



COMO CITAR ESTE ARTÍCULO:

Vargas-Chaves, I., Rodríguez, G.A., Cumbe-Figueroa, A. y Mora-Garzón, S.E. (2020). Recognizing the Rights of Nature in Colombia: the Atrato River case. *Revista Jurídicas*, 17 (1), 13-41.
DOI: 10.17151/jurid.2020.17.1.2.

Received August 12, 2019
Approved December 16, 2019

Recognizing the Rights of Nature in Colombia: the Atrato River case

IVÁN VARGAS-CHAVES*

GLORIA AMPARO RODRÍGUEZ**

ALEXANDRA CUMBE-FIGUEROA***

SANDRA-ESTEFANÍA MORA-GARZÓN****

ABSTRACT

This article studies the recognition of Río Atrato as a subject of rights through Judgment T-622-16 of the Constitutional Court, in a case without precedent in Colombian Law. To contextualize this jurisprudential milestone, the authors argue that the current regulations failed to protect the biodiversity and related rights of the inhabitants of the areas near the Atrato River. The methodology involved an analysis of the jurisprudential line of the judgments that preceded the case analyzed, as well as the study of theoretical postulates and current environmental regulations from an analytical-deductive approach. As results, the authors present the first jurisprudential line of the Río Atrato judgment, supported by their own reflections that demonstrate the birth of a new stage of environmental law in Colombia.

KEY WORDS: Atrato River, Biocentrism, Constitutional Court of Colombia, Rights of Nature, Water rights.

* Doctor of Juridical Science. Professor of Law (Full-time), Universidad Militar Nueva Granada, Faculty of Law, Bogotá, Cundinamarca, Colombia.

E-mail: ivan.vargas@unimilitar.edu.co; ivargas@outlook.com.
Google Scholar. ORCID: 0000-0001-6597-2335.

** Ph.D. in Sociology of Law. Professor of Law, Universidad del Rosario, Bogotá, Cundinamarca, Colombia.

E-mail: gloria.rodriguez@urosario.edu.co
Google Scholar. ORCID: 0000-0002-4194-1259.

*** Research Assistant. **Google Scholar.**
ORCID: 0000-0002-8407-2671.

**** Research Assistant. **Google Scholar.**
ORCID: 0000-0002-5901-2634.



El reconocimiento de los derechos de la naturaleza en Colombia: El caso del río Atrato

RESUMEN

Este artículo parte por analizar las condiciones de deterioro ambiental, que desde la Revolución Industrial se ha generado severos problemas no sólo para nuestras especies, sino también para todos los que habitan este planeta. La situación ha hecho que los sistemas legales propendan por el reconocimiento de derechos de la naturaleza como solución, siendo uno de estos ordenamientos jurídicos el colombiano. Por ello, este texto tiene como objetivo analizar los precedentes jurisprudenciales de la Corte Constitucional que han logrado este reconocimiento de la naturaleza como sujeto de derechos, para ello se utiliza la metodología de línea jurisprudencial, que permite identificar las tendencias de la Corte Constitucional de Colombia y demostrar el activismo judicial en esta materia, donde se da cuenta que es una doctrina del precedente que se ha ido consolidando en los últimos años, a partir de la adopción del enfoque ecocéntrico.

PALABRAS CLAVE: Río Atrato, Biocentrismo, Corte Constitucional de Colombia, derechos de la naturaleza, derechos del agua.

I. Introduction

Biocentrism is the moral theory that situates human beings as a part of Nature in the same scale of protection; it claims that human and all living beings deserve the same respect and value just because they are living things (Corte Constitucional, Sentencia C-449 de 2015). On the other hand, ecocentrism suggest that the earth does not belong to human beings, it is rather us the ones who belong to the many species that inhabit it. According to this approach, Nature has been recognized as the subject of protection in order to prevent anthropocentric activities from generating impact on Nature itself.

This recognition has been given by regulation in line with the recognition of the rights of Nature in the constitutions of Ecuador and Bolivia, and the jurisprudence in a large number of judicial sentences all over the world. In the case of Colombia, there are three judicial sentences that have already recognized certain entities of Nature as subjects of rights.

Thus, in 2016 the Constitutional Court of Colombia, in its judicial sentence T-622, recognized the Atrato River as a subject of rights. In 2018, the Supreme Court of Colombia held the Colombian Amazon was entitled to be included in the same category, in its judicial sentence STC4360-2018; also in that year, the Administrative Court of Boyacá recognized the Páramo de Pisba as an entity subject of rights¹ in its judicial sentence of August 9 (File 15238 3333 002 2018 00016 01).

This reality truly demonstrates that the High Courts have started to show a clear collective consciousness about the protection of certain rights that are conferred to all and that have an interest to all of us (Rodríguez, 2012). Also, it is clear by the recognition of the rights of Nature that the ethics of the survival of generations to come overpowers the human impulse to act against the environment and the natural resources.

This article analyzes the conditions of environmental deterioration that led the judicial system to take an active part in the solution of these complications caused by human beings in the first place. The basis of the recognition of the rights of Nature will also be studied, beginning with the evolution at an international

¹ However, to date September, 2019 other entities have been recognized as subject of rights, these are: (i) Coello River in judicial sentence of September 27, 2018 (File 11001 03 24 000 2012 00076 00, Consejo de Estado. (ii) La Plata River was recognized as a subject of rights in judicial sentence of March 19, 2019, Juzgado Municipal de La Plata - Huila. (iii) Combeima, Cocora and Coello Rivers in judicial sentence of the May 30, 2019 of Tribunal Administrativo del Tolima. (iv) The Tribunal Superior de Medellín recognized Cauca River in judicial sentence of June 29, 2019 (File 05001 31 03 004 2019 00071 01). (v) Pance River in judicial sentence of July 12, 2019; and (vi) Otún River in judicial sentence of September 12, 2019 of the Juzgado 4 Penal de Pereira; (vii.) Río Magdalena in judicial sentence of October 24, 2019 of the Juzgado Penal de Circuito de Neiva – Huila; Río Quindío in judicial sentence of December 5, 2019, Tribunal Administrativo del Quindío – Sala Cuarta de Decisión.

level, referencing the cases of Ecuador and Bolivia and finally undertaking the case of Colombia.

Afterwards, we will show how precedents have acquired a preponderant role as the basis of law, which facilitated legal pronouncement based on true judicial activism. With these preliminary considerations, the case of the Atrato River that led the Constitutional Court to recognize Nature as a subject of rights is delimited; that was the judicial sentence that stated the recognition of the rights of Nature in Colombia through jurisprudence.

Although the mentioned judicial sentence gives such recognition, we found precedents that show how the judicial sentence becomes an Archimedean point to past decisions. Thus, the recognition of the rights of Nature had its legal origin not in the judicial sentence of the Atrato River, but in a series of reflections of this High Court, beginning with its judicial sentence C-632 of 2011.

To achieve this, after describing the case of the Atrato River, the technique of elaboration of jurisprudence lines is methodologically used and, in this case, it will be used according to the referred case as the most recent judicial sentence, to make a sweep, create a web structure and identify the nodal points that will lead us to said judicial sentence. Finally, we will present a series of final conclusions.

2. Preliminary Considerations

2.1 Environmental Deterioration

The so-called Industrial Revolution introduced a series of changes that implied the economic transition from agriculture to industry, leaving behind agriculture and production through artisan methods developed for at least three quarters of the population worldwide. Its origins date back to the mid-eighteenth century in Great Britain, then it spread to the rest of Europe and the world, bringing about technological, economic and even social changes that later generated new patterns of consumption (Allen, 2009).

Thus, the self-consumption models were left behind and the economy was taken to the next level by focusing on factories and mass production for commercialization. The Industrial Revolution introduced new materials such as steel in the production chains, it also increased dependence on energy sources such as coal for steam engines, which were the standard of this revolution.

However, the process of industrialization has permeated the environment—in a direct and indirect way—by altering biodiversity and depleting resources due to the immeasurable use of natural resources, the excessive generation of

waste and contaminating substances, and the monopolization of land and seeds (Vargas-Chaves, Gómez-Rey & Rodríguez, 2018). This phenomenon occurs in industrialized and not industrialized countries as a consequence of the environmental passives left behind by industrialized nations (Goudie, 2018).

