THE RIGHTS OF NATURE. A NEW PARADIGM (II)

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ABSTRACT: *We pointed out in the first part of the paper that the ecological destruction comes from anthropocentric visions on nature, perceived by humans and corporations only as a natural resource available for exploitation. From this perspective, people appear as separate subjects and superior to Nature and, consequently, its exploitation and degradation to increase the availability of resources, is as legitimate as can be.*
For such reasons, moving to an eco-centric perspective, based on the understanding that humans are an integral part of Nature is important, and shows that human well-being derived from ecosystems cannot be achieved and maintained to the detriment of ecosystems.
Despite all the obstacles we point out in this study, the idea of the Rights of Nature has progressed, as so many countries and jurisdictions have recently adopted rules of law and decisions involving the granting of legal rights to nature, to ecosystems.
Not only the successful lawsuits, constitutional changes from many countries and successful trials, as well as attempts at a draft legal definition of ecocide by renowned jurists of the International Criminal Court, indicate that the Rights of Nature, a concept rooted in indigenous worldviews, is extended into environmental criminal jurisdiction.
Legislatures and Courts are increasingly extending legal personhood to some environmental factors and to entire ecosystems, granting them a right not to be harmed and placing them on the same legal level as corporations, which being accused of environmental degradation, are given a new enforceable obligation to care for nature.
Regarding the European Union, we show that, although several decades have passed since the adoption of the first environmental laws and policies, environmental destruction continues and climate change is happening and having extraordinary impacts on ecosystems and human life. Circumstances in which, in the light of international developments, the EU has begun to shift its narrative and paradigm through significant efforts to explicitly recognize Nature's right to exist, to persist, to maintain and to regenerate its life cycles.
In this regard, we will set out the position of the European Union in the legislative approach to the issue of recognizing the rights of nature (Caduci & others, 2019).

KEYWORDS: *Earth jurisprudence, Rights of Nature, litigation, environment, ecosystem protection.*
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1. ABOUT THE ROLE OF EARTH JURISPRUDENCE

The persistent destruction and degradation of ecosystems, clearly shows that legal, political and economic systems reflect an anthropocentric view of nature. As we mentioned in the first part of this study, the anthropocentric legal systems recognize only human beings and corporations as legal subjects with rights that courts and other institutions recognize and thus protects them. At the same time, the nature in its entirety, is legally defined as a property, as an object in the eyes of the law, which can be owned and exploited as a resource by legal subjects (people and corporations). And, this status legitimizes and encourages the exploitation of Nature in the same way that the definition of a person as property without rights legitimizes and encourages its exploitation by its owners (as in the case of slaves and slave owners).

The main challenge is to transform these perceptions and systems as well as the institutions that perpetuate them, in order to reflect an eco-centric perspective and not an anthropocentric one. An ecocentric legal system can recognize all aspects of nature as a legal subject, with the fundamental right to exist, to evolve, to fulfil its role and to give priority to the interests of the whole community of life, over the individual interests.

A manifestation of this approach is the Earth Jurisprudence (Ito & Montini, 2018), which seeks to transform anthropocentric legal systems by changing the purpose of the entire legal system, from legitimizing human domination to guiding people to act in a way that contributes to the well-being of the entire Earth community. Of course, the Earth Jurisprudence differs from environmental law, which is a subset of anthropocentric legal systems whose purpose is to diminish and mitigate ecological damage, but without fundamentally affecting the factors that cause ecological destruction (Dogaru, Dreptul mediului, 2nd Edition, 2020).

The transformative change that is needed is to change the systems and institutions of human societies, so that they promote the recovery, health, integrity and functioning of ecosystems rather than ecological degradation. It is therefore a matter of moving from anthropocentric to ecocentric approaches, because the necessary solutions are not available in an anthropocentric framework.

Argued, it is believed that taking an approach to the Earth jurisprudence, and the recognition of the rights of nature would transform every aspect of human systems of government. First, Earth jurisprudence requires that human laws be aligned with the laws of nature in order to restore and maintain the integrity, vitality and health of key ecosystems, as well as the planetary boundaries (Rühs & Jones, 2016).

Increasingly, the Earh jurisprudence is considered to be a significant global impetus behind emerging concepts, able to ensure a paradigm shift towards a nature-centered approach of anthropocentric-based legal frameworks that have traditionally been a barrier to the application of natural rights, treated as a mere resource.

