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## **THE CONCEPT OF RIGHTS OF NATURE IN THE BIAŁOWIEŻA FOREST: FROM ‘WHETHER?’ TO ‘HOW?’**

### **Abstract**

This article examines the potential application of the Rights of Nature (RoN) concept to the protection of the Białowieża Forest, a unique transboundary ecosystem of exceptional natural and cultural significance. The complexity of managing this area stems from multiple overlapping legal protection regimes, conflicts of interest involving local communities, and the intricate Polish-Belarusian relations. The authors highlight that existing legal frameworks, grounded in an anthropocentric paradigm, have proven insufficient to ensure effective protection of the Forest as an ecological whole. The study explores the prospective benefits of conferring legal subjectivity upon the Białowieża Forest, thereby enabling judicial protection of nature as an autonomous legal entity. International precedents such as the Ecuadorian and Bolivian constitutional recognition of nature’s rights, and the New Zealand model granting legal personality to natural features, are analysed alongside the challenges of implementing RoN within the Polish and Belarusian legal and socio-political contexts. Particular attention is given to the necessity of tailoring solutions to local conditions, as well as to issues concerning

financing and legal liability. Furthermore, the article addresses the tensions between nature conservation and economic activities, including forestry and tourism, which could be exacerbated by granting rights to the Forest. The transboundary nature of the Białowieża Forest and the current geopolitical climate further complicate cooperative management efforts. The authors propose considering the European Grouping of Territorial Cooperation (EGTC) as a potential organisational instrument to facilitate cross-border governance and optimise existing protection frameworks. In conclusion, the article stresses that effective conservation of the Białowieża Forest requires balancing the interests of all stakeholders and achieving compromises. It calls for further legal and social research, including comparative studies and engagement with local communities, to inform legislative reforms.

### KEYWORDS

Rights of Nature, Białowieża Forest, legal personhood, transboundary conservation, environmental law, Polish-Belarusian relations

### SŁOWA KLUCZOWE

Prawa Natury, Puszcza Białowieska, osobowość prawna, ochrona transgraniczna, prawo ochrony środowiska, stosunki polsko-białoruskie

### I. INTRODUCTION

The article aims to examine the potential application of the concept of the Rights of Nature (RoN) in the process of developing a protection model for the Białowieża Forest, one of the most valuable ecosystems in Europe. The term ‘Rights of Nature’ is often confused with other terms known from legal philosophy, such as natural law and natural rights. Natural law and natural rights are two related but distinct concepts within philosophical and legal traditions. Natural law refers to a set of objective moral norms or principles that arise from the nature of human beings and the world, which are binding regardless of enacted law. It thus constitutes a system of universal moral duties. In the understanding of St Thomas Aquinas, *lex naturalis* is the participation of a rational creature in the eternal law (*lex aeterna*), that is, the divine, immutable, and universal order expressing the will and reason of God. By contrast, natural rights are a more subjective notion, relating to entitlements or freedoms inherent to the individual simply by virtue of being human, independently of positive law enacted by the State. Unlike natural

law, which emphasises duties and norms, natural rights highlight what is due to the individual, that is, their entitlements.<sup>1</sup> The concept of the ‘Rights of Nature’, on the other hand, is a legal and judicial notion which posits that natural elements, and more broadly the entire environment, possess inherent rights analogous to those recognised by human rights theory. In this framework, nature is perceived as a non-human entity in its entirety, encompassing both inorganic and organic matter, including animals, plants, bacteria, and even rocks. Essentially, this concept attributes natural rights to the entire biosphere.<sup>2</sup>

In the face of intensive exploitation of forest resources and climate change, the debate on the necessity to improve existing solutions for the unique area of the Białowieża Forest has intensified.<sup>3</sup> Various concepts have been proposed; however, despite the advancement of some, none has yet become the definitive model. In this situation, it is worthwhile to scientifically consider whether the unconventional concept of the Rights of Nature could constitute an alternative approach to the protection proposals put forward so far for the Białowieża Forest. This article will present the theoretical foundations of the Rights of Nature and their potential application in the context of the Białowieża Forest, together with relevant recommendations.

<sup>1</sup> See Brian B Tierney, ‘Natural Law and Natural Rights: Old Problems and Recent Approaches’ (2002) 64(3) *The Review of Politics* 389 <<https://doi.org/10.1017/s0034670500034914>>; John Finnis, *Natural Law and Natural Rights* (Oxford University Press 2011) 396.

<sup>2</sup> Fátima Alves and others, ‘The Rights of Nature and the Human Right to Nature: An Overview of the European Legal System and Challenges for the Ecological Transition’ (2023) 11 *Frontiers in Environmental Science* <<https://doi.org/10.3389/fenvs.2023.1175143>>.

<sup>3</sup> See Jacek Zientarski and Janusz Szmyt, ‘Czy cała Puszcza Białowieńska powinna być parkiem narodowym?’ (2017) 78(1) *Leśne Prace Badawcze* 93; Mikołaj Jalinik, *Ekonomiczne, społeczne i ekologiczne znaczenie Puszczy Białowieskiej na obszarze Polski* (Oficyna Wydawnicza Politechniki Białostockiej 2024) 73; Stanisław Łuniewski, *Gospodarowanie Puszcza Białowieską jako ekosystemem przyrodniczo cennym* (Oficyna Wydawnicza Politechniki Białostockiej 2023); Ewa Kula, Zbigniew Wróblewski and Anna Starościc, ‘The Conflict over Białowieża Forest in the Light of Philip Kitcher’s Ideal Deliberation’ (2024) 73 *Environmental Management* 481 <<https://doi.org/10.1007/s00267-023-01906-w>>; ‘Puszcza Białowieska. Resort klimatu wyjaśnia: jej cały obszar nie będzie parkiem narodowym’ *Polskie Radio 24* <<https://polskieradio24.pl/artykul/3343636.puszcza-bialowieska-resort-klimatu-wyjasnia-jej-caly-obszar-nie-bedzie-parkiem-narodowym>> accessed 22 May 2025; ‘Puszcza Białowieska pod większą ochroną. Cały obszar stanie się parkiem narodowym’ *Portal Samorządowy* (13 February 2024) <<https://www.portal-samorzadowy.pl/ochrona-srodowiska/puszcza-bialowieska-pod-wieksza-ochrona-caly-obszar-stanie-sie-parkiem-narodowym.523605.html?mp=promo>> accessed 22 May 2025; ‘W transgranicznych dobrach są konfliktogenne; koncepcja EUWT może to przezwyciężyć, bo jest wspólny interes’ *Polskie Radio 24* (2 March 2024) <<https://polskieradio24.pl/artykul/3343636.puszcza-bialowieska-resort-klimatu-wyjasnia-jej-caly-obszar-nie-bedzie-parkiem-narodowym>> accessed 22 May.