The inhabitants of said countries suffer the effects of industrialization in the environment, which affect their quality of life and life expectancy; the documented number of said cases are innumerable. In Colombia, one can recently mention the impacts on human health caused by the use of mercury derived from mining (Rodríguez-Villamizar, Jaimes, Manquián-Tejos & Sánchez, 2015); the use of glyphosate in crops used for human consumption are the cause of dermatological problems in children or spontaneous abortion (Solomon., Anadón, Cerdeira, Marshall & Sanín, 2008), and the use of asbestos in construction causes illnesses such as cancer (Ossa-Giraldo, Gómez-Gallego & Espinal-Correa, 2014).

There are some impacts that are imperceptible to human beings until the damage is imminent. In the case of the depletion of natural resources, the situation is different, since the ones that exploit them know beforehand that these resources are not renewable, and the impact caused by their depletion has the potential of making social and economic systems, which depend on said resources for subsistence, collapse.

The 'tragedy of the commons' has symbolized the degradation of the environment. It strikes when many individuals simultaneously take or use a scarce resource. According to Elinor Ostrom, there is no better way to manage a 'common use' resource by those involved, the market or the State. The reason is that the exercise of property rights allows access, extraction, exclusion management and alienation in the management of common property (Ostrom, 2000).

One of the characteristics of the modern industry as an heir of the industrial revolution has been its persisting tendency to increase the scale of production, which means that the environmental impacts they produce are also greater (Liverman, 1990; Panayotou, 1996). Climatic and environmental alterations have, not in vain, given place to dire predictions about the development of the biosphere in general and the questions of whether or not the live species of the planet will survive.

Therefore, the concern for the future is justified due to the environmental modification caused by men because it will reduce even more the access to basic needs such as potable water, affecting the health of inhabitants of countries under the threshold of development negatively, and also becoming a true threat to food security in countries of Africa, Asia and Latin America (Agarwal, 2014).

From the text published by Rodríguez & Vargas-Chaves (2015) one can obtain certain data. In the report about climatic change in Paraguay, published by the United Nations through the Economic Commission for Latin America, significant

reductions are foreseen in said country, the productivity of family agriculture, with important social impact on the sanitary field and a differentiated impact on illnesses such as dengue, malaria, diarrheal diseases, and acute respiratory infections would be observed (CEPAL, 2014).

Regarding water resources, the availability of water on a seasonal basis with a greater variability in precipitation would be affected. The effects of the rise in temperature accompanied with prolonged dry seasons would also cause damage. In the end, the cited report highlights that although the impacts to fauna and flora are difficult to predict, it is clear that some species could be benefitted and others could become extinct (CEPAL, 2014).

Either way, the economic and social costs of the global effects to the environment are very uncertain, yet the greatest danger resides in the potential of risking development not only of the poorest countries, but of all of those inhabited by the generations to come. Therefore, if some countries with resources are able to mitigate the global effects in the future, none will be able to withstand neither the burden in terms of loss of lives, nor the costs associated with the devastation that will be brought by the environmental altercations (Rodríguez & Vargas-Chaves, 2015).

Unfortunately, these countries -those that are able to mitigate the impacts caused by industrial activity- are those that will continue to have an excessive use of natural resources and will continue to cause impacts on the environment because of their pollution. As a consequence, the countries that do not have the capacity to mitigate the effects, *i.e.* vulnerable countries, will be the first to be affected by the damage caused to the environment due to industrialization (Liverman, 1990); their communities will also be affected, such is the case of the Colombian Amazon, which will be studied in the present article.

2.2 The Recognition of the Rights of Nature

The aftermath of the industrial revolution locates us in an atmosphere of environmental deterioration difficult to repair as a consequence of the decisions made through policies that have underestimated the place that human beings have in an environment that does not belong to them. It is also a consequence of the systems of production and the new technologies that have prevailed against the conservation of the environment for the sake of the new generations. This way of acting of humanity is coated with the power to modify Nature according to its own interests.

Nevertheless, the right to a healthy environment is considered a human right due to the social demands issued after the severe environmental crisis (Rodríguez, 2012). As a human right, Sanchez (2012) affirms, the environment must be protected and

guaranteed by rightful means and in equal conditions compared to other human rights, in order to guarantee the respect for human dignity.

In the legal field, the origins of the recognition of Nature as the subject of rights can be found in the Declaration of Stockholm of 1972 in which regulations especially related to environmental issues began to be observed. In the case of Colombia, it was the 23rd Law of 1973. In 1982, the General Assembly of the United Nations approved the international declaration of principles, known as the World Charter of Nature, by which the processes of decision making must recognize that the needs of all cannot be met unless the ideal performance of the natural systems is protected.

The United Nations Conference on Environment and Development held in Rio de Janeiro in 1992 also influenced positively the achievement of the recognition of the rights stated before. Therefore, there are many countries that have situated the environment as a superior judicial interest in their internal law, as will be shown in the following text. The cases of Ecuador and Bolivia have been the ones that helped to establish the right to Nature as fundamental to life.

Theoretically, several currents of thought have tried to put Nature in the frontline. For example, the environmental justice movement has been built over the foundations of environmental ethics, responding to a need for an even distribution of the burdens that fall upon the environment, to be able to support the opportunity to be a part of the participative dimension in the decision-making process of intergenerational equality (Rodríguez & Vargas-Chaves, 2015).

Another valid theoretical approach is given through the principle of responsibility of Hans Jonas, who by reinterpreting the imperative categorization of Kant, established a series of guidelines that allow present generations to assume their responsibility in the conservation of the environment and the natural resources so as to not compromise them for future generations.

According to the ontological ethic of this author, man is part of the world in all aspects and, in this sense, he has made decisions apart from the interests that will characterize it as a being that belongs to it; interests that comprise aspects such as preservation, welfare, and self-realization of its own species, and also life in its most ample concept (Jonas, 1985).

Also, the philosophic approach of deep ecology mentioned for the first time in 1972 by the Norwegian philosopher Arne Naess who asserts that all human acts must be in harmony with Nature and not opposed to it, for Nature in itself has an inherent value that does not depend on men.

For this author, human beings must feel connected with and be part of Nature so that anthropocentric stances are left behind and biocentric egalitarianism be advanced.

In other words, for changes to be made with respect to the actual industrial model of large scale production and immeasurable consumerism because, if these changes are not made, the destruction of diversity and beauty of the world, and the possibility of life of the human beings and any other species will be provoked (Drengson, 2005).

From the perspective of civil responsibility, the recognition of the rights of Nature is achieved indirectly with the assumption of the responsibility of whomever contaminates or causes any detriment to the environment. This view derives from a regime for which commutative justice is a plausible solution between the damage and to whom the damage is done (Pino, 2013; Ruda, 2008). The rights of Nature must be read in the face of the obligations imposed in the political constitutions that recognize them, without confusing them, by any means, with the right recognized to the human beings to enjoy a healthy environment (Martínez & Acosta, 2017).

If we stand by the aftermath of the severe environmental changes, we will see how these have been more collective than individual, as a consequence of, what for Ruda (2008) implies, the interdependence of the natural resources integrated in a single solution system of continuity or the ecosystem itself. Hence, if it is to attempt to equate the solution proposed by civil responsibility, the answer transcends the individual compensation of the damage when this damage is common, and a reason why it is not always possible to concretely determine the victims affected by the impacts caused to the environment.

Lastly, on a jurisprudential level, the recognition of the rights of Nature begin to arise from the judicial activism that judges and High Courts who see the need to regulate the protection of the environment and the natural resources through shared responsibility have assumed all over the world. During the last years, one can evidence the significant changes in this issue and the important advances in terms of environmental protection and the right to a healthy environment.

In this sense, the tendency to especially protect Nature through means of judicial law is now present in different countries. As Acosta & Martínez (2009) explain, it is a tendency that seeks to instrumentalize actions to crystalize the Universal Declaration on the Rights of Nature. This is the case in New Zealand, where the Natural Park Te Urewera was recognized as a legal entity under the Law te Urewera of 2014, as well as the Whanganui River in Law Te awa Tupua of 2014 and in December of 2017, Mount Taranaki under the Agreement in Principle signed by the crown and Ngāti Maru.

Similarly, in India, the Superior Tribunal of the State of Uttarakhand decided on March 20, 2017 to declare the Ganges River, its basin and tributaries as a living entity that has rights, with the purpose of preserving and conserving it.; this decision

that was overruled by the Supreme Court of India that learned of the case through an appeal. Ultimately, it is a tendency that is being adopted at a worldwide level.

