

ФУНДАМЕНТАЛЬНЫЕ ПРОБЛЕМЫ ЮРИДИЧЕСКОЙ НАУКИ PROBLEMA PRINCIPALE

DOI: 10.17803/1729-5920.2023.195.2.122-133

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Rights, Not «To» but «Of» the Nature: Legal Deal with Meal

Abstract. The dilemma that human-beings are in is that; while they are aware that the sustainment of their own living fully depends on the sustainment of the natural-beings' living, on the one hand, they also want to use (*usus*), exploit (*fructus*), and even abuse (*abusus*) them, on the other. This dilemma has emerged after the viewing of the natural-beings as «resources» has proved that they are not endless by causing the extinction of many of them. It is an undeniable fact that natural-beings are the only sources for the sustainability of all beings' life. However; this, by no means, means that they can be used, exploited, and abused as one wishes. For, there is a miraculous circulation in nature that can be summarized as the «butterfly effect»: The planet we live on is like a closed circuit; that is, no being vanishes but just rots, dissolves and transforms into another being.

Let's take a look at the water: it drops from a cloud onto the earth in its pure form; it forms the rivers, lakes, seas, and oceans; it is absorbed by the soil; after being absorbed from there by a plant, via the roots thereof, it is mixed up with other chemicals therein and been stored thereby in the form of a fruit appetizing for animals and human-beings; it turns into the blood after being digested in these beings' bodies; it travels through the veins within their bodies; it returns back to the nature through the excretion and sweating processes or their burial upon the death of these beings; from where it evaporates to form another cloud. Let's take a look at the oxygen: it exists in, in addition to the air, all the places mentioned above wherein exists the water, of which it is a component, together with a pair of hydrogens — which is such a miraculous composition: a couple of flammable gas together with a burner gas, instead of creating a fire, creates a fire-extinguisher liquid-; it flies all around along with other gases; as a result of being inhaled by animal and human-beings at all-times and by plants only at night-times, it couples with another oxygen and one carbon and turns into a carbon-dioxide; returns back to its original form as a result of the photosynthesis process of plants during daytime.

Therefore; the soil formed by minerals and organic materials, the Sun, the air, and the water, all together make the living of plants, animals, and human-beings possible. Plants make it possible for almost all animals and human-beings to live, and animals make it possible for most human-beings and some plants to live. These two natural-living-beings, besides water, should be consumed as the only source of food for the continuation of human life. The exact same particles in these beings, just in the same way they have been doing so since the beginning of time, do also compose the bodies of human-beings that consume them by eating and drinking; and they will again transform back to their original states in order to form a new corpse that will host a new soul after the death of these human-beings too.

The natural-beings that we now see in their form of the meal are only unvanishable in their particle form as clearly seen in the extinct-natural-living-beings' case of both plants and animals. This reality brings us to the conclusion that; we must protect them, i.e., stop destroying them, at least for our own sake. The mostly used legal tool for this protection is a punishment-based method, in which the foreseen actions are prohibited as a rule by the legislator, and those who violate them are punished with the penalties prescribed by the courts. Two of the most important shortcomings of this method are to impose sanctions on unforeseen acts and to ensure

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that the foreseen sanctions serve to compensate the damaged natural-beings. There is an alternative method, that is in use in a few countries, fulfilling the above-mentioned shortcomings: attributing legal personality to natural-beings. According to this; first, an action may be brought for compensation for damage to a natural-being, whether foreseen by the legislator or not; secondly, the court considers the actual damage done to the natural-being instead of a predetermined fixed amount as in the case of a fine; thirdly, the compensation determined by the court serves to compensate the damages of the natural-being. Such a change of perspective towards them would make a huge difference in simplifying and effectuating their protection method.

In this paper, we will examine a new legal personality status, which we define as «legal deal with the meal» by analogy with «social contract», under the name of «natural personality», which will enable natural-beings to have their own rights.

Keywords: environment; protection; legal personality; natural person; natural personality.

Cite as: Ustahaliloğlu MK. Rights, not «to» but «of» the nature: legal deal with meal. *Lex russica*. 2023;76(2):122-133. DOI: 10.17803/1729-5920.2023.195.2.122-133.

