



Background:

Nature conservation is a human right

Biodiversity constitutional complaint by the
Bund für Umwelt und Naturschutz Deutschland
e.V. (BUND)

The ecological situation regarding the destruction of nature and the extinction of species is even more dramatic than climate change. Even if politicians and the media often overlook it: According to unanimous scientific opinion, the planetary boundaries have been exceeded even more drastically. This threatens the physical foundations of all human freedom and therefore human rights, especially those to life and health. Because without intact ecosystems, soil regeneration, functioning pollination and functioning freshwater cycles, human existence is threatened in the long term. That is why we are taking a major step and, for the first time in the world, calling for more effective nature conservation legislation before a supreme court with a lawsuit. We are suing the German legislator with the aim of obliging it to draw up a comprehensive statutory biodiversity protection concept. So far, nature has only been protected in fragments, and a significant part of the acts of parliament, for example in agricultural law with the promotion of factory farming, pesticides and over-fertilisation, is driving the loss of species and ecosystems rather than combating them. The model is the successful climate constitutional complaint, which BUND (then together with the Solar Energy Promotion Association) as the German section of Friends of the Earth was also the first to bring before the Federal Constitutional Court in 2018 in order to oblige legislation to set more ambitious climate protection targets.



Why a nature conservation constitutional complaint is necessary

The ecological situation regarding the destruction of nature and the extinction of species is even more dramatic than climate change. Both developments have been continuing unabated for decades and longer, as the regular reports of the IPBES in particular, but also the Scientific Council for the Environment of the German Federal Government (SRU), for example, show. The extinction rate of species is currently around 100 times higher than the normal evolutionary extinction rate. Almost half of the world's natural ecosystems have deteriorated in recent decades. 25% of animal and plant species, around one million species, are threatened with extinction, many of them within a few decades.

Even if politicians and the media often overlook it: According to unanimous scientific opinion, the planetary boundaries have been exceeded even more drastically with regard to biodiversity than at the climate. This threatens the physical foundations of all human freedom and therefore human rights, especially those to life and health. Without intact ecosystems, soil regeneration, functioning pollination and functioning freshwater cycles, human existence is threatened in the long term.

The concept of planetary boundaries is highly recognised in the scientific community and states that ecological boundaries exist in the form of the Earth's stress limits, which, if exceeded, endanger the stability of the Earth's ecosystem and thus the progress or even the survival of humanity. The German Federal Constitutional Court has already implicitly recognised this concept in the course of the globally recognised 2021 climate decision obtained by BUND. The nine planetary boundaries are: Climate change; overloading with novel substances; depletion of the ozone layer in the stratosphere; aerosol pollution of the atmosphere; acidification of the oceans; disruption of biogeochemical cycles; changes in freshwater systems; changes in land use and changes in the integrity of the biosphere. The limits relating to biodiversity have already been clearly exceeded.



What we want to achieve with the constitutional complaint addressing German and European nature conservation legislation

More effective nature conservation is therefore imperative for the freedom of us all. BUND, the German branch of the world's largest environmental network Friends of the Earth, is not only an environmental organisation, but also a nature conservation organisation. **That is why we are taking a major step and, for the first time in the world, calling for more effective nature conservation acts of parliament before a supreme court with a lawsuit.** BUND, together with a number of individual plaintiffs, is lodging a constitutional complaint with the Federal Constitutional Court. We are suing the German legislature – the Bundestag as the federal parliament – with the aim of obliging it to draw up a **comprehensive statutory biodiversity protection concept**. This includes an immediate halt to the loss of biodiversity and coordinated steps to restore biodiversity.

This is not only required by human rights. It is also required by the UN Convention on Biological Diversity (CBD), Article 1 of which prescribes the conservation - i.e. protection and restoration - of biodiversity for all states. And this has been the case since 1993, when the CBD came into force. Despite this, biodiversity has continued to decrease instead of halting its loss and taking comprehensive steps to restore it.

In Germany and Europe, there is currently a double threat to the freedom guaranteed by the constitution in liberal democracies: the loss of biodiversity threatens to ruin the elementary preconditions of freedom - life, health and an ecological subsistence level. Conversely, there is a threat that effective nature conservation will be postponed - although the damage is already tangible today – until it can only be done extremely quickly and thus in a way that challenges freedom.

The model for our biodiversity constitutional complaint is the successful climate constitutional complaint that BUND (then together with the Solar Energy Promotion Association) was the first to bring before the Federal Constitutional Court in 2018 to oblige legislation to set more ambitious climate protection targets. The court's 2021 climate ruling was the most far-reaching decision on better environmental legislation



by a supreme court in the world to date – besides the ECtHR climate verdict earlier this year. In 2024, BUND, again together with other associations, filed a second German climate constitutional complaint because although climate protection has made progress, it is still inadequate.

Which drivers are destroying nature

Biodiversity and ecosystem loss can be attributed to a number of causes of change in nature: Agriculture, land and marine use change, direct exploitation of organisms, climate change (which is both a cause of biodiversity loss and in turn accelerated by degraded ecosystems), pollution and invasive alien species. To a large extent, this is due to intensive farming and, in particular, excessive animal husbandry, over-fertilisation and the excessive use of pesticides - supplemented by a variety of factors associated with fossil fuels, such as urban sprawl, pollution and climate change. These direct drivers result from the underlying causes, the indirect drivers of change: a doubling of the human population, a quadrupling of the global economy and a tenfold increase in world trade over the last 50 years have led to an increasing demand for energy, food and materials.

