



# Rights for Nature – an approach for Europe?

An analysis focusing on the forests of Bialowieza (Poland) and Hambach (Germany)



# Nature's rights in Europe?

- Nature's rights generally based on the spiritual connection of indigenous people with their lands
- Few indigenous peoples in Europe
- Rights for nature on the EU level?

# EU law and rights for nature

No explicit rights for nature (yet), but

- 1979: Directive 79/409/EEC (Birds directive)
- 1992: Directive 92/43/EEC (Habitats directive)
  - Established the Natura 2000 ecological network



# Natura 2000 / Habitat Directive

- These areas shall allow for rare and threatened species to breed and rest
- Some are protected in their own right
- **Aim:** protect Europe's most vulnerable and threatened species to survive on a long-term basis
- Prohibition of *reformatio in peius*
- 18% of EU lands and 6% of its maritime territory

# Rights of Nature I

- Procedural & substantive
- Procedural: Legal standing
  - “paper tiger”?
  - Art. 71 of Ecuador’s Constitution:
    - All persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature.

# Legal standing in the EU?

- EU states are members of the **Aarhus Convention**
- **Art. 9 – access to justice**
- NGOs are privileged claimants
- **Problem:** Adoption through the member states?
- ECJ – rulings (Slovak Brown Bear case, 2011)

# Rights for Nature II

- Substantive:
  - Attributing nature an intrinsic worth, regardless of its "usefulness" for humans
  - Important: **these rights are not absolute** – principle of proportion and balancing of interests
  - Natura 2000 = no nature-exclusive areas

# European Commission v Poland

- **Białowieża Forest** is a Natura 2000 area
- Protected under Birds & Habitats Directive
- One of the best preserved natural forests in Europe
- UNESCO world heritage site





# Background

- Poland's environmental minister ordered the clearance of huge areas
- Reason: invasion of spruce bark beetles
- Criticism:
  - beetle forms part of the eco-system of the forest
  - Economic interests
- Environmental activists started massive protests



# Judgement of the ECJ

Commission v Poland (Białowieża Forest), C-441/17

- 1) Poland had failed to fulfil its obligations under the Habitat and Birds Directive
  - 2) "Active forest management" entails risks for protected habits/species
  - 3) Clearance would lead to deterioration or destruction of breeding sites and resting places of certain beetles and wild birds
- Penalty: **100.000 Euros/day**
  - Poland "respects" ruling

# Hambach forest / Hambach surface mine





# Hambach Forest (Hambacher Forst)



# RWE against environmentalists

- Hambach Forest is nearly 12.000 years old
- RWE wants to clear the forest for lignite mining
- Activists kept forest occupied for last 6 years
- October 2018 was supposed to be the beginning of the last logging round

# Events of Sept/Oct 2018

- RWE: “There is no alternative”
- Conservatives (CDU) supports RWE unconditionally
- Biggest police operation in history of North-Rhine Westphalia
- Forest becomes the focus of a bigger audience in Germany



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# Legal procedure – Hambach forest

- BUND claims that Hambach Forest must be declared a Natura 2000 area
- **Problem:** The area has never been reported to the EU Commission during the reporting phase (2002-2006)



# BUND (plaintiffs) arguments on why the clearance is unlawful

- No EIA has been carried out
- Germany infringed its obligations under the Habitats directive (no reporting)
  - The Bechstein bat's colony has not been known before 2005
  - ECJ: “constant flow” and changing circumstances possible – subsequent notification!

# Arguments of the state NRW and RWE

- Main operating plan approved in 1977
- RWE promised to re-settle the Bechstein bat's colony
- Lignite mining necessary to provide a stable and constant energy supply for the population



# OVG Münster – preliminary injunction

- On 6 Oct, the OVG **orders a logging ban**
- Reason: forest could possibly fulfil the requirements of a Natura 2000 area
- RWE has not proved that non-mining would really affect the security of power supply
- RWE must not create irreversible facts
- Complex proceedings, a decision is not expected until 2020

# Really a mind shift?

- Eco-centric approach? “Just some trees”?
- 75% of the population supports preservation of the forest
- **Hambach forest becomes symbol of climate change politics**



# Conclusion

- Natura 2000 comes closest to nature's rights
- **Białowieża Forest** and the **Hambach Forest** have demonstrated that strong activism compared with interest litigation can save forests
- The rulings have shown that ecological interests are not necessarily inferior to economic interests
- No explicit eco-centric approach but some of its features are present



# Contact

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