Права не «на природу», но «права природы»: договор с живым существом

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Аннотация. Дилемма, которая стоит перед человеком, состоит в том, что, хотя человек и осознаёт то, что, с одной стороны, поддержание его жизни полностью зависит от существования природных живых существ, с другой стороны, он также хочет использовать (*usus*), эксплуатировать (*fructus*) и даже злоупотреблять (*abusus*) ими. Эта дилемма возникла после того, как отношение к живым существам как к «ресурсам» привело к исчезновению многих из них, показав, что этот источник не бесконечен. Неоспоримым фактом является то, что живые существа являются единственными источниками устойчивости жизни всех организмов. Однако это ни в коем случае не означает, что их можно использовать, эксплуатировать и злоупотреблять ими по своему усмотрению. Ибо в природе существует чудесный круговорот, который можно кратко охарактеризовать как «эффект бабочки»: планета, на которой мы живем, подобна замкнутому контуру; ни один организм не исчезает, а просто гниет, растворяется и трансформируется в другой организм.

Давайте посмотрим на воду: из облака она попадает на землю в чистом виде; она образует реки, озера, моря и океаны; она поглощается почвой; после поглощения оттуда растением через его корни она смешивается с другими химическими веществами, которые в них содержатся и в таком виде хранятся как фрукты, привлекая животных и людей; после переваривания в их телах эти вещества превращаются в кровь, путешествуют по венам; через различные выделения и потоотделение или гниения тел после смерти они возвращаются обратно в почву; затем эти вещества испаряются, формируя новое облако. Давайте взглянем на кислород: он присутствует, помимо воздуха, везде, где существует вода, компонентом которой он является вместе с парой атомов водорода — это такой чудесный состав: пара горючих газов вместе с газом для горелки, вместо того чтобы вызывать пожар, создают жидкость для огнетушителя; она разлетается повсюду вместе с другими газами; в результате постоянного вдыхания животными и людьми, а растениями — только ночью, она соединяется с другим атомом кислорода и одним углеродом и превращается в двуокись углерода; возвращается обратно в свою первоначальную форму в результате процесса фотосинтеза растений в дневное время.

Следовательно, почва, образованная минералами и органическими материалами, солнце, воздух и вода — все вместе делает возможной жизнь растений, животных и людей. Растения дают возможность жить почти всем животным и человеческим существам, а животные дают возможность жить большинству людей и некоторым растениям. Эти два природных существа, помимо воды, должны потребляться как единственный источник пищи для продолжения человеческой жизни. Так же, как это происходило с начала времен, точно такие же частицы в этих организмах формируют тело человека, который употребляет их в пищу. Затем они снова трансформируются обратно в свои первоначальные состояния, чтобы появилась новая оболочка, которая примет новую душу после смерти человека.

Живые существа, которые мы сейчас рассматриваем в качестве пищи, исчезают только до размера частиц, что ясно видно в случае с вымершими живыми существами — как растениями, так и животными. Этот факт позволяет сделать вывод, что мы должны защищать их, то есть прекратить их уничтожать, по крайней мере, ради нас самих. Наиболее часто используемым правовым инструментом для такой защиты является метод, основанный на наказании, при котором предусмотренные действия, как правило, запрещены законодателем, а те, кто их нарушает, подвергаются наказаниям, предписанным судами. Два наиболее важных недостатка этого метода заключаются в наложении санкций на непредвиденные действия и в обеспечении того, чтобы предусмотренные санкции служили возмещению ущерба живым существам. Существует альтернативный метод, который используется в нескольких странах и устраняет вышеупомянутые недостатки: наделение живых существ правосубъектностью. В соответствии с этим; во-первых, может быть предъявлен иск о возмещении ущерба, нанесенному живому существу, независимо от того, предусмотрено это законодателем или нет; во-вторых, суд рассматривает фактический ущерб, причиненный живому существу, вместо заранее определенной фиксированной суммы, как в случае штрафа; в-третьих, компенсация, определенная судом, служит для возмещения ущерба, причиненного живому существу. Такое изменение точки зрения по отношению к ним имело бы огромное значение для упрощения и осуществления метода их защиты.

В этой статье мы рассматриваем новый вид правосубъектности под названием «природная правосубъектность» и которую мы, по аналогии с «общественным договором», определяем как «договор с живым существом», что позволит природным живым существам иметь свои собственные права.

Ключевые слова: окружающая среда; защита; правосубъектность; физическое лицо; природная правосубъектность; общественный договор; человек; живое существо; правообладатель.