Finally, another approach to this issue was adopted in the case of the Marañon River in Perú, one of the most important rivers of this country that, due to the crude oil spilling, illegal mining and the construction of dams, the flora and fauna of the Amazon and the inhabitants around this tributary suffered serious damage (Alegre & Quispe, 2017). Therefore, the President of the Republic, on June 16, 2018 issued the Supreme Decree N° 006-2018-MINAM that establishes the Area of Conservation of Regional Tropical Forests Seasonally Dry of Marañón to preserve the biodiversity of the tropical forests seasonally dry in this region.

2.3 The Rights of Nature in the Political Constitutions of Ecuador and Bolivia

The political constitution of Colombia of 1991 has been important in the protection of Nature to the point of being called the ecological constitution (Amaya, 2010). Nonetheless, as Rodríguez (2012) points out, it has been surpassed by the political constitutions of Ecuador and Bolivia in the recognition of rights, especially because those countries have stated the right to Nature as a fundamental right, given its connection with the supreme judicial interest of life (Baldin, 2015; Borràs, 2016).

The preamble of the political constitution of 2008 of Ecuador refers to Nature or Pacha Mama as a part of people and a vital element to their existence (Gudynas, 2009). In this political charter, the guidelines to strengthen the national unity in diversity are drawn in order to plan the national development, to eradicate poverty, to promote a sustainable development, to grant the equal redistribution of the resources and riches to achieve a well-being, and also to protect the natural and cultural patrimony of the country.

The concept of rights to a well-being includes the right to water and to a healthy environment; natural nonrenewable resources as inalienable, indisputable and infeasible patrimony, in charge of the State, are found. Likewise, the right to a healthy environment, article 14, recognizes the right of the population to live in a healthy environment that guarantees a good living. It is important to mention that the preservation of the environment is declared as a matter of public interest and the Ecuadorian state has the duty to promote solutions in the public sector as well as the private sector (Baldin, 2015; Gudynas, 2009; Rodríguez, 2012).

The recognition of the Rights of Nature in the Constitution is stated in article 71 that explains Nature, or Pacha Mama as the bearer and maker of life that has the right for its existence to be respected and preserved, and its vital cycles, structure, features and evolutionary processes to be regenerated. Every person, community, people or nationality can demand public authorities to enforce the rights of Nature.

Article 72 specifies the right of Nature to be restored independently from the obligation of the state and the actors of the civil society —either natural or legal person— to compensate the individuals or collectivities that depend on the natural systems affected. Lastly, article 74 describes that communities have a right to benefit themselves from the environment and the natural riches that allow them to live well and that the environmental services are not susceptible to appropriation; their production, provision, and use are regulated by the State.

The preamble of the political constitution of Bolivia, promulgated in 2009, recognizes Bolivians as people of plural composition, inspired by the fights of the past, the indigenous, social, and syndicate marches that originated the water wars and, as of October, the fights for land and territory. Thus, the state decided to guide its political charter towards respect and equality considering the search for well-being and collective coexistence with access to water, work, education, health and property.

The protection of environment, deemed as crucial for the present and future of all living things, is emphasized as an important component of the Bolivian constitution. This body of fundamental principles considers natural resources as a strategic and public interest that does not only belong to people. It also mentions that the activities related to natural nonrenewable resources are a need for the government and a public profit that is fully controlled (Rodríguez, 2012).

In relation to natural resources, the Bolivian constitution establishes in article 33 that the government has the obligation to guarantee their responsible and planned use in order to promote their industrialization through development and their preservation for the well-being of present and future generations (Vargas, 2012).

This disposition declares that all people have a right to a healthy, protected, and balanced environment and that this right allows individuals and collectivities of present and future generations, apart from other living things, to develop in a normal and permanent manner (Borràs, 2016).

Article 349 also establishes that natural resources are a property of direct, indivisible and inalienable domain of the Bolivian people and that the government is in charge of their administration since they have a collective interest. The natural patrimony of public interest and strategic character for sustainable development is considered in article 346.

2.4 The recognition of the rights of Nature in Colombia through the sentence of the Atrato River.

2.4.1 The value of judicial precedent in Colombia

With respect to legal activity, the 1991 Colombian Constitution establishes in article 230 that the administration of justice, *i.e.*, jurisprudence, general principles of law, equity and doctrine, is under the rule of law and that the rest of law sources are ancillary.

Nonetheless, according to López-Medina (2006), to jurisprudence, an important value is stated in the legal system of the law in Colombia from the same year of the judicial enactment of the political charter. In 1995 the Constitutional Court started to have a strong tendency towards considering jurisprudence as a binding source to public officials, judges and the rest of the citizens. It is evident in judicial sentence T-123 of 1995, and later in sentences such as C-037 of 1996, SU-0477 of 1999 and, more clearly, in C-836 of 2001, whose article 4 was interpreted in Law 169 of 1896 in order to refer to the comprehension of the judicial precedent that drifts away from the traditional theories of the sources by claiming that a source is binding in the legal system (López-Medina, 2016).

Therefore, between 2002 and 2015 the issue of the jurisprudential doctrine is developed by the constitutional court in two big areas: the first one refers to the mechanisms of monitoring and applying effectively the constitutional precedent by means of the judges, and the second one, from the role of the legislator, refers to the doctrine of precedence that has been given a higher value, with the sole purpose of supporting the decongestion of the legal system, and, specifically the administrative contentious jurisdiction, as asserted by López-Medina (2016).

In spite of the mentioned issues and the reiterated emphasis of the Constitutional Court on the doctrine of precedents, according to the same author, the decisions of the instance judges have been strong in certain cases, which allows us to find the incoherence in regards to the jurisprudential lines in the High Courts, in disobedience of the vertical precedent, or regarding their own decisions as horizontal precedent. This has generated the so-called train wreck that describes the institutional conflicts via *tutelage* (a mechanism included in the Colombian Constitution that protects the individuals from the denial or infringement of their constitutional rights by any public authority) in the organisms that solve discrepancies in decisions between the Constitutional Court and the Supreme Court, or between the Constitutional Court and the State Council, or between the Supreme Court and the Supreme Council of the Judiciary (Agudelo-Osorio, 2016).

Thus, the Constitutional Court has established a series of criteria by which it intends to maintain its coherence among its decisions, and also to set its validity in the legal system. Such criteria are: the mechanisms of monitoring and the mechanisms of sanction for the disregard of the precedent that are found in: (i) the revision, where the Constitutional Court has the faculty to unofficially revise certain tutelage and ascertain the fulfillment of jurisprudence; (ii) the tutelage permitted by the constitution and the law to protect fundamental rights where the judges have reached a decision incoherent to precedent; (iii) the revision of the nullity of sentences in the Court permitted by decree 2067 of 1991 when a violation of due process or disregard to the jurisprudential doctrine are faced; and, finally, (iv) penal sanctions for the disregard of precedent based on facts used by the High Court until the year 2008 (López-Medina, 2016).

In virtue of the recognition of the doctrine of precedent, the legislator has followed the tendency included in the laws of what is known as contentious administrative proceedings (Laws 1295/2010 and 1437/2011) and in the Code of General Proceedings (Ley 1564/2012) where it is given a strong value in the jurisprudence of the legal system.

2.4.2 The Case of the Atrato River

The tutelage, that successfully made the Constitutional Court recognize the Atrato River as a subject of rights, was filed by the Center of Studies for Social Justice “Tierra Digna”, in representation of the Consejo Comunitario Mayor de la Organización Popular Campesina del Alto Atrato (Cocomopoca), the Consejo Comunitario Mayor de la Asociación Campesina Integral del Atrato (Cocomacia), the Asociación de Consejos Comunitarios del Bajo Atrato (Asocoba), the Foro Inter-étnico Solidaridad Chocó (FISCH) and others, against the Presidency, the Ministry of Health and Social Protection, the Ministry of Environment and Sustainable Development, the Ministry of Mines and Energy, the Ministry of Agriculture, the Ministry of Defense, the Ministry of Home, City and Territory, the municipalities of Acandí, Bojayá, Lloró, Medio Atrato, Murindó, Quibdó, Vigía del Fuerte, Turbo, Riosucio, Río Quito, Unguía, Carmen del Darién, Bagadó, Yuto de Carmen de Atrato, the Center of Studies for Social Justice “Tierra Digna”, the Corporation for sustainable development of the Urabá – CORPOURABÁ, the Autonomous Regional Corporation for Sustainable Development of Chocó – CODECHOCO and others.