## 1. THE CONCEPT OF THE RIGHTS OF NATURE

Granting legal subjectivity to nature requires a non-anthropocentric approach to law, as it challenges the traditional legal paradigm in which only human beings are entitled to be subjects of rights. Traditionally, rights have been conferred upon actors capable of invoking them – namely humans – but in recent years, these rights have been extended to ‘non-human’ subjects such as corporations, animals, and the natural environment.<sup>4</sup> Tanasescu observed that ‘the way in which nature is understood and legally codified, equally important is who has the power to represent it, and why. This issue is at the heart of all rights of nature; it is where the theoretical rubber hits the very practical road’.<sup>5</sup>

The 2008 Constitution of Ecuador explicitly recognises the inalienable rights of the natural environment, thereby establishing it as a legal subject.<sup>6</sup> A dedicated chapter, comprising four articles, is devoted to this matter, with the following provisions:

### ‘Article 71

Nature, or *Pachamama*, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes.

All persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature. To enforce and interpret these rights, the principles set forth in the Constitution shall be observed, as appropriate.

The State shall give incentives to natural persons and legal entities and to communities to protect nature and to promote respect for all the elements comprising an ecosystem.

### Article 72

Nature has the right to be restored. This restoration shall be apart from the obligation of the State and natural persons or legal entities to compensate individuals and communities that depend on affected natural systems.

<sup>4</sup> See Juan José Guzmán, ‘Decolonizing Law and Expanding Human Rights: Indigenous Conceptions and the Rights of Nature in Ecuador’ (2019) 4 *Deusto Journal of Human Rights* 73–74; Kiana Herold, ‘The Rights of Nature: Indigenous Philosophies Reframing Law’ (2017) *Truthout* <<https://truthout.org/articles/the-rights-of-nature-indigenous-philosophies-reframing-law/>> accessed 22 May 2025.

<sup>5</sup> Mihnea Tanasescu, *Understanding the Rights of Nature: A Critical Introduction* (New Ecology 6, transcript Verlag 2022) 70 <<https://doi.org/10.14361/9783839454312>>.

<sup>6</sup> See Piotr Łaciński, ‘System polityczny Ekwadoru w świetle konstytucji z 2008 roku’ (2009) 12(1) *Ameryka Łacińska. Kwartalnik Analityczno-Informacyjny* 36–37.

In those cases of severe or permanent environmental impact, including those caused by the exploitation of nonrenewable natural resources, the State shall establish the most effective mechanisms to achieve the restoration and shall adopt adequate measures to eliminate or mitigate harmful environmental consequences.

#### Article 73

The State shall apply preventive and restrictive measures on activities that might lead to the extinction of species, the destruction of ecosystems and the permanent alteration of natural cycles.

The introduction of organisms and organic and inorganic material that might definitively alter the nation's genetic assets is forbidden.

#### Article 74

Persons, communities, peoples, and nations shall have the right to benefit from the environment and the natural wealth enabling them to enjoy the good way of living.

Environmental services shall not be subject to appropriation; their production, delivery, use and development shall be regulated by the State<sup>7</sup>.

In the context of Ecuador's constitutional provisions concerning the Rights of Nature, when considering the arguments for and against them, Wiesław Bar notes that: '1. It is crucial to set limits to treating nature solely in economic terms; a biocentric stance breaks with the commodification of Nature; 2. The biocentric turn requires recognising the plurality of perspectives on Nature and fostering multicultural attitudes; 3. From a biocentric viewpoint, all ecosystems and all forms of life must be protected, regardless of their economic utility, aesthetic value, or propaganda worth. There is equality in evaluation – places that are little discussed, as well as biologically undifferentiated areas, must also be preserved; 4. Therefore, restoration of all ecosystems degraded by human activity must be ensured; 5. It is necessary to move away (with regard to Article 73) from the classical Cartesian cause-and-effect scheme, as ecosystems are more complex and require a comprehensive perception of threats. After a brief period of norm implementation, it has been emphasised that the issue of who should represent nature must be reconsidered. Legislation – organic laws, special statutes, etc. – based on the Constitution should define the mechanisms of such representation; the main promoters in this process should be new social movements, non-governmental organisations, and indigenous organisations. In conclusion, it must be clearly stated that the shift from anthropocentrism to biocentrism represents

<sup>7</sup> Constitución de la República del Ecuador, Registro Oficial No 449, 20 October 2008 <<https://biblioteca.sejm.gov.pl/konstytucje-swiata-ekwador/>> (legal status as of 1 July 2024) accessed 22 May 2025.

a substantial change; it is the result of a long social and political accumulation in the Republic of Ecuador'.<sup>8</sup>