Для цитирования: Устахалилоглу М. К. Права не «на природу», но «права природы»: договор с живым существом. *Lex russica*. 2023;76(2):122-133. DOI: 10.17803/1729-5920.2023.195.2.122-133.

Introduction

The objects of the law can be bifurcated as: institutions and beings. Personality statuses, persons, rights, and obligations are institutions of the law; and all of the beings are viewed through the perspective of these institutions as either persons or things¹ the former of which is also referred to as subjects and the latter as objects which implicitly refer to the rights². At the moment of the State's creation, all of the beings under Her jurisdiction are at the default status of things. The whole purpose of attributing legal personality status to a being, whether it be a real or non-real, is the incorporation thereof into the «world of persons» of that legal system, which otherwise would remain as a member of the «world of things». This incorporation which is a prerequisite³ for attributing legal rights and obligations to any being is also an endowment⁴ thereto. Through this,

any being comes into a status where s/he may hold the rights and obligations that the legal system that s/he is under Her jurisdiction might attribute. The material fact of this status is the making of a being right holdable. Without this, the legal system sees and behaves to this being just like any other being even if that being is a human-being. On the other hand; any being, if duly incorporated into the world of legal persons, may have his own rights and obligations on his own name and account, his own standing in front of any public and private institutions, and use his own rights for the sake of protecting his own interests; even thought that being is not a human-being. The law can even, first, imagine a non-physically-existing thing and create it as a legally-existing-being, and second, attribute the status of the «legal personality» thereto. Such an imaginarily-created-object of the law becomes a «potential» subject of the rights over any being lacking this status making «it» an object of the

¹ John R. Trahan, *The Distinction Between Persons and Things—An Historical Perspective* (2008) 1 *Journal of Civil Law Studies* 9 ; Mustafa Kenan Ustahaliloğlu, *Legal Personality of Artificial Intelligence in* (eds) Yıldırım Sipahi, Fatih Avcı and Meral Sabun, *İslam Hukuku Araştırmalarına Zemin Oluşturması Açısından «Yapay Zeka» Bildiri Özetleri Kitabı* (E-Book: URL: <https://ihyaz.mehmetakif.edu.tr/files/abstracts.pdf> 2022) 64.

² Mustafa Kenan Ustahaliloğlu, *İnsan Dışı Varlıkların Hukûkî Kişiliği* (Filiz Kitabevi 2022) 113.

³ Rona Serozan, *Medeni Hukuk—Genel Bölüm—Kişiler Hukuku* (Vedat Kitabevi 2011) 189.

⁴ Bilge Öztan, *Şahsın Hukuku, Hakikî Şahıslar* (Turhan Kitabevi 1994) 5 ; Jale G. Akipek, *Türk Medenî Hukuku, Birinci Cilt: Başlangıç Hükümleri — Şahsın Hukuku, İkinci Cüz: Şahsın Hukuku* (Başnur Matbaası 1966) 1.

rights. The status of object of the rights may include even a physically-existing-human-being. The relation of a being to the rights, therefore, is the determinative point of that being's status within the law; if he may become the subject of, i.e., hold, them then he is a person; and on the other hand, if it may be the object of them, then it is a non-person, i.e., thing or object. There is the common usage of the terms of «object» and «subject» referring to those beings' selves; which were created in a way of abbreviating the sayings of «object of rights» and «subject of rights.»

Prior to the creation of corporate legal personality; there were only some human-beings, amongst all, who were the only members of this legal status. Although the human-being-members of this status have increased by the

subsequential inclusion of some other human-beings like the Roman family members besides the *patria potestas*⁵, the women⁶, the elder⁷, the malformed⁸ and insane⁹ members of the societies, children out of wedlock¹⁰ but it has not been reached to the whole yet due to the still-existing exclusion of the fetuses¹¹. Besides these subsequently-added-human-beings, some other non-human-beings were also created and included in the legal status of the «person» like the corporations (C), the associations (A), and the trusts (T): CAT.

