effective protection is hindered by the fact that natural goods, due to the dominance of anthropocentrism, are moved to the periphery of legal regulations. There is an urgent need to develop new environmental protection mechanisms. Regine Roncucci points out that anthropocentrism has led to a high rate of ecosystem degradation and loss of biodiversity in nature under the guise of "the global need for progress and economic growth."[39] However, according to the doctrine of the rights of nature, humans should use

38 Carlota Houart, "Rights of Nature as a Potential Framework for the Transformation of Modern Political Communities", *Janus.Net. E-Journal of International Relations* 13, no. 1. 2022: 136.

39 Regine Roncucci, *Rightsof Nature and the Pursuit of Environmental Justice in the Atrato Case*. Wageningen, 2019, 4.

natural resources not toexcess, but to the extent that enables the satisfaction of basic needs (and not temporary or artificially created ones). Individualism detached from ethical norms results in the common space for human and natural functioning becoming broken.

Ithas been shownthatin countries where the rights of nature were first introduced, the indigenous population becomes more active. According totheMāori notion of guardianship, *kaitiakitanga*, "people live in a symbiotic relationship with the earth and all living organisms and have a responsibility to enhance and protect its ecosystems."[40] There is a fundamental difference between this and Western countries where commodification and utilitarianism dominate. The Stillheart Declaration on Rights of Nature and the Economics of the Biosphereindicated that most of the current legislation treats nature as the property of humans.[41] Attempts to include the elements of nature in the bureaucratic and formal framework of purchase and sale contracts weaken the protective measures. According to the indigenous ontology underlying the doctrine of the rights of nature, natural goods are not objects and are not subject to trade.[42] This viewpoint can prevent a reductionist view of nature. This issue was highlighted by the ruling of the Constitutional Court of Colombia of 10 November 2016, which indicated that there is unity and interdependence between humans and nature(§ 9.28).[43] Nature has an intrinsic and inherent value (biocentrism),[44] whether it is recognized or not by doctrine or law.

40 Houart, 143–144.

41 Stillheart Declaration on Rights of Nature and the Economics of the Biosphere, Woodside, March 3, 2014, p. 3. For example, in British Columbia law, it is assumed that the ownership of wild animals belongs to the government. Legal basis: Property in Wildlife, art. 2(1), Wildlife Act [RSBC 1996] Chapter 488, as amended. Date of original text: 23 July 1982.

42 Corte Suprema de Justicia, STC4360–2018, Radicación n.° 11001–22–03–000–2018–00319–01, Bogotá, cinco (5) de abril de dos mil dieciocho (2018), 2. Consideraciones, 5.3, 21; Waitangi Tribunal, *The Whanganui River Report*.Wellington, 1999, § 2.8.1.

43 Judgment of Constitutional Court of Colombia of 10 November 2016.

44 Mario Alejandro Delgado Galarraga, "Climate Change Law and the Rights of Nature: A Colombian Example through an International Perspective", *Revista Catalana de Dret Ambiental* 13, no. 2. 2022: 16. See: Allison Katherine Athens, "An Indivisible and Living Whole: Do We Value Nature Enough to Grant It Personhood?", *Ecology Law Quarterly* 45, no. 2. 2018: 226.

Biocentrism supports the formation of a holistic vision of the world via an ecological prism. New Zealand customary norms and legal regulations provide guidance in this regard. In the Whanganui Act (in Māori: Te Awa Tupua), a river is defined as an indivisible and living whole, consisting of both animate nature and intangible and metaphysical elements.[45] The traditional views of the Māori people maintain that the role of people is *kaitaiki*, i.e. performing the functions of nature guardians. Care in this area should be provided with current and future generations in mind. Accordingly, people are to "nurture and protect the physical and spiritual well-being of the natural systems that surround and support us."[46] Hence the conclusion that the elements of the ecosystem that are part of the human living environment make up a biocultural diversity system. Actions to protect nature should therefore be implemented on a continuous, and not makeshift or superficial, basis. Protection of the environment is a common good, but also an intergenerational obligation for humanity.[47]

In the face of the growing devastation of nature, it is necessary to take coordinated actions through international cooperation. The concept of the legal personality of international law rises above the existing normative order. Without understanding the assumptions of the above concept, it is impossible

45 Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, Public Act 2017, No. 7, 20 March 2017, Part 2, Subpart 2 – Te Awa Tupua, 12.