2. THE RIGHTS OF NATURE IN TERMS OF JURISPRUDENCE. GRANTING RIGHTS TO NATURE

In the last period, the rights of nature are making remarkable legal progress throughout the world, so these rights now exist in around 30 countries, whether in the form of local laws, constitutional amendments, treaties or judicial decisions.

From a global perspective, the rights of nature have been recognized in three important ways or perspectives, as follows: by introducing the legal identity of nature in normative or constitutional regulations (especially in Civil Law systems with pluralistic legal traditions, starting with Ecuador and Bolivia, and after with New Zealand - in 2017, the New Zealand Parliament granted Whanganui River legal status), way that generates protective effects of certain natural areas; through courts' decisions (especially in Common Law systems with pluralistic legal traditions, such as, India and Canada. For example, in 2019, the Bangladesh High Court recognized the Turag River as a living entity with legal rights, a status that was subsequently applied to all rivers in that country), option that involves radical change in the entire legal system; by using new methods in promoting nature (in common and civil law, as in New Zealand, by using the hermeneutic criterion "*in dubio pro natura*" and by promoting the hierarchical priority of nature protection over economic interests), a way which leads to a new approach in favour of nature.

Of course, the three perspectives show that the rights of nature are not new rights, opposed to human rights, but are anthropogenic rights which promote new methods of interpretation and application of the law and the recognition of new subjects within the complex interconnections of life in the Earth system.

The Rights of Nature and human rights to environment must result not only from laws but also from judicial decisions (Colon-Rios, 2014) (Dogaru, Preserving the right to a healthy environment: European jurisprudence, 2014).

We pointed out that, in many national and international legal systems, nature with all its components, states the idea of natural resources, a form of human property that can be exploited according to the desire, which justifies the exploitation of the Earth, and makes it almost impossible to protect nature before the courts of justice. It is so clear that such legal systems have not only failed in planet protection against the progress of greedy use of its resources, but they were real instruments of accepting extractivism, which, although sanctioned in some cases it was thus continued.

The insufficiency of traditional environmental law requires a new form of jurisprudence on the rights of nature, because by recognizing the quality of a subject of law as human beings have, the courts are pushed to disregard economic incentives and to decide judgments based on the interests of humanity.

Perhaps one of the strongest points of Earth's jurisprudence is its ability to return to a sacred appreciation of nature and of the earth and to provide a framework of cohesion between law, politics, science, economics, ethics, traditional wisdom and human spirituality, in order to create a more effective governance of protecting the Earth (Maloney & Siemen, Responding to the Great Work: The Role of Earth Jurisprudence and Wild Law in the 21st Century, 2015).

In the field of jurisprudence, at the international level, there are some interventions completed either with the recognition of the legal personality of some ecosystems, or with the implicit or explicit enshrinement of the Rights of Nature. For example, in India, a decision was issued in 2017, declaring the two big rivers, Ganges and Yamuna, as legal entities, and in Colombia, through a Constitutional Court judgement, the Atrato River Basin is recognized as a legal person with rights of protection, conservation, maintenance and restoration (El Heraldo: Rights of Nature Granted to the Atrato River in Colombia, n.d.).

As a consequence of the Global Alliance for Natural Rights approach, in January 2014, the International Rights of Nature Tribunal was established, a court to which complaints regarding the aggression of nature and its components can be addressed and which can make recommendations regarding the protection and restoration of the Earth (Maloney, Building an alternative jurisprudence for the Earth; the International Rights of Nature Tribunal, 2016). This forum aims to prove how to implement the rights of nature, by bringing heavy environmental cases before the courts, to examine and resolve them from the perspective of the rights of nature. During its annual meetings, the last one held in Glasgow in November 2021, in parallel with COP 26, systemic alternatives based on the rights of nature to incorrect solutions and failed states' negotiations are usually examined. At the COP26 organized by the United Nations Conference on Climate Change (UNFCCC), the Tribunal sent a message right in the arena where the world's environmental policies were being debated, a message that was intended to be an alternative to many of the false solutions that were marketed on that occasion. In this way, it fought for the protection of the rights of nature and for the awareness of governments and tribunals around the world to stop the current ecological crises. At the same time, two of the most fundamental environmental causes facing the world today have been heard, namely, the false solutions to the climate change crisis and the Amazon River issue, this living entity permanently subjected to aggressions. It is rightly considered that, the mission of this international institution is to make the rights of nature a significant part of the legal system and of the society, and to provide a framework for raising awareness and educating civil society and world governments about the fundamental principles of the rights of nature, as well as to provide a tool for judicial experts in the analysis of the constructs necessary for the full integration of the rights of nature. The main values promoted by the International Tribunal for the Rights of Nature are the following: the interests of non-human beings are of equal importance to human interests; human society needs a fundamental paradigm shift in the way it relates to nature; the survival of mankind depends on its ability to change its attitude towards the nature; the ideas promoted by this institution are intended to be a fundamental tool in changing the perspectives of humanity for the better, and in the informed legal analysis of the various cases based on the rights of nature and the jurisprudence of the Earth.