This was done for the protection of their fundamental rights to life, health, water, food security, healthy environment, culture, and the territory of ethnic communities and the petitioners. A series of orders and measures were requested to allow articular structural solutions to respond to the severe crisis in the matters of health, socio-environmental crisis, ecological crisis and humanitarian crisis that are found in the Atrato River basin, its tributaries and adjacent territories, derived from illegal mining and the inaction of the authorities.

Because of this, the Court posed the following judicial issue: Due to the activities of illegal mining in the basin of the Atrato River (Chocó), its tributaries, and adjacent territories and the omission of the defendant government authorities (in charge of taking care of this situation at a local and national level), there is a violation of the fundamental rights to life, health, water, food security, healthy environment, culture, and territory of the ethnic communities as petitioners.

In order to settle this issue, the Court began by considering that, according to article 8 of the Constitution, the government and the society have the fundamental obligation to care for the natural and cultural riches, as well as to protect the environment with the purpose of preventing, and controlling the factors of environmental deterioration, seeking their conservation, restoration and sustainable development.

Additionally, the Court asserts that the protection of forests, rivers, food sources, and biodiversity as elements of a healthy environment have a direct relation and interdependence with the guarantee of the rights to life, health, culture and territory as biocultural rights. Thus, the elements of this approach have an intrinsic relation among Nature, culture and the diversity of the human species as a part of Nature and the manifestation of multiple forms of life, by which the conservation of biodiversity requires the preservation and protection of all ways of life and cultures that interact with it.

Consequently, after evaluating the proof of the case and the judicial inspection of the Court with the petitioning communities and other government entities, Codechocó, Corpourabá, la Defensoría del Pueblo, la Procuraduría General de la Nación, la Contraloría General de la República, the experts of the Universities of Cartagena and Chocó, international organisms such as the UN and non-governmental organizations such as Dejusticia and WWF Colombia, among others. The court confirms *in situ* the extensive use of heavy machinery and toxic substances such as mercury in the process of gold extraction from the Atrato River and its tributaries.

After understanding the presence of illegal mining activities in the Atrato River basin and its tributaries, as well as the direct and indirect effect in the fundamental rights to life, health, and a healthy environment of the ethnic communities that inhabit this region along with the lack of scientific certainty, the Court determines that the case requires the precautionary principle in environmental law. The protection of the right to health is represented in the following actions: (i) to prohibit the use of toxic substances such as mercury in activities of mining whether legal or illegal; and (ii) to declare the Atrato River as a subject of rights that imply its protection, conservation and preservation.

Also, the Court considers that the activities that contaminate and severely threaten water resources and forests due to illegal mining directly affect the availability, accessibility and sustainability of food production for the ethnic communities that inhabit the Atrato River basin and its tributaries.

With respect to the responsibility of the authorities towards preventing the violation of the rights to the petitioners, the Court establishes that the neglect in taking effective action to stop the activities of illegal mining has generated a severe humanitarian and environmental crisis in the Atrato River basin (Chocó), its tributaries and adjacent territories. The national government and its mining and environmental authorities are responsible for the eradication processes of illegal mining and, in cases of legal mining, for the previous consultation with ethnic communities that can be affected in their collective territory or territories and their traditional ways of life.

Thus, the Court considers that there is a violation to the rights to territory and culture of the ethnic communities in the Atrato River basin as a consequence of the implementation of the activities of illegal mining.

As previously stated, the Court decides to declare the existence of a severe violation of the fundamental rights to life, health, water, food security, a healthy environment, culture and territory of the ethnic communities that inhabit the Atrato River basin and its tributaries. It also recognizes the Atrato River, its basin and tributaries as an entity subject of rights, which involves its protection, conservation and preservation.

The recognition of the rights of Nature is based on overcoming its utilitarian vision, which is limited and disproportionate. In this context, judges and High Courts in Colombia have decided to judge environmental conflicts because entities are subjects of law. The explanation for this intervention lies in the fact that environmental law from a traditional perspective has failed (Gómez-Rey, Vargas-Chavés and Ibáñez-Elam, 2019).

Unlikely, according to authors as Wei-xian (2010), the rights of Nature are only fiction of rights, as well the rights of future generations. This fiction is the result of the shape of thinking to solve the environmental crisis and it also undermines the traditional theory of new rights. In the context of alienated language in the postmodern semantics, the judges must prudently use “right” as term and concept (Wei-xian, 2010).

3. Methodology

The jurisprudential line, according to López-Medina (2006), is the not so abstract idea found in a graph, in which a question or judicial problem is depicted, well defined and followed by its possible answers that generally are bipolar stances, for the exercise of traceability of the sentences to be achieved, so as to allow one to see the tendency in matter of the decisions made in one or more approaches to cases of the same judicial fundamental problem.

Methodologically, the research that precedes this article was based on the study of a jurisprudential line about a judicial problem identified by a question that, according to López-Medina (2006), leads to a not so abstract idea—for example, the extent of a right or a case with very specific characteristics—as it was to determine the ecocentric approach of the Constitutional Court. In this sense, the exercise of traceability of the sentences allowed us to identify through the nodal points its tendency in decision making.

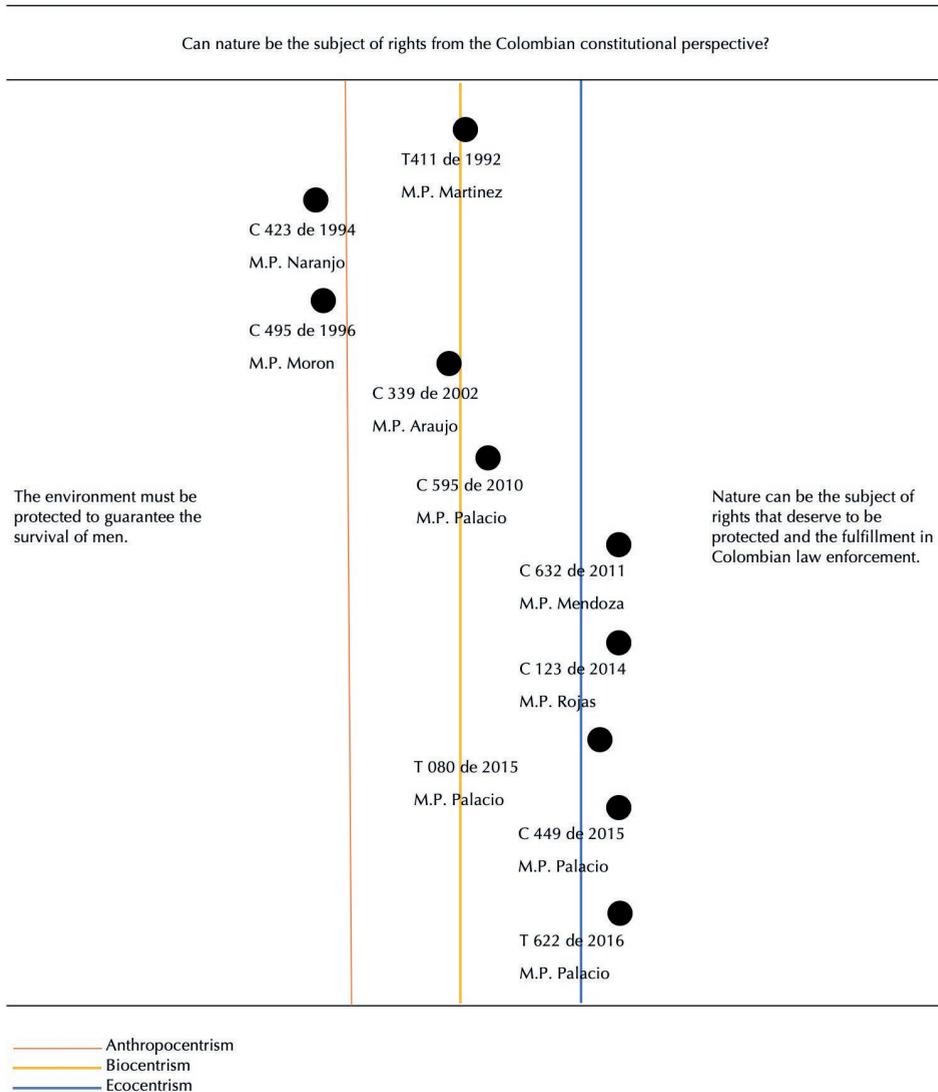
Firstly, it is necessary to emphasize that this research used an analysis technique that led us, in the first place, to find an Archimedean point, which is the most recent sentence (T-622 of 2016) of the Court about the judicial problem. That sentence, recognized the Atrato River as a subject of rights. In fact, our research question that deals with the possibility of creating a jurisprudential line of the same sentence that marked the beginning of the recognition of the rights of Nature in Colombia was developed from the same sentence.