Apart from these widely accepted and applied creations and inclusions; there appeared also a practice of attributing legal personality to non-human and human-made-real-beings like the ships¹², and the idols¹³, as well as some non-

⁵ Henry James Sumner Maine, *Ancient Law — Its Connection With the Early History of Society and its Relation to Modern Ideas* (2nd edn. Beacon Press 1963) 133–142; Sevgi Kayak, *Roma Hukukunda Aile Kurumu* (2018) 8 *Hacettepe Hukuk Fakültesi Dergisi* 249 ; Haluk Emiroğlu, *Roma Hukukunda Kadının Durumu* (Sözkesen Matbaacılık 2003) 31ff; Kamil Doğanç and Fulya Kocakuşak, *Eski Roma Ailesinde «Pater Familias» ve «Patria Potestas» Kavramları* (2014) 15 *Uludağ Üniversitesi Fen-Edebiyat Fakültesi Sosyal Bilimler Dergisi* 233, 234ff; George Mousourakis, *The Historical and Institutional Context of Roman Law* (Routledge 2016) ; Elvan Sütken, *Roma Aile Hukukunda Patria Potestas* (2019) 5 *Anadolu Üniversitesi Hukuk Fakültesi Dergisi* 67.

⁶ Eugene Arthur Hecker, *A Short History of Women's Rights — From the Days of Augustus to the Present Time: With Special Reference to England and United States* (G. P. Putnam's Sons, 1911) ; Paul Koschaker and Kudret Ayiter, *Modern Özel Hukuka Giriş Olarak Roma Özel Hukukunun Ana Hatları* (Olgaç Matbaası 1983) 301ff; Aytuğ Ceyhan Çakır, *Sağ Kalan Eşin Mirasçılığı* (On İki Levha Yayıncılık, 2018) ; Özlem Söğütlü Erişgin, *Roma Toplumunda Kadının Konumu* (2013) 4 *İnönü Üniversitesi Hukuk Fakültesi Dergisi* 1 ; Roberto Paribeni, *Roma Hukukunda Aile Kurumu* (1935) 1 *İstanbul Üniversitesi Hukuk Fakültesi Mecmuası* 79 ; Katarzyna Buczek, *Germanic Women in the Eyes of Law* (2018) 7 *Academic Journal of Modern Philology* 55 ; Bengi Sermet Sayın Korkmaz, *Roma Aile Hukukunda Evlat Edinmenin Yeri ve Usulleri* (2020) 78 *Ankara Barosu Dergisi* 49, 70 ; Fulya İlçin Gönenc, *Roma Hukuku'nda Boşanma (Divortium)* (2003) 7 *Erzincan Binalı Yıldırım Üniversitesi Hukuk Fakültesi Dergisi* 645, 647.

⁷ William Jones, *Institutes of Hindu Law-or, the Ordinances of Menu, According to the Gloss of Culluca — Comprising the Indian System of Duties Religious and Civil* (Rivingtons and Cochran 1825) 171 ; Henry James Sumner Maine, *Dissertations on Early Law and Custom-Chiefly Selected from Oxford University Lecture Notes* (John Murray 1883) 122.

⁸ William Blackstone, *A Treatise on the Law of Descents in Fee-Simple* (Clarendon Press 1759) 70–71; David J. Clegg, *Teratology* 1971 11 *Annual Review of Pharmacology and Toxicology* 409 ; Füsün Ersoy, Mehmet Ersoy and Mehmet Yalçın, *Konjenital Malformasyonlara Bir Bakış* 1999 3 *Türkiye Aile Hekimliği Dergisi* 40.

⁹ Luc Ferry and Alain Renaut, *French Philosophy of the Sixties — An Essay on Antihumanism* (Mary H. Schnackenberg Cattani tr. The University of Massachusetts Press 1990) 73–74; Michel Foucault, *Madness and Civilization — A History of Insanity in the Age of Reason* (Richard Howard tr. Vintage Books 1988).

¹⁰ Josef Kohler, *Philosophy of Law* (The Boston Book Company 1914) 105–107.

¹¹ William Blackstone, *Commentaries on the Laws of England in Four Books, Vol. I, Book I* (J. B. Lippincott Company 1893) ; Julia Epstein, *The Pregnant Imagination-Fetal Rights, and Women's Bodies: A Historical Inquiry* 1995 7 *Yale Journal of Law and the Humanities* 139 ; Michael L. Lupton, *The Legal Status of the Embryo* 1988 1988 *Acta Juridica* 197 ; Melodie Nöthling Slabbert, *The Fetus and Embryo — Legal Status and Personhood* 1997 1997 *Journal of South African Law* 234.