Some States have followed the trend set by Ecuador. New Zealand established a historic precedent by granting legal personality to the Whanganui River in 2014. In India, the Ganges River became the first non-human entity to receive the same rights as humans. In 2016, the Constitutional Court of Colombia granted legal personality to the Atrato River, ordering the Colombian State to develop a protection plan against the ongoing degradation of the river and its surroundings caused by illegal mining activities.<sup>9</sup> It is worth mentioning that the European continent is also taking its first steps in implementing the concept of the Rights of Nature. Spain, as a result of years of degradation of the Mar Menor Lagoon, decided to enact a law granting it legal personality. The lagoon was accorded rights to protection, conservation, maintenance, and restoration, as well as the right to exist as an ecosystem and to natural evolution. These rights include, among others, the limitation of activities harmful to the ecosystem, the preservation of species and habitats, and the remediation of environmental damage. The management of the lagoon is based on three bodies: the Committee of Representatives (comprising representatives of public administration and local inhabitants), the Monitoring Commission (the so-called guardians of the Mar Menor lagoon, representing various social and economic sectors), and the Scientific Committee (independent experts). These bodies are responsible for safeguarding the lagoon's rights, monitoring its ecological status, and undertaking remedial actions. The law provides for civil, criminal, administrative, and environmental sanctions for violations of its provisions. Any natural or legal person has the right to defend the lagoon's ecosystem in court or before public authorities. Public administrations are obliged

<sup>8</sup> Wiesław Bar, 'Nowa dogmatyka konstytucji Republiki Ekwadoru. Casus praw natury' (2010) *Teka Komisji Prawniczej PAN Oddział w Lublinie*, 46.

<sup>9</sup> Juan José Guzmán, 'Decolonizing Law and Expanding Human Rights: Indigenous Conceptions and the Rights of Nature in Ecuador' (2019) 4 *Deusto Journal of Human Rights* 73–74; Kiana Herold, 'The Rights of Nature: Indigenous Philosophies Reframing Law' (2017) *Truthout* <<https://truthout.org/articles/the-rights-of-nature-indigenous-philosophies-reframing-law/>> accessed 22 May 2025. See: Lieselotte Viaene, 'Ríos: seres vivientes y personalidad jurídica. Nuevos argumentos legales de los territorios de los pueblos indígenas' (2017) *Plaza Pública* <<https://www.plazapublica.com.gt/content/rios-seres-vivientes-y-personalidad-juridica-nuevos-argumentos-legales-en-la-defensa-de-los>> accessed 22 May 2025; 'Ganges and Yamuna rivers granted same legal rights as human beings' *The Guardian* (21 March 2017) <<https://www.theguardian.com/world/2017/mar/21/ganges-and-yamuna-rivers-granted-same-legal-rights-as-human-beings>> accessed 22 May 2025; Colombian Constitutional Court, 'Principio de precaución ambiental y su aplicación para proteger el derecho a la salud de las personas – Caso de comunidades étnicas que habitan la cuenca del río Atrato y manifiestan afectaciones a la salud como consecuencia de las actividades mineras ilegales. Sentencia T-622/16' (2016) <<https://www.corteconstitucional.gov.co/relatoria/2016/t-622-16.htm>> accessed 22 May 2025.

to conduct preventive, educational, and research activities aimed at protecting the lagoon. Actions leading to the extinction of species or the permanent disruption of natural cycles are prohibited.<sup>10</sup>

Similar problems and needs are also evident in Poland. The case of the pollution of the Oder River, an international watercourse, has demonstrated that the existing environmental protection mechanisms ultimately prove inadequate.<sup>11</sup> This is particularly evident in the case of exceptional areas. A prime example in this regard is the Białowieża Forest.

## 2. BIAŁOWIEŻA FOREST

The Białowieża Forest is an extensive woodland complex located on the border between Poland and Belarus, holding exceptional significance for nature conservation due to the scale of its ancient forests. These encompass vast, undisturbed areas where natural processes occur. The forest is characterised by a high diversity of fungi and saproxylic invertebrates, and its emblematic species is the European bison, which lives here in the wild.<sup>12</sup> The biodiversity of this area is, regrettably, accompanied by a fragmented and administratively burdensome patchwork of legal protection regimes.

The obvious diversity already results from the division of the Białowieża Forest by the State border between Poland and Belarus. However, this ‘diversity’ of relevant regulations does not end there. One of the fundamental forms of protection of the Białowieża Forest under Polish law is its designation as a national park. This was established by the Regulation of the Council of Ministers dated 21 October 1947.<sup>13</sup> The Białowieża National Park currently covers an area of 10,517.27 hectares, while its protective buffer zone (the so-called *otulina*) encompasses

<sup>10</sup> Ley 19/2022, de 30 de septiembre, para el reconocimiento de personalidad jurídica a la laguna del Mar Menor y su cuenca, ‘BOE’ núm. 237, 3 October 2022 <<https://www.boe.es/buscar/doc.php?id=BOE-A-2022-16019>> accessed 22 May 2025.

<sup>11</sup> See Najwyższa Izba Kontroli, ‘Informacja o wynikach kontroli: Działania podmiotów publicznych w związku z kryzysem ekologicznym na rzece Odrze’, Delegatura w Opolu, LOP.430.3.2023, nr ewid. 97/2023/D/22/505/LOP <<https://www.nik.gov.pl/plik/id,28435,vp,31265.pdf>> accessed 22 May 2025.

<sup>12</sup> Białowieża Forest <<https://whc.unesco.org/en/list/33/>> accessed 22 May 2025.

<sup>13</sup> Rozporządzenie Rady Ministrów z dnia 21 listopada 1947 r. o utworzeniu Białowieskiego Parku Narodowego, Dz.U. 1947 nr 74 poz. 469. Significant changes related to the functioning of the Białowieża National Park were introduced pursuant to the Rozporządzenie Rady Ministrów z dnia 16 lipca 1996 r. w sprawie Białowieskiego Parku Narodowego, Dz.U. 1996 nr 93 poz. 424.