46 Nicola Pain, and Rachel Pepper, "Can Personhood Protect the Environment? Affording Legal Rights to Nature", *Fordham International Law Journal* 45, no. 2. 2021: 318. Depending on the national legal tradition, regulations in this area may differ. To illustrate, the Colombian court recognized the Atrato River with its basin and tributaries as a subject to rights who is entitled to protection by both the state and the indigenous population which is linked to the river by an ontological and biocultural bond. Accordingly, the court ordered the appointment of a person representing the Colombian government and indicated by the indigenous population to act as the Atrato River guardians. Judgment of Constitutional Court of Colombia of 10 November 2016, pp. 110, 114. In turn, in Bolivia, pursuant to Article 10 of the Act of December 21, 2010, the Defender of Mother Earth (Defensoría de la Madre Tierra) was established. The basis for activity is the legal act: Ley de Derechos de la Madre Tierra (Ley Nº 071), Ley de 21 de diciembre de 2010.

47 Boubacar Sidi Diallo, "African Legal Instruments as Regional Tools of Harmonization of International Environmental Law", *Adam Mickiewicz University Law Review* 14. 2022: 97.

to grasp the complex nature of international law.[48] Similarly, the essence of the rights of nature cannot be explicated without delving into the natural processes that affect the functioning of social structures. This view points to the need to perform a caring function, and not to treat natural resources instrumentally.

The degree of environmental pollution has exceeded the currently acceptable standards. The extinction of plants and animals is occurring at a rapid pace. The Preamble of the Earth Charter indicates that humanity stands at a critical moment in Earth's history.[49] The cited document aims to create a global partnership for environmental protection. It points out that people and nature constitute "one Earth community" and "the community of life."[50] However, the prevailing economic factors now often reduce nature to the category of "something" and not "someone". The dysfunction of political systems, the growth of a predatory economy and industrial expansion require a thorough reform in the spirit of common values, solidarity and shared responsibility. As indicated by the authors of the Charter, the road to healing the current environmental protection mechanism should lead through the adoption of a "new ethical vision" (Preamble). The answer to the above appeal may be the rights of nature that support the process of building an ecological normative order. However, socio-economic transformation is not a one-time process. It requires the implementation of systemic solutions and the remodelling of the legal and axiological foundations of protection in the context of committed ethical awareness.

Conclusions

The current model of environmental protection, despite rapid scientific and technological progress, is still determined by the economy and market mechanisms.

48 Tadeusz Gadkowski, *Podmiotowość prawnomiędzynarodowa organizacji międzynarodowych a ich zdolność traktatowa*. Poznań, 2019, 2.

49 The Earth Charter was completed in March 2000 at UNESCO House in Paris. Document launched on 29 June 2000 at the Peace Palace in the Hague.

50 Preamble, The Earth Charter.

The application of property law in Western countries leads to the "privatisation" of elements of nature. The current paper is an attempt to show that in anthropocentrism, environmental protection functions as activities undertaken with the aim of protecting human well-being. As a consequence, a reductionist vision of nature becomes widespread, which narrows down protection to natural resources that contribute to raising the standards of human functioning. The analysis of existing legal regulations and the mechanism of environmental protection should lead to a deeper reflection on the essence of human coexistence within the natural environment. Once such a reflection is undertaken, a close cause-and-effect relationship emerges. Ensuring a healthy and unpolluted environment is essential for the functioning of both humans and ecosystems.

The principles oftherights of nature show a surface on which a modern and integrated system of environmental protection can be built. The discussed concept is not based on objective criteria, but treats nature as a living being endowed with inalienable rights. The rights of nature entaila return to the origins of human and natural existence. The introduction of such rights can therefore be an antidote to disrupting the relationship between humans and the environment, in which interdependent and complementary processes take place. Innovative regulations resulting from the implementation of rights of nature include the subjectivity and legal representation of nature. In the course of the considerations, it has been demonstrated that the representation makes it possible to give nature a "voice" under the law. For practical purposes, however, it should be clarified who would be entitled to represent nature on a formal and legal basis. In connection with the above, there also arises the issue of specifying the natural areas that could be represented. Assuming that the rights of nature are based on the theory of holism, it can be assumed that nature as a whole, as well as its components that will be in danger as a result of human activity, should be protected.