¹² Bryant Smith, *Legal Personality* (1928) 37 *The Yale Law Journal* 283, 287.

¹³ Herbert Arthur Smith, *The Law of Associations — Corporate and Unincorporate* (Clarendon Press 1914) 133.

human-natural-beings like the river¹⁴, and the nature as a whole¹⁵ in some jurisdictions. Such practices have proven that it is possible to protect any being by using the rights held by them as a result of their inclusion into the legal personality status rather than by using the rights held by the persons over them. This personalitylessness of a being results in the dilemma that acknowledging that it has to be protected against harmful actions although it does not have an owner but not being able to protect it because there is no breach of any interest of any personality-holding-member of the law. In order to overcome this dilemma, there are offers like: the rights of the existing persons' or of the future generations' to/over the nature; which seems to us to be the hard way.

In this paper, we will analyse the meaning, the function, the types, and the scope of the legal personality and discuss that there exists the need for new legal personality types and offer that the «natural personality» type can be created and recognised to the natural-beings that are considered to be protected in the most effective way.

1. The Meaning of the Legal Personality

The meaning of being a person in the eyes of the law is to determine the beings that are capable of holding rights and obligations¹⁶. According to this definition, which is formulated in the «legal personality» term; the ability of a being to be the subject of the rights recognized and obligations brought by the legal system in which it is located depends primarily and only on its acceptance as a «person» by this legal system. Although it is perceived to be identical to the human-being, in fact, the existence of the personality of even human-beings is not due to itself, but because the legal

system in which he is located recognizes it¹⁷. That is, it is possible for a legal system not to recognize a human-being as a person, and therefore not to accept him as a subject of rights and obligations, just as it was a fact for slaves in the past and for the fetuses then and now. Same way; it is possible for a legal system to recognize some non-human-beings as legal persons, as well as human-beings.

Today, some beings that do not have any physical existence, but are considered to exist in accordance with the «law», that expresses the legal system, can be the subject of certain rights and obligations stipulated by this legal system, thanks to the institution called «corporate legal personality»¹⁸. The point that should be noted here is that although the term «legal» is used consecutively with the concept of «personality», it does not describe the personality of this being but the being itself. Indeed, the fact that is considered to exist according to the law is not «the legal personality» of a self-existing-being but «the legal existence» of that non-actually-existing-being. Otherwise, there is no difference in terms of the legality of the personality of a human-being and of a legal person. The meaning of the expression «real», which is used to distinguish the legal personality of human-beings from that of legal persons, is that the existence of human-beings is based on physical reality rather than a legal one. Therefore; the expression of «legal person» in case of a corporate legal person implicitly means the fact of «a personality belonging to a non-real-being that exists only in the eye of the law».

2. The Function of the Legal Personality

Legal personality should be considered as a mere legal tool rather than a goal that is to be used for

¹⁴ Cathy Suykens, Herman Kasper Gilissen and Marleen van Rijswijk, Editors' Introduction (2019) 44 *Water International* 641 ; Craig M. Kauffman and Linda Sheehan, *The Rights of Nature — Guiding Our Responsibilities Through Standards* in (eds) Stephen J. Turner, Dinah L. Shelton, Jona Razzaque, Owen McIntyre and James R. May, *Environmental Rights — The Development of Standards* (Cambridge University Press 2019) 345.

¹⁵ Kauffman and Sheehan (n 9) 344, 347 ; María Valeria Berros, *Defending Rivers: Vilcabamba in the South of Ecuador* in (eds) Anna Leah Tabios Hillebrecht and María Valeria Berros, *Can Nature Have Rights? Legal and Political Insights* (Rachel Carson Center Perspectives 2017) 37–44; Gwendolyn J. Gordon, *Environmental Personhood* (2018) 43 *Columbia Journal of Environmental Law* 49, 55.

¹⁶ Sheryl N. Hamilton, *Impersonations — Troubling the Person in Law and Culture* (University of Toronto Press Inc. 2009) 17.

¹⁷ John Chipman Gray, *The Nature and Sources of the Law* (New York : The Columbia University Press, 1909), par. 122, 52.