Secondly, we used the before mentioned method that deals with process of engineering the inverse line and consists of finding, through the Archimedean sentence, those cited sentences related to the research subject.

Finally, the creation of a 'jurisprudential web' to identify the nodal points which lead us to the landmark sentence in which the legal reasoning is based upon, and the sentence that founded it, which is the one that dealt with the issue in the first instance.

Thanks to this 'web', we were able to identify the sentence that solved the judicial problem and, through the graph, the tendency of the Court. This method is useful because it allows the researcher to arrive at the consolidating sentence of the line, where the Court reaffirms its position, and the modifying sentence, where the Court steps away from its initial position, and also the reconceptualizing sentence, that takes various different concepts and unifies jurisprudence in a certain issue.

4. Results



4.1 Archimedean point

Based upon the methodology proposed, it was necessary, in the first place, to find an Archimedean point for the judicial problem posed, that is, the most recent sentence that addressed the subject, which was in this particular case T 622 of 2016, wherein

the Atrato River was recognized as a subject of rights and marked a turning point in the recognition of the rights of Nature.

This sentence, as previously stated, discussed the case of the Afro-descendant and indigenous communities that live in the riverbeds of the Atrato River, its tributaries and the territories nearby in the Chocó District, and that live on artisan mining, agriculture, hunting and fishing, which has existed for many centuries and guarantees the complete supply of their dietary needs.

However, illegal mining is practiced in a large scale by certain armed outlaw groups that produce serious contamination of this river and its tributaries, a scourge that has not been stopped due to the ommissive attitude of the government. Thus, the fundamental rights to life, to health, to water, to food security, to a clean environment, to culture, and to territory of the ethnic communities inhabiting the basin of the Atrato River and its tributaries, have been affected.

Therefore, the Court, after considering that the activities of illegal mining can undermine health and the environment, and that there exists scientific uncertainty of the adverse effects of the toxic substances used for this activity, finds it appropriate to apply the precautionary principle, to protect the right to a clean and healthy environment, and to protect the wellbeing of the people that inhabit this territory. They also decided to ban the use of toxic substances, such as mercury, in the activities of legal or illegal mining, and recognized the Atrato River as a subject of rights, for its protection, conservation and preservation.

In this sentence, the Court cites certain decisions in which it had addressed the issue in a general manner, without recognizing a certain entity as a subject of rights, but that serves as theoretical foundation to justify the decision made and construct the citational niche.

4.2 Study of the Jurisprudential Line

In sentence T 622 of 2016 the Court recognizes a particular entity of Nature as a subject of rights to guarantee its protection, conservation and preservation: the Atrato River, and its tributaries. However, the High Court had been adopting the judicial approach of biocentrism during past decisions, as can be seen in their citations. The court has adopted three approaches to fulfill the constitutional disposition to protect the environment: anthropocentrism, biocentrism, and ecocentrism. Anthropocentrism was adopted during the initial decisions about this kind of protection, biocentrism was adopted during the first decade of the 2000s, and ecocentrism was used to base decisions referring to Nature as a good to protect by itself.

Similarly, sentence C 449 of 2015 contains an action of unconstitutionality for which the partial unenforceability of sections 3 and 4 of Article 42 of Law 99 of 1993 is declared. It refers to the retributive and compensatory taxes because, for the petitioner, these dispositions violated constitutional article 338 since only laws, ordinances and agreements can establish the taxable bases and tariffs of taxes. Therefore, it cannot be done by an administrative authority as it is the case of the Ministry of the Environment and Sustainable Development, which disregards the principle of tax legality in an ample sense.

Then the Court establishes the following judicial problem: “Does article 42, of Law 99 of 1993, partially violate the principle of tax legality as rendered in article 338 of the Constitution by delegating the definition of annual bases on which the calculation of the depreciation of natural resources is based (section 3) and the power to apply the method (as provided in section 4) for the definition of the costs on which the base would be fixed of the amount of taxes of the compensatory taxes for environmental contamination is based, to an administrative authority, when according to the law it can only determine the taxable bases and rates of the taxes?” (C 449 de 2015).

Hence the High Court proceeds to declare that the recognition of Nature has been historically slow and difficult; particularly in Colombia, great progress was made in the Constitution of 1991 that adopted anthropocentrism, biocentrism, and ecocentrism as the different judicial approaches to protect the environment through legislation and jurisprudence.

Anthropocentrism perceives human beings as the most valuable and the sole reason for the existence of the legal system, because they are the only rational worthy and complete beings in the planet, which situates natural resources only as simple objects at their service. Therefore, the most important is to guarantee the existence of the human species.

Biocentrism conceives that Nature does not belong exclusively to the human beings that inhabit it, but to future generations as well, and to humanity in general, thus, its protection makes sense because it guarantees the survival of the human species.

Ecocentrism proposes that earth does not belong to human beings, but rather the opposite just like the other species, and human beings are nothing more than an event in the long chain of evolution of the planet. Therefore, Nature is the authentic subject of rights that must be recognized by the states and exercised through the use of tutelage of legal representatives.

Then, the Court proceeded to study the guiding principles of environmental law, including the principle of sustainable development, *i.e.*, the one who contaminates,

must pay compensatory fines, the principle of prevention, and the precautionary principle to refer to the compensatory taxes for environmental contamination. They are meant to aid in the recovery of the costs generated by the uses of the atmosphere, the soil and the water allowed by the environmental authorities to introduce or dispose waste, either from agriculture, mining or industry, black waters or of any origin, smoke, fumes and toxic substances produced by anthropic activities, or promoted by man, or the economic activities or services whether or not lucrative. Hence, the High Court decided to declare sections 3 and 4 of article 42 of Law 99 of 1993 constitutional.

In sentence T 080 of 2015 the Court reviewed a *tutelage* against the judicial sentence of the Superior Court of the District of Cartagena that underestimated the claims of the popular action that asked for the ecological damage to be recognized, because it was produced by the Dow Química company of Colombia S.A. Such company dumped a chemical component called “Lorsban” that has as an active element “Chlorpyrifos” in the Bay of Cartagena in June of 1989, therefore, it should pay a compensatory fine; the Court studied if the environmental damage had been caused by this component, although it was biodegradable.

Accordingly, the Court emphasizes that the Colombian constitution considers Nature as a transversal element thought as important because of their interdependence with all living things on earth. It also recognizes human beings are part of the global ecosystem rather than dominant beings or users. Thus, jurisprudence of this entity sustained that Nature does not encompass exclusively the environment and surroundings of human beings, but it is in itself a subject of its own rights and as such, those rights must be protected and guaranteed.

Also, the Court establishes that the environment in the Colombian constitution has acquired relevance because it represents not only an objective of principle in the social rule of law, but also a fundamental right for its relation to life and health, and a collective right that jeopardizes the community, which represents a duty to all. Furthermore, because it is an environmental affectation that generates legal responsibility for the damage, even if the ecosystems have the way to recover, not accepting it constitutes a lack of environmental protection under the excuse that Nature will recover and reaching its balance eventually.

Hence the Court decided to revoke the sentence passed by the Superior Court of the District of Cartagena that underestimated the claims of the *tutelage* and disregard it instead, order the community to be part of the recovery of the affected zones, and make the Dow Química company recognize in a newspaper the human and institutional flaws caused by the dumping of the chemical substance in the Bay of Cartagena, explain the circumstances, ask for public forgiveness for the damages, and commit to never repeat the action.