Of course, there are also a lot of opinions that claim that the rulings given by this Civil Ethics Tribunal, if they end up being implemented at the highest levels, could provide an extremely useful tool in the fight for ecological justice.

What we want to emphasize is that, although there is a worldwide jurisprudential trend of recognizing the legal rights for nature, this trend has, unfortunately, very few forays into the European space.

However, the way how nature is protected by the European Union law, involves some legal rights on the grounds that other legal obligations have been stipulated in relation to it for other entities (Dogaru & Dogaru, Particularités de la protection juridique de l'environnement au niveau international , 2009). Without an explicit recognition of the rights of nature, there are current rulings from the EU Court of Justice that can be interpreted as arguing that nature as it is protected by European law, benefits from certain legal rights which can be recognized and enforced by the national courts of the Member States (Epstein & Schoukens, 2021) (Maloney, Changing the Legal Status of Nature:

Recent Developments, 2018) (Dogaru & Dogaru, Special Liability for Ecological damage caused in an international context, 2021).

3. TIME TO SHIFT FROM OUTDATED PARADIGMS TO NEW PARADIGMS. THE POSITION OF THE EUROPEAN UNION

Environmental law has gradually emerged as a field of law based on systemic thinking and the need for ecological restoration and on the integration of ecological limits into law (Anker, Burdon, Garver, & Maloney, 2021). Although environmental law has a number of shortcomings, it has inevitably prevailed in the context of the current environmental crisis, even if according to some studies it often fails because it addresses especially the symptoms and not the underlying causes. Or, it is well known that only the law grounded on ecological foundations is able to restore the community of life on Earth and to give a shade of green to the ecological destruction represented by the current industrial civilization.

Therefore, a common question about current environmental legislation is whether it is able and enough to maintain the current state of the environment and a habitable planet (Zelle, Wilson, Adam, & Greene, 2021). Because, in the context in which the ecological crisis has become a reality and its denial means nothing more than the rejection of obvious evidence in this regard, laws' compliance that proves to be unfit to resolve this situation does not seem to be a sustainable solution.

It is well known that rights are the main tool in addressing power imbalances. And we know or should know that the corporate and human rights have long been in conflict with the rights of nature. The current imbalance between big corporations and everyone else manifests itself on many levels, from their aggressive tendency to bring in court the governments because it tries to protect people or nature, to the monetization of ecosystems by creating property titles on various functions of nature to ensure cash flows as marketable in capital markets.

And, this type of behaviour attached to wrong methodologies (such as, biodiversity compensation, which assumes that interconnected living ecosystems are as interchangeable as money), are trends that can lead to ecological collapse.

Therefore, considering nature as an independent stakeholder with legal personality could be a strong counterbalance to the so-called corporate dictatorship, empowering people and governments to sustain the nature in the benefit of present and future generations.

As it is known, environmental regulations are based on that old, anthropocentric, mechanistic and hostile paradigm that separates people from nature, determining the phenomenon of its commercialization. Through the exclusive government, only of the relations established between the subjects of law, the current laws did not recognize the relationship between people and nature, which led not only to an attitude of separation and disconnection but also to a lot of practical issues that have made it almost impossible to protect nature through the law. So, environmental legislation based on this paradigm has consistently failed, and the level of environmental degradation has increased, which requires a systemic transformation, so that environmental laws promote activities that increase the resilience of the Earth.

A new paradigm based on natural rights has emerged, along with the legal and judicial recognition of natural rights, in countries such as Bolivia, Ecuador, Mexico, Brazil, India, New Zealand, United States (for example, in 2020, in Orange County, USA, the amendment to the Charter on the Right to Clean Water was approved, which recognizes all the rights of waterways to be protected from pollution and to maintain healthy ecosystems, as well as the rights of residents for clean water) (Kauffman & Martin, 2018) and Australia (The Australian Federal Court, recently ordered the government to protect children from climate change, meaning that, the Environment Minister, when asked to approve the expansion of a coal mine, it has a duty to consider the reasonable protection of children from carbon dioxide emissions so as not to endanger their future). This was an extremely important step, but not sufficient, because the efficiency of the laws thus designed requires their integration in all areas of society, which involves the transition of all systems of society to a functioning in harmony with nature. The International Union for Conservation of Nature (IUCN), which is the main global authority for nature conservation, has adopted nature rights in its Resolutions and in the Program adopted for 2017-2020.