In all of this, nature conservation is by no means something that "we cannot afford". On the contrary, it is scientifically and especially economically indisputable that the loss of biodiversity threatens to be many times more expensive than effective nature conservation. Without basic functions of nature such as water purification or pollination, humanity could not survive. Artificially substituting them is sometimes not even possible - or it is extremely expensive. As with the climate issue, it is not primarily the fight against the problem that is expensive, but the failure to fight it.



Why the current nature conservation legislation is not enough

So far, nature has only been protected in fragments, and a significant part of acts of parliament, for example in agricultural law with the promotion of factory farming, pesticides and over-fertilisation, is driving the loss of species and ecosystems rather than combating them. The rapid and so far barely slowed loss of biodiversity is the result of previous non-regulation, namely through the authorisation of biodiversity-damaging activities in agricultural, energy and transport law, for example, and through the lack of sufficiently effective protection regulations, particularly in nature conservation law.

The majority of agricultural land use consists of the production of animal-based foodstuffs, which means that the loss of biodiversity is largely a consequence of intensive livestock farming. Nevertheless, agricultural law allows practically unlimited animal husbandry. Certain requirements are set for fertilisers and pesticides in terms of products and application. However, excessive fertilisation and the widespread use of pesticides are legally permitted, at least outside protected areas under nature conservation law and thus on the vast majority of land, and even the existing limited requirements are subject to a broad enforcement deficit. Furthermore, despite individual ecological requirements, the agricultural subsidies based on EU law have so far continued to reward precisely the intensive agricultural model that drives the loss of biodiversity.

If acts of parliament still promote and authorise the destruction of nature, this cannot be compensated by nature conservation law, for example by placing individual areas or species under special protection (especially as there are also considerable enforcement deficits there). It is to be welcomed that the EU Nature Restoration Law was adopted in summer 2024. It is intended to partially remedy damage to nature in the EU member states by 2050. The regulation sets binding targets for the restoration of nature in various ecosystems and requires member states to develop corresponding concepts. Although this is a step forward for various reasons, it is still not sufficient:



- The regulation gives the EU member states a further time extension, mostly until 2050, which is too long to wait in view of the planetary boundaries that have already been exceeded.
- The regulation primarily presents (not very clear) targets. Whether appropriate measures will follow remains to be seen. It therefore depends heavily on the goodwill of the EU member states. However, in view of the ongoing loss of biodiversity, there are major doubts about this.
- In addition, the targets are riddled with holes due to many exceptions. And the targets are inadequate for the conservation that is owed - i.e. the protection and restoration of biodiversity.
- In Germany, although the Nature Restoration Law only presents a framework, no comprehensive implementation law is planned to date. A comprehensive, legally binding (!) protection concept will therefore still not materialise as things stand today.
- The Nature Restoration Law does not even address all the problem areas mentioned in the Kunming-Montreal Global Biodiversity Framework, for example, which concretises the CBD at UN level - and therefore not all the drivers of the nature crisis. For example, it says nothing about pesticides. The regulation also does not specify the percentage of the total area of an EU member state such as Germany that must be covered by protected areas.

From BUND's point of view, the human rights obligation - confirmed by the CBD - that legislation must have a comprehensive protection concept for the conservation of biodiversity therefore remains unfulfilled. We must therefore take legal action.



Complainants and the role of environmental organisations

The following persons and organisations are the complainants in the biodiversity constitutional complaint:

1. Myriam Rapior (28): Deputy Chairwoman of BUND (Friends of the Earth Germany), works in science, was active in the Federal Government's Commission for the Future of Agriculture in adopting proposals for a better coexistence of land use and nature conservation - which the government has still not put into practice.
2. Christof Martin (61): Long-standing nature conservation practitioner who has seen and denounced the ongoing disappearance of species and ecosystems for decades - he decisively initiated the biodiversity constitutional complaint with an idea and a major donation to BUND.
3. Hannes Jaenicke (64): German-American actor, audio book and dubbing actor, author - he has been known to a wide audience for decades through his commitment to species protection.
4. Jutta Wieding (37): With many years of national and international experience in environmental policy work and a career as managing director of a sea rescue organisation, she is familiar with nature conservation through her involvement in BUND at all levels, from the level of international treaties to the practical work of the district group on the orchard and sees a massive need for action for more effective nature conservation.
5. Henriette Schwabe (23): An active student in BUNDjugend, she urges that steps such as prompt post-fossilisation and a significant reduction in animal husbandry be seen as ways to find an integrated solution to most environmental problems, from climate change and biodiversity loss to the nutrient and pollutant crisis.
6. BUND Federal Association.
7. BUND Saxony: For many years, it has been committed to better protection of freedom and human rights through better environmental protection, including by land management that promotes biodiversity. The idea for BUND's various



environmental constitutional complaints originated in Saxony.

8. BUND Naturschutz Bayern: As an association, BN has been active in agriculture for a long time and therefore has extensive knowledge of how the loss of biodiversity is increasingly undermining sustainable agriculture that enables food security.

With the constitutional complaint, we are showing that individuals are specifically affected by the loss of biodiversity in terms of their freedom and its preconditions. And, following a ground-breaking climate judgement by the European Court of Human Rights in April 2024, we are also showing that environmental organisations are also entitled to make this claim. So far, this has been controversial.

Legal representation

As with the 2018 and 2024 climate constitutional complaints, the constitutional complaint is being legally represented by the law firm Baumann Rechtsanwälte - Dr Franziska Heß (specialist lawyer for administrative law) and Lisa Hörtzsch - together with Prof Dr Dr Felix Ekardt from the Research Unit Sustainability and Climate Policy, all in Leipzig.

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