3,224.26 hectares.<sup>14</sup> The area of strict protection amounts to 6,059.27 hectares, active protection covers 4,104.63 hectares, and landscape protection encompasses 353.37 hectares. The part of the Białowieża Forest on the Polish side that is not included within the Białowieża National Park is managed by the State Forests National Forest Holding (*Państwowe Gospodarstwo Leśne Lasy Państwowe, PGL LP*).<sup>15</sup> The forests of the Białowieża Forest, managed by the *PGL LP*, are administratively divided among three forest districts: Hajnówka, Białowieża, and Browsk. Together, they form the Białowieża Forest Promotional Forest Complex (formerly known as the Promotional Forest Complex ‘Forests of the Białowieża Forest’).<sup>16</sup> Promotional Forest Complexes are intended to reconcile the needs of forest management with nature conservation (sustainable forest management). They consist of large, contiguous forest areas that are part of one or several forest districts.<sup>17</sup>

Within the area of the Białowieża Forest administered by the *PGL LP*, there are also nature reserves covering a total area of several thousand hectares.<sup>18</sup> It is worth noting that the largest of these reserves<sup>19</sup> encompasses a forest area of 8,581.62 hectares located within the municipalities of Białowieża, Hajnówka, Narewka, Narew, and Dubicze Cerkiewne, in the Hajnówka County, Podlaskie Voivodeship.

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<sup>14</sup> Formularz danych dla parku narodowego – Białowieżski Park Narodowy – z Centralnego Rejestru Form Ochrony Przyrody, Generalna Dyrekcja Ochrony Środowiska, sygn. PL.ZIPOP.1393.PN.8, as of 25 March 2025.

<sup>15</sup> The State Forests National Forest Holding is a State organizational unit without legal personality, operating on the basis of the Forest Act of 28 September 1991 (as amended; Journal of Laws of 2024, items 530, 1473, 1907, of 2025, item 179).

<sup>16</sup> Andrzej Szujecki, *Puszcza Białowieża. Konflikty wokół ochrony i zarządzania* (Centrum Informacyjne Lasów Państwowych 2008) 3. See Decyzja nr 23 Ministra Ochrony Środowiska, Zasobów Naturalnych i Leśnictwa z dnia 8 listopada <<http://www.browsk.bialystok.lasy.gov.pl/documents/62664/0/Decyzja+23+MO%C5%9AZNiL+z+dnia+8+listopada+1994+r.pdf/be89546a-1d14-15e1-bf92-e2082f7dfda3>> accessed 22 May 2025; Zarządzenie nr 30 dyrektora generalnego Lasów Państwowych z dnia 12 grudnia 1994 roku w sprawie Leśnych Kompleksów Promocyjnych (LKP), ZO-72-15/94 <[http://www.bialowieza.bialystok.lasy.gov.pl/c/document\\_library/get\\_file?uuid=904a3cc3-9875-49d3-8d53-e47f3afe891c&groupId=62676](http://www.bialowieza.bialystok.lasy.gov.pl/c/document_library/get_file?uuid=904a3cc3-9875-49d3-8d53-e47f3afe891c&groupId=62676)> accessed 22 May 2025.

<sup>17</sup> Forest Promotion Complexes, website of the State Forests – National Forest Holding <<https://www.lasy.gov.pl/pl/nasze-lasy/lesne-kompleksy-promocyjne>> accessed 22 May 2025.

<sup>18</sup> See Central Register of Nature Conservation Areas, General Directorate for Environmental Protection <<https://crfop.gdos.gov.pl/CRFOP/>> accessed 22 May 2025; Reserves in the Białowieża Forest District <<https://bialowieza.bialystok.lasy.gov.pl/rezerwaty-przyrody>> accessed 22 May 2025; Reserves in the Hajnówka Forest District <<https://hajnowka.bialystok.lasy.gov.pl/rezerwaty-przyrody>> accessed 22 May 2025; Reserves in the Browsk Forest District <<https://browsk.bialystok.lasy.gov.pl/rezerwaty-przyrody>> accessed 22 May 2025.

<sup>19</sup> Rozporządzenie Ministra Środowiska z dnia 25 czerwca 2003 r. w sprawie uznania za rezerwat przyrody, Dz.U. 2003 nr 132 poz. 1236.

This reserve is named the ‘Natural Forests of the Białowieża Forest’.<sup>20</sup> Other forms of nature protection present in the Polish part of the Białowieża Forest include: zones of protection around breeding sites and regular habitats of protected bird species, natural monuments, lichen protection zones, and ecological sites.<sup>21</sup>

Against the backdrop of the diverse regulatory framework in Poland regarding the status of the Białowieża Forest, the situation in Belarus appears surprisingly clear-cut. On the Belarusian side, in September 1991, the entire eastern part of the Białowieża Forest was granted the status of a State National Park.<sup>22</sup> The State National Park ‘Belovezhskaya Pushcha’ [Национальный парк «Беловежская пушча»] covers an area of 152,962 hectares. Currently, 30,679 hectares of forest within the park are under strict protection. In addition to the strict protection zone, the park is divided into the following zones: a regulated use zone (57,318 hectares), a recreational zone (7,739 hectares), and an economic zone (57,226 hectares).<sup>23</sup>

In light of the indicated regulatory divergences, dedicated international arrangements for the Białowieża Forest assume particular importance. Pursuant to the decision of the UNESCO World Heritage Committee in 1979, the Polish Białowieża National Park was inscribed on the World Heritage List as a natural site.<sup>24</sup> In 1992, the Committee inscribed the core zone of the Belarusian State National Park ‘Belovezhskaya Pushcha’ on the World Heritage List, recognising it as an extension of the Polish Białowieża National Park. Under this decision, the Committee registered the transboundary property as a single entry on the World Heritage List under the name Belovezhskaya Pushcha / Białowieża Forest of Belarus / Poland, acknowledging the ecological unity of the transboundary area and commending the authorities of both States for agreeing to include the entire area as a single

<sup>20</sup> Data form for the nature reserve – Natural Forests of the Białowieża Forest – from the Central Register of Nature Conservation Forms, General Directorate for Environmental Protection, signature PL.ZIPOP.1393.RP.1536, as of 25 March 2025.