Due to the cosmological genesis derived from the traditional views of the indigenous peoples of Latin America, the idea of the rights of nature may seem controversial in other cultures. However, it should be remembered that

when the construction of a legal person was introduced, it was also widely regarded as an incomprehensible decision of the legislator. The formalisation of the rights of nature in domestic law should respect the national legal tradition. Considering the rapid degradation of the environment, the search for more effective protection should not be delayed. Activities in this area require cooperation on an international scale, because despite socio-cultural diversity, people are one large family, just asbiodiversity in nature makes up the community of all life on Earth. In order to strengthen the protection of nature, as Marsha Jones Moutriepointed out, it is necessary to restore the awareness that the "human welfare and Nature's welfare are indivisible."[51]

References

Altmann, Philipp. "Sumak Kawsay as an Element of Local Decolonization in Ecuador." *Latin American Research Review* 52, no. 5. 2017: 749–759.

Athens, Allison Katherine. "An Indivisible and Living Whole: Do We Value Nature Enough to Grant It Personhood?" *Ecology Law Quarterly* 45, no. 2. 2018: 187–226.

Berros, María Valeria. "Defending Rivers: Vilcabamba in the South of Ecuador." In *Can Nature have Rights? Legal and Political Insights*, edited by Tabios Hillebrecht, and María Valeria Berros. Munich, 2017: 37–44.

Charles, J. Daryl. "The Natural Law and Human Dignity: Reaffirming Ethical 'First Things'."*Liberty University Law Review* 2, no. 3. 2008: 607–647.

Clark, Cristy, Nia Emmanouil, John Page and Alessandro Pelizzon. "Can you Hear the Rivers Sing? Legal Personhood, Ontology, and the Nitty-Gritty of Governance." *Ecology Law Quarterly* 45, no. 4. 2018: 787–844.

Coral-Guerrero, Carmen Amelia, Jorge Guardiola, Fernando García-Quero. "An Empirical Assessment of the Indigenous Sumak Kawsay (living well):

51 Marsha Jones Moutrie, "The Rights of Nature Movement in the United States: Community Organizing, Local Legislation, Court Challenges, Possible Lessons and Pathways", *Environmental and Earth Law Journal* 10, no. 1. 2020: 65.

the Importance of Nature and Relationships." In *Handbook on Wellbeing, Happiness and the Environment*, edited by David Maddison, Katrin Rehdanz, and Heinz Welsch. Cheltenham-Northampton, 2020: 385–398.

Cullinan, Cormac. "The Rule of Nature's Law." In*Rule of Law for Nature. New Dimensions and Ideas in Environmental Law*, edited by Christina Voigt. Cambridge, 013: 94–108.

Delgado Galarraga, Mario Alejandro. "Climate Change Law and the Rights of Nature: A Colombian Example through an International Perspective." *Revista Catalana de Dret Ambiental* 13, no. 2. 2022: 1–44.

Donziger, Steven R. "Rainforest Chernobyl: Litigating Indigenous Rights and the Environment in Latin America." *Human Rights Brief* 11, no. 2. 2004: 1–4.

Gadkowski, Tadeusz. *Podmiotowość prawnomiędzynarodowa organizacji międzynarodowych a ich zdolność traktatowa*. Poznań, 2019.

George, Robert P. *Prawo naturalne, Bóg i godność ludzka. Wykład im. Leona Petrażyckiego, Wydział Prawa i Administracji UW, 4 maja 2010*, edited by Maciej Dybowski, translated by Alicja Legutko-Dybowska. Warszawa, 2010.

Houart, Carlota. "Rights of Nature as a Potential Framework for the Transformation of Modern Political Communities." *Janus.Net. E-Journal of International Relations* 13, no. 1. 2022: 135–151.

Jones Moutrie, Marsha. "The Rights of Nature Movement in the United States: Community Organizing, Local Legislation, Court Challenges, Possible Lessons and Pathways." *Environmental and Earth Law Journal* 10, no. 1. 2020: 5–66.

Kimerling, Judith. "Disregarding Environmental Law: Petroleum Development in Protected Natural Areas and Indigenous Homelands in the Ecuadorian Amazon." *Hastings International and Comparative Law Review* 14, no. 4. 1991: 849–903.

Kimerling, Judith. "Habitat as Human Rights: Indigenous Huaorani in the Amazon Rainforest, Oil and Ome Yasuní." *Vermont Law Review* 40, no. 3. 2016: 445–524.

Kowalska, Samanta. *Międzynarodowe prawo roślin*. Warszawa, 2023.