Recently, in sentence C 123 of 2014, the Court studied an action to declare article 37 about the legal prohibition of Law 685 of 2001, that issues the Code of mining and dictates other provisions unconstitutional as well as article 2 of the regulatory decree 0934 of 2013 because they violate articles 1, 2, 79, 80, 82, 288 and 313, sections 2, 7 and 9 of the Constitution. It happens every time it disregards the duties assigned to the municipal councils, which causes the violation of the principle of autonomy; additionally, this article makes it impossible to fulfill the duty of protecting the environment by way of the municipal councils.

In fact, the Court poses a judicial problem: if the legal prohibition of municipal and district councils regarding the ability to exclude mining from their territories does not permit their land development plans to address such issues apart from not permitting the district and municipal authorities to regulate the uses of the soil in their own territory. Consequently, it is impossible to protect the environmental and cultural patrimony of the Nation.

Thus, the High Court established that the concept of environment is complete because it involves different elements that participate in its surroundings that allow the development of the life of human beings, flora and fauna. This led to the protection not only of the environment, but also of the elements that are part of it, no matter if they are useful or necessary for the development of human life, such that the protection of Nature overcomes the utilitarian notions, and becomes respected, and the city is founded on ontological conceptions.

Consequently, as the Court notes, the constitution assigned the government the duties of (i) protection of the environment's diversity and integrity, (ii) safekeeping of the nation's natural resources, (iii) conservation of areas considered of special importance, (iv) promotion of environmental education, (v) planning management and use of the natural resources based on the principle of sustainable development, (vi) prevention and control of environmental deterioration, (vii) sanction and demand of the environmental damages repair, and (viii) cooperation with other nations in the protection of ecosystems located near the frontiers.

Because of this, when dealing with mining activities, the license given does not represent the end of the environmental protection process of the project, or mere environmental protection because it originates the fulfillment of the requirements and conditions stated in the license in dealing with environmental effects. Therefore, the Court declares the norm demanded, constitutional.

In sentence C 632 of 2011, the Court studies whether or not to declare constitutional article 31 that refers to the compensatory measures taken and paragraphs 1 and 2 of article 40, that refer to the sanctions established in Law 1333 of 2010 that establishes the procedure for sanctioning environmental damage and other provisions.

In this case, the petitioner bases his claims on the fact that the afore mentioned provisions violate the constitutional principle of *non bis in ídem* of article 29 since it is an environmental violation, which generates two different processes with the same claim, *i.e.*, twice the compensation for the damages caused: one assigned by the administrative environmental authority, and the other by the competent judicial authority.

This generates the profit without just cause of the administration by receiving twice the compensation of the damage and a violation of the principle of interdiction of arbitrariness as indicated in the preamble and in articles 1 and 2 of the constitution. The attributions of jurisdictional duties of the administrative authorities without the full compliance of the presumed premises established in the constitution for this matter must be added.

Hence, the Court poses the judicial problem in the present case to establish whether or not the legislator, by including the compensatory measures in the penalty system and by assigning the administrative authorities the duty to adopt them, disregarded the guarantees of *non bis in ídem*, the principle of legality of the sanctioning and the principle of legal reservation, as well as the principle of separation of powers" (C 632/11).

The court indicates that the objective to have a healthy environment is justified in relation to the right of life, right to health and physical integrity of the people because the authorities around the world have to provide legal mechanisms, even preventive ones, and to act in situations of risk or environmental damage, as well as to recognize the responsibility to take care of toxic effects not only for the victims, but also for the ecosystem itself. Hence, it is necessary to recognize that Nature is not only seen as the environment and surroundings of human beings, but as a subject of its own rights that must be protected and guaranteed.

Thus the High Court indicates that since the administrative field has the power to impose penalties, it is oriented to the protection of the organization and performance of the jeopardized or disregarded public interest. That is why they are completely capable of adopting repressive measures against the administrated parties, and against the public officials, when dealing with contrary conducts of the legal system, always seeking for the non-violation of the constitutional guarantees to due process. Therefore, the Court decided to declare the mentioned articles as constitutional.

The Constitutional Court, in sentence 595 of 2010, studies whether the paragraph of article 1 about the presumption of guilt or deceit for environmental infringement, and paragraph 1 of article 5 about the weight of the proof that the environmental infringer has to outweigh the presumption of guilt or deceit found in law 1333 of

2009, which establishes the procedure to penalize environmental infractions and dictates other provisions are constitutional.

The petitioner points out that the sections cited violate articles 29 and 4 others of the Constitution by establishing an administrative procedure to penalize infringers based on the presumption of guilt or deceit of the investigated —the presumed infringer— because the principle of presumption of innocence is applied, and the principle of supremacy of the constitution (Article 4) is disregarded by foreseeing that, in a penalty proceeding, the government does not have to outweigh the presumption of innocence and that it is the accused who has to outweigh the presumption of guilt.

In virtue of the claims made, the Court claims that the judicial problem to be resolved is whether or not the paragraph of article 1 and the paragraph 1 of article 5 of law 1333 of 2009 violate the principle of presumption of innocence in article 29 of the constitution, by presuming the guilt or deceit of the infringer and investing in the weight of the proof that the administrative environmental penal law dictates. To solve this, the Court indicates that the constitution of 1991 attributes a special relevance to the environment as a good to be protected and because of its relation to the living things that inhabit the earth. This is seen in the fact that the environment is a legal asset constitutionally protected through the actions of the government and the concurrence of people, society and the rest of the authorities.

All stated before, since conservation and the perpetuity of humanity depend on the unconditional respect to the environment and its unyielding defense because it is an indispensable element that allows and guarantees existence and full life. Thus, the importance of a healthy environment means renouncing to life itself, and the survival of present and future generations is ignored.

Therefore, the Court considered the presumption of guilt and deceit in environmental terms not contrary to the Constitution because it does not exclude the government from an active presence in the process of environmental sanctioning nor does it give the infringer the title of alleged perpetrator. Meaning that the environmental authorities are obliged to verify the conduct, and, if in the case of an environmental infraction, a possible exoneration of responsibility.

For the Court, the basis of all is the precautionary principle, from which not only answers are given until there are consequences for the actions taken, but where an active position of anticipation is taken, to prevent future environmental affectations to optimize the surrounding natural life.

Consequently, the High Court decided to declare paragraph of article 1 and the first paragraph of article 5 of Law 1333 of 2009 constitutional.

Before this decision, the Court took the issue of environmental protection in sentence C 339 of 2002, where a claim of unconstitutionality was filed by a citizen against article 3, the part about general regulation; article 4, of general regulation; article 18, the part about requirements for foreigners; article 34 about anti-mining zones; article 35 partially about restricted zones for mining; and, article 36, partially about the effects of exclusion or restriction of Law 685 of 2001, "by which the Charter for Mining and other provisions is issued."

For the petitioner, said provisions violate the preamble and articles 1, 2, 4, 5, 8, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 38, 44, 58, 63, 65, 72, 79, 80, 82, 84, 85, 93, 95, 150, 158, 209, 230, 277, 288, 313, 333, 334, 360 and 366 of the Colombian Constitution, in the sense that they disregard that environmental laws are of preferential application and are related to the duty of protection, preservation and conservation of the environment, added to the fact that the claims made against said articles sponsor the destruction of the environment, among other claims made.

In this context, the Court establishes in its considerations that the constitution of 1991 has among its primary objectives, the protection of natural resources and a healthy environment (articles 8, 79 and 80 of the constitution) because the risk that humanity must face is not only the destruction of the planet, but of life itself. Considering that the human species is a product of the evolution that the planet has achieved over millions of years, if we continue destroying the biosphere that has permitted this evolution, we are destined to, not only the loss of quality of life of the present and future generations, but also the disappearance of the human being.

Thus the High Court found as an obligation of the government, relating to the protection of the environment, the following three aspects: (i) the ethical standpoint that begins using the principle of biocentrism that considers human beings as part of Nature, giving both the same value; (ii) the economic standpoint, that understands that the productive system cannot extract resources or produce waste without limits since it must adjust to the social and environmental interests and to the cultural patrimony of the nation (articles 333 and 334); and (iii) the judicial position that states that the law and the government must protect the dignity and liberty of a human being over other human beings and must also look out for the depletion of natural resources, that requires new values, norms, judicial techniques, and principles that put collective values above individual values (articles 67, subparagraph 2, 79, 88, 95 section 8).