<sup>21</sup> Program Gospodarczo-Ochronny Leśnego Kompleksu Promocyjnego ‘Puszcza Białowieska’ na lata 2012–2021 (Regionalna Dyrekcja Lasów Państwowych, Białystok 2011) 17.

<sup>22</sup> Postanovleniye Soveta Ministrov Respubliki Belarus ot 16.09.1991 No 352 o reorganizatsii Gosudarstvennogo zapovedno-okhotnich’yego khozyaystva ‘Belovezhskaya pushcha’, dokument zaregistrirovannyy v Natsional’nom reyestre pravovykh aktov RB 20 oktyabrya 2006 g. N 5/23482 (tekst pravovogo akta s izmeneniyami i dopolneniyami na 1 yanvarya 2014 g.).

<sup>23</sup> Bogdan Jaroszewicz, ‘Państwowy Park Narodowy “Belovezhskaya Pushcha”’ in Artur Obidziński (ed), *Z Mazowsza na Polesie i Wileńszczyznę. Zróżnicowanie i ochrona szaty roślinnej pogranicza Europy Środkowej i Północno-Wschodniej* (Polskie Towarzystwo Botaniczne 2010) 234.

<sup>24</sup> Report of the rapporteur on the third session of the World Heritage Committee (Cairo and Luxor, 22–26 October 1979) (Paris, 30 November 1979) CC-79/CONF.003/13, 11 <<https://whc.unesco.org/archive/1979/cc-79-conf003-13e.pdf>> accessed 22 May 2025.

World Heritage site.<sup>25</sup> In 2014, the inscription was extended to include the entire Polish part of the Białowieża Forest not covered by the national park, and the name ‘Białowieża Forest, Belarus, Poland’ was adopted for the site.<sup>26</sup>

The legal status of the Białowieża Forest is also shaped, more often indirectly than explicitly, by bilateral agreements between Poland and Belarus<sup>27</sup> (however, due to Belarus’s involvement on Russia’s side in its aggression against Ukraine, the significance of bilateral agreements temporarily diminished, and local government agreements were terminated by Polish partners).<sup>28</sup>

The Polish part of the Białowieża Forest is also subject to European Union law based on the Birds Directive and the Habitats Directive. Pursuant to the Regulation of the Minister of the Environment dated 12 January 2011 concerning Special Protection Areas for birds (SPA), § 2, item 83, the following municipalities within the Białowieża Forest (PLC200004) have been designated as bird protection areas, covering a total area of 63,147.6 hectares: Hajnówka – urban municipality (6.7 ha), Hajnówka – rural municipality (17,640.3 ha), Białowieża (20,338.2 ha), Dubicze Cerkiewne (2,318.6 ha), Narew (2,115.3 ha), and Narewka (20,728.5 ha).<sup>29</sup> In 2007, the European Commission approved the designation of the Białowieża Forest Natura 2000 site (PLC200004) in accordance with Article 4(2)(3), of the Habitats Directive as a Site of Community Importance (SCI).<sup>30</sup> As a result of

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<sup>25</sup> Report of the rapporteur on the sixteenth session of the World Heritage Committee (Santa Fe, United States of America, 7–14 December 1992) (14 December 1992) WHC-92/CONF.002/12, 37 <<https://whc.unesco.org/archive/1992/whc-92-conf002-12e.pdf>> accessed 22 May 2025.

<sup>26</sup> Decision 38 COM 8B.12 adopted by the World Heritage Committee at its thirty-eighth session (Doha, Qatar 15–25 June 2014) (Doha, 7 July 2014) WHC-14/38.COM/16, 172–174 <<https://whc.unesco.org/archive/2014/whc14-38com-16en.pdf>> accessed 22 May 2025; World Heritage List – Białowieża Forest, UNESCO <<https://whc.unesco.org/en/list/33>> accessed 22 May 2025.

<sup>27</sup> Maciej Perkowski, Wojciech Zoń and Przemysław Saganek, *The Disputed Białowieża Forest: Legal Remedies for the Protection of Cross-Border Properties* (Brill-Nijhoff 2022) 204–205.

<sup>28</sup> See Uchwała Nr XXXIX/542/2022 Sejmiku Województwa Podlaskiego z 28 lutego 2022 r. w sprawie wypowiedzenia porozumień o międzynarodowej współpracy regionalnej Województwa Podlaskiego (Rzeczpospolita Polska) z Obwodem Brzeskim i Grodzieńskim (Republika Białorusi) <[https://bip.wrotapodlasia.pl/wojewodztwo/akty\\_prawnel/uchwaly\\_sej/uchwaly-sejmiku-od-2008/uchwala-nr-xxxix5422022-sejmiku-wojewodztwa-podlaskiego-z-dnia-2022-02-28.html](https://bip.wrotapodlasia.pl/wojewodztwo/akty_prawnel/uchwaly_sej/uchwaly-sejmiku-od-2008/uchwala-nr-xxxix5422022-sejmiku-wojewodztwa-podlaskiego-z-dnia-2022-02-28.html)> accessed 22 May 2025; Samorzady wypowiadają umowy partnerstwa z miastami w Rosji i na Białorusi, Serwis Samorządowy PAP, 02 March 2022. <<https://samorząd.pap.pl/kategoria/aktualnosci/samorzady-wypowiadaja-umowy-partnerstwa-z-miastami-w-rosji-i-na-bialorusi>> accessed 22 May 2025.

<sup>29</sup> Rozporządzenie Ministra Środowiska z dnia 12 stycznia 2011 r. w sprawie obszarów specjalnej ochrony ptaków, Dz.U. 2011 nr 25 poz. 133.