Most modern EU regulatory frameworks treat nature as property, which of course does nothing but legalizes environmental damage through regulations that treat ecosystems as objects rather than subjects of law. The purpose of such regulations is mainly to establish the amount of ecological damage that can be caused and not to prevent and/or eradicate environmental aggression. Natural persons in their capacity as holders of rights, bear the responsibility of proving only this amount, namely, whether or not the damages caused have exceeded the limits established by incidental rules of conduct. Or, it is known that individuals have a great tendency to defend themselves and the damage caused to their property.

Reality shows that in the decades since the adoption of the first environmental laws and policies of the European Union, the destruction of the environment in the European space has continued, and climate change has had obvious and worrying effects, not only for ecosystems but also for humans (Dogaru, Preserving the right to a healthy environment: European jurisprudence, 2014). It is increasingly considered that the main objectives of EU environmental policy (protecting, conserving and consolidating the Union's natural capital; transforming the EU into an energy-efficient, environmentally friendly and competitive low-carbon economy; protecting European citizens against pressures and risks related to the environment, health and human well-being) have not been fully realized precisely because of the environmental legal framework that omits the rights of nature and the principles that govern ecosystems. However, according to the Environmental Performance Index (EPI), EU member states are situated at the level of a global ranking related to environmental protection, appreciated to be in a good place (being positively assessed Natura 2000 and the relationship between environmental regulations and green growth). Those rights that contribute to the transformation of the human-nature relationship in order to improve the protection of the environment, meaning that it requires the adoption of legal documents containing the three elements of the ecological mandate (recognition of substantial rights to nature, new methods of interpretation and law enforcement for nature support, and related duties). At present, although European environmental regulations constantly promote environmental sustainability, they do not comply with these requirements, they are mainly inspired by conservative approaches that

do not provide a legal recognition of natural rights and do not recognize common violations of natural and human rights. A number of studies (Schoukens, 2019) show that in European law, environmental protection focuses mainly on human and economic interests, and nature protection takes place only through sectoral approaches, without the presence of innovative methods of interpretation and application of the law. We will try in the following to outline some of the features and failures of current European environmental legislation in the context of ecosystem and climate urgency (Dogaru & Kajcsa, Manual terminologic de dreptul mediului, 2021).

Firstly, we consider that the EU's approach to nature protection has been and is fragmented and reactive, just as it is and has been fragmented and reductionist (in the sense that it does not reflect the rules of interconnection and interdependence imposed by the ecological mandate). In addition, EU environmental policies have been developed on the basis of their own strategies and priorities, without an integrated and systemic assessment of human action on Earth. On the other hand, the protection of nature as a common heritage of humanity has been constantly separated from fundamental human rights (Emily, 2015), which is deprived of access to justice. We believe that these are relevant and sufficient reasons to show why environmental policies cause conflicts, so that in the face of ecosystem challenges, full confrontation on environmental issues is limited.

For these reasons, but also taking into account international developments in the approach and regulation of environmental issues, the European Union has begun in recent years to change the paradigm, moving towards a new legislative orientation that recognizes that Nature has the right to exist, to persist, to maintain and to regenerate its vital, integral cycles (Epstein & Schoukens, A positivist approach to rights of nature in the European Union lume, 2021). Definitely, recognizing nature as a legally interested party with inalienable rights in environmental law proceedings is likely to provide a serious counterbalance to corporate dictatorship, as they empower people and governments to defend nature, which is the basis of the economy but also of human life. In addition, such recognition is in stark contrast to approaches hitherto based on the commercialization and financing of nature as an object, which could easily be used to justify damage to nature.

In a chronological order, also the Earth Charter adopted in Paris in 2000 remains an international declaration of the values and fundamental principles needed to build a just, sustainable and peaceful global society in the 21st century, which, of course, evokes respect and concern for the protection of ecological integrity, but without evoking any intrinsic value or concrete rights of nature.

This was followed by other documents issued by various institutions, such as the 2011 OECD Green Growth Report (Council, 2011) (Dogaru, Green economy and green growth-Opportunities for sustainable development, 2021), which calls for policies to address green growth and for the preservation of "global public goods", but without showing why aggressive economic competition continues and what is needed to stop it.