What serves as the foundation for the Court to declare articles 3, 4, 18, 34 -sections 1, 2, 3 y 4- and 35 of Law 685 of 2001 that issues the Code of Mines and where other provisions are dictated are constitutional, and that the expression of article 35, and a part of article 36 are unconstitutional.

Similarly, sentence C 495 of 1996, where the Court studies whether or not articles 42, referring to compensatory taxes on the direct or indirect use of the atmosphere, water or soil, to introduce or dispose of waste and toxic substances from anthropic or man-made activities, or economic activities or of service, either profitable or not, and paragraph; article 43, referring to the taxes for the use of water and its paragraph; and article 46, section 4 of the patrimony and revenue of the autonomous regional corporations of Law 99 of 1993, and article 18 of the Executive order 2811 of 1974 that refers to the use of the atmosphere, the rivers and soil for the uses mentioned.

To establish that the articles are unconstitutional, the petitioner says that the provisions cited, violate what has been established in article 150, section 11, and articles 154, 338, 359 and 363 of the Constitution, since the legislative initiative is of fiscal Nature, apart from the fact that national revenue cannot be assigned to the patrimony of the Autonomous Regional Corporations. Also, the petitioner presents that by taxing four times, and simultaneously, the use of water in the events signaled by the law, a tributary inequity is imposed.

Finally, the petitioner upholds that the norms demanded violate the principle of legality in the sense that they are not rightfully determined, not including the elements of obligation, as well as the system and method to fix them.

Based on this, the Court studies whether or not the norms are constitutional, beginning with the affirmation that it is undeniable that today, to be able to determine the judicial principles, the need to protect the environment and to give people their related rights cannot be disregarded. Thus, the Court found that environmental resources are an issue of vital importance in the constitution, which is why they constitute a patrimony to all the people of Colombia, and that it is the responsibility of the head of the state to plan and use the natural resources to procure a sustainable development and of the citizens to promote its conservation and preservation.

It is why the High Court deduces that authorities can issue norms relating to the protection of the environment or seeking to reestablish it, when possible, thus the compensatory rates of the demanded norms represent with certainty the generation of economic costs for those that cause harmful effects to Nature. This is, a corrective measure to heal the affectation to the environment produced by the usage of the natural resources, which relates with the purposes of the Constitution.

In fact, the Court finds that the rules of article and its paragraph, and number 4 of the article 46 of the Law 99 of 1993 are constitutional because they adjust to the constitution, and it represses to rule about article 18 of the executive order 2811 of 1974.

Sentence C 423 de 1994 was interposed by a citizen to demand the articles 34 about the Corporación para el Desarrollo Sostenible del Norte y Oriente de la Amazonía, CDA; 35 of the Corporación para el Desarrollo Sostenible del sur de la Amazonía, CORPOAMAZONIA; 36 referring to the Corporación para el Desarrollo Sostenible de la Sierra Nevada de Santa Marta, CSN; 37 of the Corporación para el Desarrollo Sostenible del Archipiélago de San Andrés, Providencia y Santa Catalina, CORALINA; 38 of the Corporación para el Desarrollo Sostenible de la Macarena; y 41 about the Corporación para el Desarrollo Sostenible de la Mojana y San Jorge, CORPOMOJANA of Law 99 of 1993. It states “by which the Ministry of the Environment is created, the public sector is reorganized and in charge of the management and conservation of the environment and the natural renewable resources, the National Environmental System (SINA in Spanish) is organized, and other provisions are taken.”

As a basis, the petitioner manifests that Congress over passed its constitutional duties, found in article 150, in that, it does not have the faculty to create regional corporations and less so, the autonomy of the development of their activities. Also, the creation of these new entities favors the centralism that the framers of the constitution tried to stray away from.

Therefore, to solve this action of unconstitutionality, the Court states that article 150 of the Constitution establishes the general duties of congress, that it finds a limitation in the same dispositions of this article. Also, that the protection of the environment can be achieved by two means: (i) by way of the State, that uses civic participation and the fulfillment of its constitutional duties, apart from the creation of public policy that pursue this purpose, and (ii) by way of the judicial, by means of the implementation of judicial mechanisms for preservation or sanction.

However, the protection of the environment finds its meaning because it guarantees general prosperity and the public interest, in the understanding that natural resources are primordial to the prevalence of the population of Colombia and the entirety of humanity. This is the reason why the Court finds as a given that the articles pertain to the Constitution and declares them constitutional.

Hence, the line begins at the judicial sentence T 411 of 1992, where an action of protection by a citizen is presented in his condition as legal representative of the Industria Molinera Granarroz Ltda., and as a natural person, based on the following facts: in the development of the activity of the Mill, specifically with the management of the residues of raw materials —rice hulls— that were abandoned and afterwards burnt, pulmonary and respiratory illnesses originated in the inhabitants of the area surrounding the mill, reason that led the mayor of the city to decide to close the mill down, due to the affectation to the health caused by this activity, and the effects on the environment, for the mill did not possess an operating license.

Therefore, seeing this, the plaintiff asks the judge, using tutelage, to prevent the mayor from closing down the mill because of the quantity of losses and damages that closing down the mill could cause to the legal entity, and also the violation of the 25th article of the Colombian constitution relating to the right to work.

However, the judge did not grant the tutelage because he considered that there was no violation to the right to work, and indicated that the public interest is above the private interest.

Thus, the Court poses the question that the judicial problem of the case is: To determine if a violation to the right to work of the plaintiff does exist when the mayor orders to close down the mill? For this case, the Court determined in first place that, although the individual does possess rights that must be protected, such as described in the constitution, here the problem must be looked at in a social dimension, for, although the rights, guarantees and duties should be protected, in them, the protection of the environment, for it is vital to human beings, such as art and culture, for it belongs to the people that there inhabit it, but also belonging to the generations to come, reason for why it must be protected and conserved for the following generations that will later inhabit it.

The Court also recognized that, man is not the omnipotent owner of the environment, being able to do as he pleases with it, but that, on the contrary, man is part of Nature. Therefore, the Court decided to verify the judicial sentence given by the prior judge, where the tutelage was not granted in reason to the right to work.

We emphasize that the Constitutional Court in recent years has protected Nature as a whole, based on the recognition of its rights. However, with the judgment of the Río Atrato the Court made further progress by declaring it as a subject of rights. An unprecedented fact because it is an entity of Nature. The key issue of this ruling is the importance of the river for the ecosystem balance and the survival of people.

This precedent has served as support for the judges of different instances to declare other entities as subjects of rights. This has opened the discussion on the role of judges in these matters, as well as on the concept of subjects of law. Finally, it is necessary to indicate that this new paradigm represents a very important task for the legislator in Colombia.

After all that has been stated, the question that should be answered is the central theory of the rights of Nature. *Is it necessary to give legal identity or fundamental rights to the elements of the environment to be able to fulfill the constitutional dispositions of protection, conservation and reasonable planification of the environment?*

Conclusions

In virtue of the afore stated, it is necessary to understand that the present investigation does not intend to provide a solution for the issue of the protection of the environment through judicial ordainment to obtain its conservation, preservation and/ or restoration like so, but it is the result of the inquiry of the constitutional jurisprudence of Colombia referring to Nature as the subject of protection using the approaches developed by the same jurisprudence, which are anthropocentrism, biocentrism and ecocentrism.

Therefore, a major breakthrough related to the protection of the environment is evidenced around the world in statutory terms, especially in Colombia, that as a pioneering country, has adopted an ecocentric judicial approach to ensure the fulfillment of the constitutional obligation of the State and society in itself to procure the care of natural and cultural riches and also to protect the environment and propend for its conservation, restoration and sustainable development.

This approach, as it was seen in the development of the investigation, understands the earth as not belonging to the human beings, but as the human being belonging to Nature such as any other species, thus, human beings cannot be the owners of other species, or of the biodiversity, or of the natural resources or of the destiny of the planet. Therefore, it was determined that an effective measure to protect the environment is to declare it a subject of rights and as such, for them to be guaranteed.