<sup>30</sup> Commission Decision of 13 November 2007 adopting, pursuant to Council Directive 92/43/EEC, a first updated list of sites of Community importance for the Continental biogeographical region (notified under document number C(2007) 5403) [2008] OJ L 12, 383–677 <<https://eur-lex>.

actions undertaken in the Białowieża Forest by the *PGL LP* aimed at limiting losses in stands affected by the spruce bark beetle, the European Commission brought a case against Poland before the Court of Justice of the European Union for the breach of obligations under the Birds Directive and the Habitats Directive. The Court of Justice issued a judgment finding Poland in breach of its obligations. However, this ruling did not resolve the dispute concerning the appropriate management of the Białowieża Forest.<sup>31</sup>

The foregoing considerations compel several reflections. Firstly, it is clear that the scope of protection afforded to the Białowieża Forest is quite extensive, ranging from national measures to international frameworks.<sup>32</sup> Secondly, the existence of such a wide variety of nature protection forms undoubtedly reflects the exceptional character of this area; however, it simultaneously results in a complex management system for the Forest, which causes difficulties in ensuring proper protection of the site as an ecological whole.

The Białowieża Forest, as a unique ecosystem inscribed on the UNESCO World Heritage List, presents an immense and complex challenge for the States and international community that share it, in terms of selecting appropriate methods and forms of nature protection. Regulating the legal status of this site repeatedly brings about collisions between environmental protection regulations and the interests of local communities, who have lived in the vicinity of the Białowieża Forest for generations. The area subject to intensive protection requires the introduction of restrictions on the use of natural resources, which directly affects the lives of residents and arouses their opposition. Additionally, their cultural and traditional ties to this area must be taken into account. The Forest is an example of an area where these contradictions take on particular intensity.<sup>33</sup> There have

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[europa.eu/LexUriServ/LexUriServ.do?uri=OJ%3AL%3A2008%3A012%3A0383%3A0677%3APL%3APDF](https://europa.eu/LexUriServ/LexUriServ.do?uri=OJ%3AL%3A2008%3A012%3A0383%3A0677%3APL%3APDF)> accessed 22 May 2025.

<sup>31</sup> Judgement of the Court (Grand Chamber) from 17 April 2018 in Case C-441/17, action for failure to fulfil obligations under Article 258 TFEU, ECLI:EU:C:2018:255; see Maciej Perkowski and Wojciech Zoń, 'Sprawa Puszczy Białowieskiej przed Trybunałem Sprawiedliwości Unii Europejskiej – uwagi z (odpowiedniej) perspektywy czasu' (2021) 87 *Studia Iuridica* 412–428 <<http://hdl.handle.net/11320/17832>> accessed 22 May 2025.

<sup>32</sup> See Maciej Perkowski, Wojciech Zoń and Przemysław Saganek, *The Disputed Białowieża Forest: Legal Remedies for the Protection of Cross-Border Properties* (Brill-Nijhoff 2022).

<sup>33</sup> A large portion of the local residents, in response to calls for designating the entire Forest as a national park, sought to organise a referendum to maintain the status quo. However, the referendum did not take place – see *Starostwo w Hajnówce wstrzymało procedowanie uchwały o referendum w sprawie Puszczy Białowieskiej*, 13 June 2024 <<https://samorzad.pap.pl/kategoria/aktualnosci/starostwo-w-hajnowce-wstrzymalo-procedowanie-uchwaly-o-referendum-w-sprawie>> accessed 22 May 2025. Attention should also be drawn to a series of protests by forestry workers and the social groups supporting them – see Renata Reda, 'Radni Sejmiku zajmą się obroną branży

been relevant proposals, including the designation of the entire area as a national park (a concept that was abandoned following criticism) or the development of the so-called ‘Constitution for the Białowieża Forest’ – a specific document that would take into account all aspects related to the management of this valuable area.<sup>34</sup> Such a situation invites consideration of unconventional solutions, raising the question of whether the concept of granting legal personhood to the Białowieża Forest, in the spirit of the rights of nature doctrine, could resolve the issue of effective protection of this area while taking into account the interests of its local inhabitants.

### 3. APPLICATION OF THE RIGHTS OF NATURE CONCEPT

When considering the implementation of the rights of nature concept in Poland, and prospectively also in Belarus, it is essential to take into account the legal, cultural, and political specificities of both countries. In the context of the Białowieża Forest, an area of exceptional natural significance, granting rights to nature could represent a breakthrough in its protection. Conversely, the absence of an established practice in this regard presents an opportunity to develop a tailor-made solution. As emphasised by O’Donnell and Talbot-Jones, the success of implementing the rights of nature depends on adapting them to the local context and ensuring effective enforcement mechanisms. In the case of Poland, this would require consideration of both legal and social conditions.<sup>35</sup> Polish legal frameworks already allow for the legal subjectification of ‘protection organisations’, which could serve as a foundation for advancing the rights of nature approach.

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drzewnej, Puszcą Białowieską i pomocą gminom po powodzi’, Polskie Radio Białystok, 24 October 2024 <<https://www.radio.bialystok.pl/wiadomosci/index/id/243935https://hajnowka.naszemiasto.pl/puszcza-bialowieska-lesnicy-z-trzech-puszczanskich/ar/c1-9638245>> accessed 22 May 2025. See also Alan Weiss, ‘Kluczowy moment dla Puszczy Białowieskiej. Nowe zagrożenie’, Onet.pl, 03 July 2024 <<https://www.onet.pl/styl-zycia/dzikie-zycie/kluczowy-moment-dla-puszczy-bialowieskiej-nowe-zagrozenie/86np4f2.30bc1058>>; Piotr Toborek, ‘Dość klepania po plecach. Szykuje się bój o Puszcę Białowieską’, Portal Samorządowy, 10 March 2024 <[https://www.portalsamorzadowy.pl/komunikacja-spoieczna/dosc-klepania-po-plecach-szykuje-sie-boj-o-puszcze-bialowieska.528771.html?mp=promo#google\\_vignette](https://www.portalsamorzadowy.pl/komunikacja-spoieczna/dosc-klepania-po-plecach-szykuje-sie-boj-o-puszcze-bialowieska.528771.html?mp=promo#google_vignette)> accessed 22 May 2025.