Magallanes, Catherine J. Iorns. "Nature as an Ancestor: Two Examples of Legal Personality for Nature in New Zealand." *VertigO* 15, Special Issue. 2015: 1–20.

McConnell, Donald R. "The Nature in Natural Law." *Liberty University Law Review* 2, no 3. 2008: 797–846.

Myers, Norman. "Threatened Biotas: "Hot Spots" in Tropical Forests."*The Environmentalist* 8, no. 3. 1988: 187–208.

Orbik, Zbigniew. "Human Rights in the Light of the Concepts of Natural Law." *Scientific Papers of Silesian University of Technology. Organization and Management Series*, no. 140. 2019: 275–284.

Pain, Nicola, and Rachel Pepper. "Can Personhood Protect the Environment? Affording Legal Rights to Nature." *Fordham International Law Journal* 45, no. 2, 2021: 315–377.

Pastor, Ginés Haro, Georgina Donati, and Troth Wells. *Yasuní Green Gold. The Amazon Fight to keep Oil Underground*. Oxford, 2008.

Piechowiak, Marek. *Filozofia praw człowieka. Prawa człowieka w świetle ich międzynarodowej ochrony*. Lublin, 1999.

Radcliffe, Sarah A. "Development for a Postneoliberal Era? Sumak Kawsay, Living Well and the Limits to Decolonisation in Ecuador." *Geoforum* 43, no. 2. 2012: 240–249.

Redelbach, Andrzej. *Natura praw człowieka. Strasburskie standardy ich ochrony*. Toruń, 2001.

Roncucci, Regine. *Rights of Nature and the Pursuit of Environmental Justice in the Atrato Case*. Wageningen, 2019.

Sidi Diallo,Boubacar. "African Legal Instruments as Regional Tools of Harmonization of International Environmental Law." *Adam Mickiewicz University Law Review* 14. 2022: 87–101.

Stone, Christopher D. "Should Trees have Standing? – Toward Legal Rights for Natural Objects." *Shoutern California Law Review* 45. 1972: 450–501.

Swing, Kelly, Jaime Chaves, Stella de la Torre, Luis Sempértegui, Alex Hearn, Andrea Encalada, Esteban Suárez, and Gonzalo Rivas. "Outcomes of Ecua-

dor's Rights of Nature for Nature's Sake." *Advances in Environmental and Engineering Research* 3, no. 3. 2022: 1–16.

Tokarczyk, Roman. *Historia filozofii prawa w retrospektywie prawa natury*. Bydgoszcz, 1999.

Urbański, Wojciech. *Zasadnicze prawa natury*. Lwów, 1867.

Waitangi Tribunal. *The Whanganui River Report*. Wellington, 1999.

Weinreb, Lloyd L. *Natural Law and Justice*. Massachusetts, 1987.

World Economic Forum. *The Global Risks Report 2023. Insight Report*. Geneva, 2023.

World Wildlife Fund. *Living Planet Report 2022. Building a Nature – Positive Society*. Gland, 2022.

Judgments, legal acts and documents

Constitution of the Republic of Ecuador, National Assembly, Legislative and Oversight Committee, Publisher in the Official Register October 20, 2008.

Corte Suprema de Justicia, STC4360–2018, Radicación n.° 11001-22-03-000-2018-00319-01, Bogotá, cinco (5) de abril de dos mil dieciocho (2018).

Ley de Derechos de la Madre Tierra (Ley Nº 071), Ley de 21 de diciembre de 2010.

Judgment of Constitutional Court of Colombia of 10 November 2016, *Center for Social Justice Studies et al. v. Presidency of the Republic et al.*, T-622/16, The Atrato River Case.

Judgment of High Court of Uttarakhand at Nainital of 20 March 2017, *Mohammad Salim v. State of Uttarakhand & Others*, Writ Petition (PIL) No. 126 of 2014.

Property in Wildlife, art. 2(1), Wildlife Act [RSBC 1996] Chapter 488, as amended. Date of original text: 23 July 1982.

Stillheart Declaration on Rights of Nature and the Economics of the Biosphere, Woodside, March 3, 2014.

Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, Public Act 2017, No. 7, 20 March 2017.

The Earth Charter launched on 29 June 2000.

Universal Declaration of the Rights of Mother Earth, April 22, 2010. World People's Conference on Climate Change and the Rights of Mother Earth, Cochabamba, Bolivia.