¹⁸ Serdar Arat, *Ehliyetleri Açısından Dernek ve Vakıf Tüzel Kişilikleri — Medeni Hukuk Tüzel Kişilikleri* (Masters thesis, İstanbul University 2007) 1.

the protection of a being's interests via the State-power-using legal institutions. It functions as utilising the legal powers of any given legal system for the interest of any given legal person whether it be a human-being or not and against the interest of any being whether it be a person or not. Without it, any being would exist in fact but not have any right at all; and with it, any being would not even exist in fact but have any right that the legal system wishes him to have. Therefore; there is no bias to state that the legal personality is the base of rights and obligations stipulated by any given legal system. The legal system should first attribute legal personality to any being he wishes, whether it be a real-being like a human-being or a ship or even a non-real-being like a corporation or the God, in order to grant him any legal right or obligation.

Once recognised as a person of a legal system, this being will now on be treated as a potential holder of rights and obligations of his own. Any interest of him will be protected by the institutions of that legal system under the name of «his rights.» He will be able to be the plaintiff in front of the court on his own name and account. He will be able to sue for the damages given to himself. The compensation awarded will be utilised to revert back the negative consequences of the wrongdoer¹⁹.

3. The Types of the Legal Personality

In most of the current legal systems, there are only two types of legal personality: real and legal — or artificial, or corporate²⁰. Real personality is the term used for the legal personality type of human-beings²¹. Although there are different types of real-beings holding legal personality, only the legal personality type of human-beings is called «real personality» and only they are called «real persons». In some jurisdictions, non-human-real-beings such as ships, idols, and rivers do also hold legal personality however their personality type is not called «real personality» and they themselves are not called «real persons».

This may make an impression that the terms «real» and «legal» do not define these persons' selves but the type of their legal personalities. As discussed above and can vividly be seen now; the ship, the idol, and the river are not fictitious-beings

that exist only by the stipulation of law. They are just as real as human-beings are. Therefore; it is true that these terms are not used to indicate the existence cause of these beings. However; they are not used in order to differentiate the type of these beings' legal personalities either as there is no difference between being a person, in respect of any given legal system, of human-beings' from of other real and non-real but always non-human-beings'. No one can claim that there is an inequality of degree at the legality of personality of the real persons and the legal persons. The only difference there is that makes the use of different terms necessary and meaningful is the scope of these legal-person-beings' legal personalities. Besides this scope, there is no difference between being a person, in respect of any given legal system, of human-beings from other real-beings. This is the only reason why the terms «legal personality» and «legal person» are used in respect of those non-human-beings although they are as real as, and hold personality as legal as human-beings. When it comes to the non-real and non-human-beings' legal personality: the term «legal» means; first, that their existence is only in respect of the law, second, they are blessed with the personality status of the law by the law, and third, the scope of this status that they are in is not the same as the status that the human-beings are in. Therefore, legal personality in this case means in long: The (legal) status that (legally) makes the (legally created) non-real-beings to be able to hold the (legal) rights not specific to human-beings.

Although there are no different types of real persons, there are different types of legal capacities among human-beings. Legal personality, on the other hand, is the term used for the legal personality type of both non-human-real-beings' and all non-real-beings'. Therefore, there are two main types of legal personality: the first is non-human-real-beings' and the second is of non-real-beings. There are also two sub-types of legal personality of non-real-beings: civil law and common law.

4. The Scope of the Legal Personalities

Being a legal person does allow this being of the legal system to hold, not every existing but only,

¹⁹ Christopher D. Stone, *Should Trees Have Standing? Law, Morality, and the Environment* (Oxford University Press 2010) 61–70; Christopher D. Stone, *Should Trees Have Standing? — Towards Legal Rights for Natural Objects* (1972) 45 *Southern California Law Review* 450, 458.

the stipulated rights and obligations for him by the legal system. Every legal person neither has the same rights nor the same obligations. As for the legal personality types: there are «human rights» available only for the «real» legal personality type and other rights available for the «legal» legal personality type. For instance: to be born, to get mature, to get married, to die, etc.²² are unique for human-beings while being established, general assembly, opening a new branch, dissolution, etc. are unique for artificial-beings. No being other than human-beings may hold the real personality type as opposed to the legal personality type: the legislator may legislate that any real or fictitious-being to become a legal person that holding a legal personality.

The scope of the legal personalities differs according to the needs of the legal persons. Civil law legal persons may decide to end their own life while common law persons and real persons may not. Real persons may vote, merry, etc. while neither of the legal persons may not²³.