<sup>34</sup> See ‘Puszcza Białowieska. Resort klimatu wyjaśnia: jej cały obszar nie będzie parkiem narodowym’, polskieradio24.pl, 02 March 2024 <<https://polskieradio24.pl/artukul/3343636.puszcza-bialowieska-resort-klimatu-wyjasnia-jej-caly-obszar-nie-bedzie-parkiem-narodowym>> accessed 22 May 2025; ‘Ochrona Puszczy Białowieskiej jednym z priorytetów resortu klimatu’, Ministerstwo Klimatu i Środowiska, 09 May 2024 <<https://www.gov.pl/web/klimat/ochrona-puszczy-bialowieskiej-jednym-z-priorytetow-resortu-klimatu>> accessed 22 May 2025.

<sup>35</sup> Erin L O’Donnell and Julia Talbot-Jones, ‘Creating legal rights for rivers: lessons from Australia, New Zealand, and India’ (2018) 23(1) *Ecology and Society* 9 <<https://www.ecologyandsociety.org/vol23/iss1/art7/>> accessed 22 May 2025.

As emphasised by Adam Habuda, ‘Certain natural resources simultaneously constitute objects of legal protection and subjects of law. For example, a national park is, on the one hand, an object of protection as an area distinguished by its natural values, and on the other hand, it is simultaneously a State legal person, that is, a subject of law, as provided for in Article 8a of the Nature Conservation Act. It should be emphasised, however, that the legislature primarily refers to the structural aspect, viewing the national park as an organisational unit established to perform public tasks, as indicated by the reference in the Nature Conservation Act to Article 9 point 14 of the applicable Public Finance Act’.<sup>36</sup> Therefore, in the case of the Białowieża National Park, certain elements of legal subjectivity exist. Nevertheless, the anthropocentric approach to the environment predominates in the Polish legal system; the environment and its individual components are not regarded as entities equal to humans, but rather as subordinate to them.<sup>37</sup> The introduction of the Rights of Nature (RoN) would require a paradigm shift, whereby nature conservation is perceived not only through the lens of benefits to humans but also as an end in itself. Theoretically, one could consider adopting provisions modelled on Ecuadorian solutions, where the Constitution recognises the rights of nature (Constitution of the Republic of Ecuador 2008), or Bolivian legislation (Ley de Derechos de la Madre Tierra). In practice, however, enforcement of such provisions could prove difficult.

Alternatively, the New Zealand model (Whanganui) could be considered, granting the Białowieża Forest legal personhood with appointed guardians representing its interests. Yet, this too would face legal limitations due to the parallel application of Polish and Belarusian law. Such a solution would also, to some extent, have to ‘consume’ or integrate existing forms of protection. At the same time, financing such a legal entity would remain problematic. Furthermore, questions would arise regarding liability for damage to persons and property resulting from natural processes interacting with the surrounding socio-economic environment. It is unclear whether such liability should be excluded absolutely in cases of force majeure, or rather precisely defined.

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<sup>36</sup> Adam Habuda, ‘Przyroda i jej elementy. Przedmiot ochrony prawnej czy podmioty prawa?’ (2023) 1(34) *Radca Prawny. Zeszyty Naukowe* 84.

<sup>37</sup> The Act of 27 April 2001 Environmental Protection Law (Ustawa z dnia 27 kwietnia 2001 r. Prawo ochrony środowiska, Dz.U. 2024.54 t.j.) adopts the perspective of sustainable development as the starting point for environmental protection. According to Article 3, point 13, environmental protection means undertaking or refraining from actions that enable the preservation or restoration of natural balance; this protection particularly involves: a) rational shaping of the environment and management of environmental resources in accordance with the principle of sustainable development, b) preventing pollution, c) restoring natural elements to their proper condition.

Should the decision be made not to grant the Białowieża Forest full legal subjectivity akin to natural or legal persons under national law, it may be worthwhile to consider introducing elements of such subjectivity. Practically, this could involve enacting provisions enabling the Forest (or its designated representative) to bring legal actions to court in defence of its rights, for example, in cases of activities threatening the integrity of its ecosystem. Moreover, it would be important to define specific rights of the Forest, such as the right to exist, to develop, and to regenerate its natural processes.

Introducing such changes into the Polish legal system would require amendments to laws concerning nature protection, spatial planning, and forest management, or the enactment of dedicated special regulations. Of course, there are many further implications to consider.

#### 4. CHALLENGES AND CONTROVERSIES

The implementation of the Rights of Nature (RoN) concept in relation to the Białowieża Forest, as in other areas, inevitably involves various challenges and controversies. One of the primary issues is the conflict between nature conservation and economic activities such as forestry and tourism. A key aspect concerns whether the rights granted to nature can be effectively enforced, which requires balancing the interests of diverse stakeholder groups. Granting rights to the Forest could preclude the possibility of intensive forest management, which would, in turn, intensify opposition from sectors connected to the timber industry, including local inhabitants. Similarly, the development of tourism would need to be carefully balanced to avoid threatening the ecological integrity of the Forest, a condition that the tourism industry might not readily accept. An additional challenge stems from the transboundary nature of the Białowieża Forest and the specific characteristics of Polish-Belarusian relations. In this context, implementing RoN for the entire area would require a cooperative partnership with Belarus, which may be complicated due to differing legal and political systems, and currently, predominantly influenced by the geopolitical situation. As previously noted, following Belarus's support of Russian aggression against Ukraine, Polish local governments have terminated agreements with their Belarusian (and naturally Russian) partners. Simultaneously, Belarusian authorities have been supporting migratory pressure on the Polish-Belarusian border – a significant segment of the European Union's external border – which negatively affects regional security.<sup>38</sup>

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<sup>38</sup> See, e.g., Artem Graban, 'Instrumentalisation of Fear and Securitisation of "Eastern Borders Route": The Case of Poland-Belarus "Border Crisis"' (2023) 3(2) *European Security* 236–260

Introducing protection based on the Rights of Nature (RoN) in the Polish part of the Białowieża Forest, while maintaining the status quo on the Belarusian side, carries the risk that conservation efforts will be ineffective in the context of the ecosystem functioning as a whole.