Bibliographic References

- Acosta, A. & Martínez, E. (Ed.). (2009). *Derechos de la naturaleza: el futuro es ahora*. Quito, Ecuador: Abya-Yala.
- Agarwal, B. (2014). Food sovereignty, food security and democratic choice: Critical contradictions, difficult conciliations. *Journal of Peasant Studies*, 41(6), 1247-1268. DOI: <https://doi.org/10.1080/03066150.2013.876996>
- Agudelo-Osorio, J.D. (2016). *Choque de trenes: tutela contra sentencias, concepciones del Derecho y constitucionalización del ordenamiento jurídico colombiano* (tesis de pregrado). Universidad de Antioquia, Medellín, Colombia.
- Alegre, N. & Quispe-Mamani, M. (july, 25, 2017). ¿Se puede proteger el medio ambiente declarando a un río como sujeto de derechos en el Perú?. *Enfoque Derecho*. Retrieved from <https://www.enfoquederecho.com/2017/07/25/se-puede-proteger-el-medio-ambiente-declarando-a-un-rio-como-sujeto-de-derechos-en-el-peru/>
- Allen, R. C. (2009). *The British industrial revolution in global perspective* (Vol. 1). Cambridge: Cambridge University Press.
- Amaya, O.D.A. (2010). *La constitución ecológica de Colombia*. Bogotá: Universidad Externado de Colombia.

- Baldin, S. (2015). La tradición jurídica contro-egemonica in Ecuador e Bolivia. *Boletín mexicano de derecho comparado*, 48(143), 483-530. DOI: <https://doi.org/10.22201/ijj.24484873e.2015.143.4938>
- Borràs, S. (2016). New transitions from human rights to the environment to the rights of Nature. *Transnational Environmental Law*, 5(1), 113-143. DOI: <https://doi.org/10.1017/S204710251500028X>
- CEPAL. (2014). *La economía del cambio climático en el Paraguay (LC/W.617)*. Santiago de Chile: UN-CEPAL.
- Corte Constitucional de Colombia (17 de junio de 1992) Sentencia T-411/92. Magistrado Ponente: Alejandro Martínez Caballero.
- Corte Constitucional de Colombia (29 de septiembre de 1994) Sentencia C-423/94. Magistrado Ponente: Vladimiro Naranjo Mesa.
- Corte Constitucional de Colombia (26 de septiembre de 1996) Sentencia C-495/96. Magistrado Ponente: José Gregorio Hernández Galindo.
- Corte Constitucional de Colombia (7 de mayo de 2002). Sentencia C-339/02. Magistrado Ponente: Jaime Araujo Rentería.
- Corte Constitucional de Colombia (27 de julio de 2010). Sentencia C-595/10. Magistrado Ponente: Jorge Iván Palacio Palacio.
- Corte Constitucional de Colombia (24 de agosto de 2011). Sentencia C-632/11. Magistrado Ponente: Gabriel Eduardo Mendoza Martelo.
- Corte Constitucional de Colombia (5 de marzo de 2014). Sentencia C-123/14. Magistrado Ponente: Alberto Rojas Ríos.
- Corte Constitucional de Colombia (20 de febrero de 2015). Sentencia T-080/15. Magistrado Ponente: Jorge Iván Palacio Palacio.
- Corte Constitucional de Colombia (16 de julio de 2015). Sentencia C-449/15. Magistrado Ponente: Jorge Iván Palacio Palacio.
- Corte Constitucional de Colombia (10 de noviembre de 2016). Sentencia T-622/16. Magistrado Ponente: Jorge Iván Palacio Palacio.
- Drengson, A. (2005). *The Selected Works of Arne Naess*. Foundation for Deep Ecology. Retrieved from http://www.deepecology.org/publishing_arne.htm
- Gómez-Rey, A. Vargas-Chaves, I. & Ibáñez-Elam, A. (2019). El caso de la naturaleza: los derechos sobre la mesa ¿decálogo o herramienta? In L. Estupiñan-Achury, C. Storini, R. Martínez-Dalmau & F. De Carvalho (Eds.). *La naturaleza como sujeto de derechos en el constitucionalismo democrático* (pp. 423-443). Bogotá: Universidad Libre de Colombia.
- Goudie, A. S. (2018). *Human impact on the natural environment*. Hoboken: John Wiley & Sons.
- Gudynas, E. (2009). La ecología política del giro biocéntrico en la nueva Constitución de Ecuador. *Estudios sociales*, (32), 34-47.
- Jonas, H. (1985). *The imperative of responsibility: in search of an ethics for the technological age*. Chicago: University of Chicago Press.
- Liverman, D.M. (1990). Vulnerability to Global Environmental Change. In R.E. Kasperson, k. Dow, D. Goldin & J.X. Kasperson (eds.), *Understanding Global Environmental Change: The Contributions of Risk Analysis and Management*, Clark University, Worcester, 27-44.
- López-Medina, D. (2006). *El derecho de los jueces*. Bogotá: Legis.
- López-Medina, D. (2016). *Eslabones del derecho*. Bogotá: Legis.
- Martínez, E. & Acosta, A. (2017). Los derechos de la naturaleza como puerta de entrada a otro mundo posible. *Direito e Práxis*, 8(4), 2927-2961. DOI: <https://doi.org/10.1590/2179-8966/2017/31220>
- Ossa, A. C., Gómez, D. M. & Espinal, C. E. (2014). Asbestos en Colombia: un enemigo silencioso. *Latreia*, 27(1), 53-62.

- Ostrom, E. (2000). *El gobierno de los bienes comunes. La evolución de las instituciones de acción colectiva*. México, D.F.: Universidad Nacional Autónoma de México.
- Panayotou, T. (1996). Ecología-economía, medio ambiente y desarrollo. *Ciencia y Tecnología Agropecuaria*, 1(1), 40-45. DOI: 10.21930/rcta.vol1_num1_art:151
- Perú. Ministerio de Economía y Finanzas (16 de enero de 2018). Decreto Supremo n.º 006-2018-EF. República del Perú.
- Pino, A. (2013). Entre reparación y distribución: la responsabilidad civil extracontractual como mecanismo de distribución de infortunios. *Revista chilena de derecho privado*, (21), 89-135.
- Rodríguez, G.A. (2012). La consagración de los derechos ambientales en las Constituciones Políticas de Colombia, Ecuador y Bolivia. En G. Rodríguez & I. Páez (Eds.) *Temas de derecho ambiental: una mirada desde lo público* (pp. 1-54). Bogotá: Universidad del Rosario.
- Rodríguez, G.A. & Vargas-Chaves, I. (2015). Reflexiones preliminares sobre la responsabilidad por daños ambientales en Colombia. En G. Rodríguez, & I. Vargas-Chaves (Eds). *Perspectivas de responsabilidad por daños ambientales en Colombia* (pp.1-14). Bogotá: Universidad del Rosario.
- Rodríguez-Villamizar, L. A., Jaimes, D. C., Manquían-Tejos, A. & Sánchez, L. H. (2015). Human mercury exposure and irregular menstrual cycles in relation to artisanal gold mining in Colombia. *Biomédica*, 35 (no.spe), 38-45. DOI: <http://dx.doi.org/10.7705/biomedica.v35i0.2442>
- Ruda, A. (2008). *El daño ecológico puro*. Madrid: Thompson Aranzadi.
- Sánchez, L. (2012). *El derecho al ambiente sano. Esquemas de reconocimiento constitucional y mecanismos judiciales de protección del derecho comparado*. Bogotá: Universidad Nacional de Colombia.
- Solomon, K. R., Anadón, A., Cerdeira, A. L., Marshall, J. & Sanín, L. H. (2005). *Estudio de los efectos del Programa de Erradicación de Cultivos Ilícitos mediante la aspersión aérea con el herbicida Glifosato (PÉCIG) y de los cultivos ilícitos en la salud humana y en el medio ambiente*. Comisión Interamericana para el Control del Abuso de Drogas (CICAD), 5.
- Vargas-Lima, A. E. (2012). El derecho al medio ambiente en la Nueva Constitución Política del Estado Plurinacional de Bolivia. *Anuario de Derecho Constitucional Latinoamericano*, (18), 251-267.
- Vargas-Chaves, I., Gómez-Rey, A. & Rodríguez, G.A. (2018). La invocabilidad de la acción de cumplimiento frente a los compromisos suscritos en el Paro Nacional Agrario de 2013: un análisis desde la regulación de las semillas certificadas. *Revista Jurídicas*, 15(1), 28-45. DOI: 10.17151/jurid.2018.15.1.3
- Wei-xian, L.I.U. (2010). Fiction of the Rights of Nature and Future Generations [J]. *Law and Social Development*, 6. Retrieved from http://en.cnki.com.cn/Article_en/CJFDTotal-SFAS201006003.htm