Recently, the Seventh Environment Action Programme to 2020, entitled "Living well, within the limits of our Planet" (the title of this report refers to the title of the EU Environment Action Programme, adopted in 2013) proposes a new vision for 2050, namely that of living well but within the ecological limits of the planet, resistance and human well-being, the safe and sustainable global society being directly conditioned by the quality and resilience of nature and the balance of its components (Hoff, Nykvist, & Carson, 2014).

The Draft ECI Directive for the Rights of Nature of 2017 provides for the material and procedural rights of nature, human rights in relation to nature, and establishes a duty of care, protection and ecological governance. This important document addresses the need for the recognition and legislative enshrinement of natural rights, and shows that the introduction of the issue of natural rights into the international debate has been done through the Bolivian and Ecuadorian proposals. Thus, the Declaration of the Rights of Nature, initiated by the two states, invokes first of all, the need for attachment to nature, an attachment that allows a planetary cosmology, a reorganization of the vision of the world and life. The scope of the proposal for the recognition of natural rights implies mutual respect, the symbolic dimension being important in the international arena, so the adoption of a declaration of natural rights, along with human rights, is a strong signal for the whole world. The Rights of Nature should be recognized by the rules governing legal relations between society and nature, based on the principles of applied ecology, and the rights nature should cover, inter alia, are the right to life and the right to exist; the right to maintain the integrity of living systems and the natural processes that support them; the right to habitat; the right to evolve naturally and to the diversity of life; the right to water that sustains life; the right to air that sustains life; the right to balance; the right to life systems and the right to live free from torture or cruel treatment by humanity.

Based on this approach, the document recognizes the fundamental rights of nature and lays down rules of legal regulation, imposing on Member States the obligation to revise national laws in the light of fundamental rights of nature and to adapt laws accordingly. It even suggests the appointment of an Ombudsman for the fundamental rights of nature, entitled to receive and investigate complaints of violations of the rights of nature. In addition, it lays down rules for the recognition and enforcement of fundamental natural rights in judicial proceedings, rules for the preparation of annual ecological plans, appropriate procedures for institutions, designed to ensure that nature can continue its natural and vital cycles.

At present there is a growing talk and emphasis on the need to adopt a Charter of the Rights of Nature in the European Union at EU level (Caduci & others, 2019).

This is in the context of the existence of a draft for an international environmental treaty, entitled the Global Pact for the Environment, which seeks to recognize the environmental rights and obligations of citizens, states and companies. Launched in June 2017 by more than 100 environmental experts, in May 2018, thanks to the efforts of the UN General Assembly, it managed to be negotiated by adopting the resolution entitled "Towards a Global Pact for the Environment", accompanied by the recommendation of States to adopt a political declaration in 2022 on the 50th anniversary of the Stockholm Conference. Experts in the field believe that the Global Pact for the Environment can make a significant contribution to the constitutionalization of fundamental environmental principles (Aguila, 2020).

Another positive sign that we want to mention in this context is that, in March 2021, the European Parliament's Department of Citizens' Rights and Constitutional Affairs Policy published a study exploring the concept of the Rights of Nature and its implications for legal philosophy and international agreements, as well as legislation. This document highlights the increased potential for constitutional changes in the European Union in terms of the intrinsic value of biodiversity and the principles of environmental integrity, which may lead to rigorous regulatory requirements.

4. CONCLUSIONS

Almost five decades after the first debates on political ecology, the Rights of Nature still maintain as a separating element of this current in relation to other political currents. And this, in the context in which there is more and more talk about planetary justice, about climate law and also about climate justice (Hickey & Robeyns, 2020).

It follows from the above that the change of the legal status of nature, from object of law to subject of law holding legal personality and rights, can radically change the legal structure that codifies the old mechanistic paradigm. In this way, nature with all its elements is brought into legality, with rights that must be respected and integrated into human behaviour, and people will be required to respect the rights set up. Of course, in order for producing systemic results and achieve the spirit of the Earth's jurisprudence, a whole mechanism is needed to effectively implement these types of rights in all sectors of society and translate them into concrete actions.

Despite constant concerns for environmental protection, European Union law does not comply with the above requirements, being mainly based on conservative approaches, and therefore, they do not provide a legal recognition of the rights of nature, nor do they recognize common violations of natural rights and human rights.

Now, the European law manages only the externalities and consequences of a dysfunctional system, supporting an economically unsustainable paradigm grounded on infinite growth. That is why the need for a societal model established by law, able to maintain all societal systems (including the economic one), and aligned with regeneration, can be the foundation of the recalibration of society in its relations with the nature and with ensuring the rights of future generations.

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