5. The need for the New Legal Personality Types

Although it seems simple and efficient to employ these two types of legal personalities also for the new members of this status; they are not even currently sufficient for the current legal persons as discussed above. Naming the non-human-real-beings' personality type as «legal» creates a confusion as making the impression that they exist only by the stipulation of the law which is obviously not true; on the other hand, not naming the human-beings' personality type as «legal» makes the impression that their personality is not based on the law which, again, is not true. There are real-beings holding legal personality and therefore are real persons but not named so; also, there are human-beings holding legal personality

and therefore are legal persons but not named so. The need for a new type of legal personality has been seen clearly and approved in the case of AI: the European Parliament has offered a new type of legal personality for it to be named as «electronic»²⁴. Similarly, if recognised, natural-beings' legal personality type would be named as «natural».

Instead of using a specie name for the private kinds of that species; it is wiser and more useful to use private names for them. The term «legal person» is a name used as the specie name and also the private name under that specie: in its usage as a specie name, it means a being that is recognised as a right and obligation holdable unit within a legal system, which covers human-beings as well; and in its usage as a private name, it means a real or non-real, but always a non-human, being that is recognised as a right and obligation holdable unit within a legal system. This does not mean that human-beings do not have legal personalities or they are not legal persons; on the contrary, they are the first — and to some point, the only — person of law, which is to say, legal person.

The terms «real» and «legal» are, although the latter is confusing as discussed above, accepted and used widely within the legal literature. The confusion will be much greater if there is a new kind of being to be recognised as a person of law, because it will become a legal person just like human-beings, corporations (C), associations (A), and trusts (T): CAT. It might seem practical to keep grouping the newly legal-personality-attributed-beings under the legal persons group. However, this would be no different than naming the human-beings as «living-beings» and the rest of the beings «non-living-beings» which is not true as there are living-beings just like human-beings other than human-beings. Naming the legal personality type of human-beings after the emergence of the CAT

²⁰ Frederic William Maitland, *The Corporation Sole in* (ed) Herbert Albert Laurens Fisher, *Collected Papers of Frederic William Maitland*, vol. 3 (Cambridge University Press 1911) 210.

²¹ Visa Anton Julius Kurki, *A Theory of Legal Personhood* (Oxford University Press 2019) 8 ; Metin İkizler, *Tüzel Kişilerin İlkeli Kişiliği — Bu Uğurda Ana Statünün Anlamı ve İşlevi* (Yetkin Yayıncılık 2012) 29 ; Osman Gökhan Antalya and Murat Topuz, *Marmara Hukuk Yorumu — Cilt: I, Medeni Hukuk, Giriş, Kavramlar, Başlangıç Hükümleri* (Seçkin Yayıncılık 2019) 148 ; Ergun Özsunay, *Gerçek Kişilerin Hukukî Durumu* (Sulhi Garan Matbaası 1979) 10 ; Serap Helvacı, *Gerçek Kişiler* (Arıkan Basım Yayım 2006) 2 ; Aytekin Ataay, *Şahıslar Hukuku — Birinci Yarım — Giriş — Hakikî Şahıslar* (Fakülteler Matbaası 1978) 46 ; Öztan (n 4) 6 ; Akipek 4) 8.

²² Öztan (n 4) 7.

²³ Mustafa Dural and Tufan Öğüz, *Kişiler Hukuku* (Filiz Kitabevi 2021) 248.

²⁴ P8_TA(2017)005: European Parliament resolution of 16 February 2017 with recommendations to the Commission on Civil Law Rules on Robotics (2015/2103(INL)), art. 59 (f).

as «real» makes sense as the CAT have no real existence while human-beings do. The situation has started to be confusing when real-beings other than human-beings have been recognised as legal persons like ships, idols, rivers, etc. because they also do have existence in the real meaning. These real-beings are not like CAT as their existence is not only in the eye of the law. This becomes weirder when the public international law is the case as for the traditional doctrine in the matter of subjects of international law are only the States and international organizations²⁵. Therefore, these two legal persons are in fact the real persons in this field. If the human-beings are included as new actors in this stage, the name of their legal personality type will have to be «legal personality».

This problem of naming, which became to exist with the recognition of legal personality to non-real-beings besides human-beings, will accelerate with further legal personality recognition to non-human-real-beings. Therefore, there exists the need for new legal personality types for the upcoming real and non-real-beings such as natural-beings and AI.