An alternative may be to utilise existing forms of nature protection, such as national parks and nature reserves, to achieve RoN objectives. However, the high likelihood of opportunism among decision-makers could significantly distort these goals. Another option worth considering is the innovative use of the European Grouping of Territorial Cooperation (EGTC), which is promoted by the European Union (and incorporated into its law<sup>39</sup> as well as the legal systems of Member States) primarily to facilitate cross-border cooperation. Unlike the euroregion – which lacks legal personality – the EGTC is a form of corporate legal entity that does not preclude the operation of standard nature protection forms, but rather organisationally optimises them.

The EGTC structure could, therefore, serve as one of the tools supporting the implementation of RoN in relation to transboundary ecosystems. It enables cooperation between entities located in EU Member States (with the possibility of including third countries) in managing shared natural resources.<sup>40</sup> However, the effectiveness of this solution depends on the scope of its application – it may address problems either fragmentarily or comprehensively, depending on the agreements adopted and geopolitical conditions. This, however, is an aspect that requires separate, detailed analysis.

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<https://doi.org/10.1080/09662839.2023.2287499>; Marcin Kośka, 'Protection of the Land Border of the Republic of Poland with the Republic of Belarus in Relation to the Migration Crisis from July 2021 to June 2024' (2024) 288(3) *Wiedza Obronna* 119–42 <<https://doi.org/110.34752/2024-3-9>>.

<sup>39</sup> Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC), *Official Journal of the European Union* L 210 of 31 July 2006, 19–24; Regulation (EU) No 1302/2013 of the European Parliament and of the Council of 17 December 2013 amending Regulation (EC) No 1082/2006 on a European grouping of territorial cooperation (EGTC) as regards the clarification, simplification and improvement of the establishment and functioning of such groupings, *Official Journal of the European Union* L 347 of 20 December 2013, 303–319.

<sup>40</sup> See Elisabetta Nadalutti, 'Does the "European Grouping of Territorial Co-operation" Promote Multi-level Governance within the European Union?' (2013) 51(4) *Journal of Common Market Studies* 756–771 <<https://doi.org/10.1111/jcms.12014>>; Peter Ulrich, 'Territorial Cooperation, Supraregionalist Institution-Building and National Boundaries: The European Grouping of Territorial Cooperation (EGTC) at the Eastern and Western German Borders' (2019) 28(1) *European Planning Studies* 57–80 <<https://doi.org/10.1080/09654313.2019.1623974>>; Hynek Böhm, 'Five Roles of Cross-Border Cooperation Against Re-Bordering' (2021) 38(3) *Journal of Borderlands Studies* 487–506 <<https://doi.org/10.1080/08865655.2021.1948900>>.

## II. CONCLUSIONS

Strengthening nature protection by granting the Białowieża Forest legal subjectivity could represent a breakthrough in its conservation. When considering the benefits of the Rights of Nature (RoN) concept, it is important to emphasise that this approach enables judicial protection of nature as such, and in its own interest. The establishment of RoN with respect to the Białowieża Forest would not directly lead to a more restrictive nature protection regime; however, it could complicate the situation of the local population, which may become apparent in decision-making processes relating to the area. As already indicated by previously cited voices concerning the protection of this region,<sup>41</sup> the residents often feel that their situation is not taken into account. It is, therefore, crucial to consider the rational interests of all parties and to find compromises in this regard.

An additional challenge is the transboundary character of the Białowieża Forest, the specific nature of Polish-Belarusian relations, and their current state. Although, in theory, more effective protection of the Białowieża Forest across borders could be envisaged through a dedicated international agreement between Poland and Belarus (e.g., a localised treaty),<sup>42</sup> this remains wishful thinking under the present geopolitical conditions.

Regardless of the legal protection model adopted, it is essential that the solution ensures effective protection of the Białowieża Forest as an ecological whole, irrespective of State borders, while taking into account the fluctuating geopolitical relations. Another important aspect is raising social awareness about RoN and the benefits of nature conservation on both the Polish and Belarusian sides, which could contribute to increased support for initiatives based on this concept.

The authors recognise the need for further legal research, including comparative legal studies, as well as social research incorporating the voices of the local population. The results of such studies should form the basis for legislative actions concerning the protection of the Białowieża Forest.

## ACKNOWLEDGEMENTS

The publication was prepared within the framework of the project titled ‘Rights of Nature – A Vehicle for Sustainable Development? Operationalisation and Cri-

<sup>41</sup> See footnotes 3 and 33.

<sup>42</sup> See Maciej Perkowski, Wojciech Zoń and Przemysław Saganek, *The Disputed Białowieża Forest: Legal Remedies for the Protection of Cross-Border Properties* (Brill-Nijhoff 2022) 207, 216–17; see also Malgosia Fitzmaurice, ‘Third Parties and the Law of Treaties’ (2002) 6(1) *Max Planck Yearbook of United Nations Law Online* 78–79 <<https://doi.org/10.1163/18757413-00601003>>.

tique from an International and Comparative Law Perspective’ (RONSUS), grant no 2021/43/B/HS5/01839, funded by the National Science Centre, Poland. The authors serve as investigators in the project.

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