6. The Need for «Natural Personality»

It was the concern that full autonomous AIs (FAAIs) would cause harm to currently existing legal persons which sparked the European Parliament to consider recognising them as a new kind of legal person under the name of the «electronic personality.» This naming shows that we are not alone in the above-mentioned concern of «using different names for different legal personalities» as it is clear that FAAIs are more real than CAT however, they are still predominantly non-real to be called a «real person.» The main difference between CAT and FAAIs is that the former lack the capacity of will while the latter have their own of it.

The situation is the opposite in the natural-beings' case as they are considered to be recognised as legal persons not due to the concern that they may cause harm to the existing legal persons but due to the concern that existing legal persons do cause harm to them but it is not possible to focus on the compensation of the damages occurred on them because they do lack existence in the eye of the law as a being worth to protect the interests of by making them a

subject of rights. Therefore, the law considers the collateral damage that occurred on the account of these beings' owners but not the direct damage given to these beings' selves.

This scenario shows the inefficiency of the protection of natural-beings under the current legal personality regime: An owned animal's leg has been cut off while it is alive which is forbidden according to the law. What will be demanded from the court will not be the repairment of the loss of its leg, maybe via a prosthesis leg, but a sum of money to be paid to the owner and maybe another sum of money to be paid to the government as a penalty which might be accompanied with or instead of some to time of imprisonment of the wrongdoer; none of which will help to the animal itself. Even if the cost of the prosthesis leg can be demanded and held through the court decision, the owner is free to spend that money for that goal or not. The only way to ensure the repairment of the loss of such an animal in the most efficient way is to attribute legal personality to it by which it will become the plaintiff in front of the court in his own name and will sue for the damages given to himself.

Such a legal person that is created by attributing a specific legal personality to meet its needs would never empower it with the rights that existing legal persons have. This, we can clearly see in the comparison of the rights and obligations of existing legal persons: CAT do not have the right to vote, health, education, marriage, etc. also do not have some of the obligations that real persons might have such as the military service. On the other hand; they have some rights; such as to open a branch, end their own existence, etc., and obligations; such as to maintain at least one human-being as her representative and a shareholder at all times; which real persons do not. Likewise, natural-beings can also become legal persons by having their tailor-cut kind of legal personality which includes the rights serving for the efficient protection of their own interests.

Conclusion

Just as the law itself is a tool to maintain and sustain the public order in any State; being a person in the eye of that State's legal system is another tool that enables any-given-being to be able to hold the rights, not every existing but

²⁵ Hersch Lauterpacht, *The Subjects of the Law of Nations* (1947) 63 *Law Quarterly Review* 438, 451.

only the legal personality type recognised to him enables him to, for the sake of protecting the interests of his own by using the State's powers. As it is at the discretion of only²⁶ the States to give that status to any being he wishes, it is the State to decide to which of the beings She wants to attribute legal personality in order to protect the interests by the rights belonging to that being's self.

Natural-beings seem to us to be the most-jeopardised-being and therefore need and deserve

such a status amongst all. They have served to human-beings from the beginning till now and will continue to do so until the end of time only if they do not extinct due to the mal-use (*abusus*) of them by the human-beings and insufficient protection of them by the States. A new type of legal personality may serve as an appropriate tool to reach that goal. Including tailor-cut rights together with a special name for this type of legal personality might enable the human-beings to survive along with these beings.

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²⁶ «Solus princeps fingit quod in rei veritate non est» is an expression used to define the unique power of the State to create non-real-beings to exist only in Her legal system: Frederic William Maitland, Moral Personality and Legal Personality (1905) 6 Journal of the Society of Comparative Legislation 192, 195 ; Javier Martínez-Torrón, Anglo-American Law and Canon Law-Canonical Roots of Common Law Tradition (Duncker and Humblot 1998) 181 ; Otto von Gierke, Das Deutsche Genossenschaftsrecht (Weidmannsche Buchhandlung 1881) 371 ; Otto von Gierke, Political Theories of the Middle Age (Frederic William Maitland tr, Reprint, Cambridge University Press 1913) xxx ; Edwin Merrick Dodd, Dogma and Practice in the Law of Associations (1929) 42 Harvard Law Review 977, 979. That expression may well be applied to the legal personality status as this also is a creation of the State to exist only in Her legal system.

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Материал поступил в редакцию 3 ноября 2022 г.

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