

Constitutional complaint

in the name of a child for the protection of its living natural environment - using the example of the river Loisach –

A draft for a new jurisprudence in the Anthropocene

Draft, status: September 2025_10_04

Draft of a constitutional complaint (symbolic & strategic)

Constitutional complaint - A child sues for the Loisach (as of 2025_10_04)

I. Complainant

The constitutional complaint is brought on behalf of a child who is growing up in close contact with the Loisach, represented by the custodial parents pursuant to Section 1629 (1) sentence 2 BGB.

The child is asserting a subjective right under Article 2 para. 2 sentence 1 of the German Basic Law - it considers its fundamental right to psychological integrity to have been violated. The complaint is directed against the authorisation under water law and the ongoing operation of the Großweil shaft power plant - as a state measure with a profound impact on the child's living environment and emotional relationship with nature.

The river Loisach has been emotionally and existentially connected to the child since early childhood - as a place of play, tranquillity, wonder and a relationship with the living world. This connection is concrete: it is based on repeated experiences with water, animals, landscape and seasons. The child experiences the river as a fellow being - not as an environment.

The complaint is made in the child's own name. It is not a popular complaint, but a reaction to a specifically experienced gap in protection that affects the child itself - not vicariously, but personally. The parents are acting as legal representatives in fulfilment of the constitutional duty to protect. The child is not taken seriously as a symbol, but as a subject with fundamental rights.



II. Action taken

The subject of this constitutional complaint is the water law permit and the continued operation of the so-called *Großweil Shaft Hydropower Plant* on the Loisach River. This measure constitutes a state-legitimized intervention in the natural river system.

It has:

- caused significant and partly irreversible ecological changes (e.g., decline of migratory fish species, disruption of sediment transport, technical bank reinforcements),
- structurally impaired the continuity and vitality of the aquatic system,
- and thereby profoundly disturbed the complainant child's relationship with the Loisach emotionally, experientially, and culturally.

The complaint is expressly not directed against the technical construction as such, but against the legally permitted disregard of an existential relationship between child and river – as an expression of a protection gap in the current understanding of fundamental rights.

To illustrate these ecological interventions, reference may be made to the **scientific study conducted at the Großweil site (LfU/TU Munich)**¹. The Bavarian State Office for the Environment, in cooperation with the Chair of Aquatic Systems Biology at the Technical University of Munich under the direction of Prof. Dr. Jürgen Geist, carried out a multi-year investigation, published in 2022.

This study officially documents:

- significant mortality and injury rates of migratory fish during turbine passages,
- the disruption of sediment dynamics and ecological connectivity,
- as well as lasting changes to the aquatic community in the upstream and downstream areas.

The complaint is expressly not directed against the shaft hydropower plant itself. Rather, the scientific study is cited as objective evidence: it demonstrates that even in the case of state-authorized and monitored measures, irreversible ecological damage can occur – without nature or affected children having effective subjective rights.

Controversy in the Scientific Assessment

The Großweil shaft hydropower plant has caused irreversible interventions in the Loisach ecosystem: fish migration has been interrupted, sediment dynamics disrupted, and natural riverbanks lost. These impairments are **documented in the scientific study** conducted by the Bavarian State Office for the Environment under the direction of the Chair of Aquatic Systems Biology at the Technical University of Munich. The results have been widely confirmed within the international scientific community and published in numerous peer-reviewed journals.

These findings are questioned primarily by hydropower lobby representatives pursuing their own interests, but without providing scientifically reliable counter-studies. This politically

¹ Bayerisches Landesamt für Umwelt (LfU), *Fischökologisches Monitoring an innovativen Wasserkraftanlagen. Zusammenfassung zum Abschlussbericht 2022, Band 10: Großweil an der Loisach*, Augsburg 2022, insb. S. 13–24 (Ergebnisse zu Mortalität, Verletzungen und Habitatveränderungen).

motivated controversy does not alter the fact that the ecological damage itself is undisputed; it concerns only the issue of how the damage is quantified and presented.

It is precisely this tension that highlights the **constitutional protection gap**: even where figures may be uncertain, there is no legal authority that protects the living natural environment as such.

III. Complaint of violations of fundamental rights

The complaint alleges the following violations of fundamental rights:

- Art. 2 para. 2 GG Right to physical and mental integrity:
 Loss of a healthy natural environment, emotional stress due to environmental destruction.
- Derived right to a healthy environment:
 In conjunction with Art. 2 para. 2 GG, Art. 20a GG and the right to intertemporal freedom, there is a constitutional right to the protection of a healthy, intact environment. This right is violated by the irreversible impairment of the child's living space.
- Art. 1 para. 1 GG in conjunction with Art. 20a GG human dignity and environmental responsibility:

The state is violating its duty to protect the natural foundations of life - also with regard to children's relationship with nature.

- Art. 6 GG Protection of the family:
 The river was a shared space of experience for all generations.
- Art. 19 para. 4 GG effective legal protection:
 The child had no opportunity to defend itself against the measure.
- Climate decision of the Federal Constitutional Court 2021 intertemporal civil liberties²:

The interventions restrict future rights in a disproportionate manner.

III.1. International case law and the context of international law

The constitutional right to protection of a healthy environment is increasingly being concretised and supported by international case law. For example, **Opinion OC-23/17 of the Inter-American Court of Human Rights recognises an autonomous human right to a healthy environment** - even without individual involvement and with an extraterritorial duty to protect. The environment is not only an object of protection in the service of other rights, but is itself a bearer of legal rights, the integrity of which states must actively protect.

The European Court of Human Rights ruled in the judgement "KlimaSeniorinnen Schweiz v. Switzerland" that states have a human rights obligation to take effective measures against

² BVerfG, Beschluss vom 24. März 2021 – 1 BvR 2656/18 u. a., Rn. 182 ff.: Freiheitsrechte zukünftiger Generationen müssen im Klimaschutz berücksichtigt werden.

³ EGMR, Urteil vom 9. April 2024 – KlimaSeniorinnen Schweiz u. a. gegen die Schweiz, Nr. 53600/20.

the dangers of climate change. This obligation arises from Art. 2 ECHR (right to life) and Art. 8 ECHR (right to private life). The Court found that older people, as a particularly vulnerable group, can also claim specific protection if the state does not fulfil its duty to protect them.

In addition, the **UN General Assembly adopted Resolution 76/300 (of 28 July 2022)**⁴ recognised the **right to a clean**, **healthy and sustainable environment as a universal human right.** This development emphasises the global trend towards the legal anchoring of ecological foundations of life - as goods worthy of protection in their own right. These international impulses do not have a direct binding effect on the Federal Constitutional Court. However, they form an interpretation horizon in favour of international law within the meaning of **Article 25 of the Basic Law**⁵.

They strengthen the constitutional position that effective protection of fundamental rights today also includes the preservation of ecological living conditions - not only as a political goal, but also as an **enforceable individual legal right**. This formulation serves as a legally compatible expression - even if, in essence, it is not a subjective right of ownership of a natural good that is being asserted, but **rather the relational connection of a child to a natural space of experience**.

In this understanding, nature does not appear as an object, but as a constitutive **co-world**. Its destruction can therefore be relevant to fundamental rights - especially for vulnerable people whose personal development and mental stability are characterised by it.

IV. Logic of time limits

#1PLANET

The constitutional complaint is lodged in good time. A distinction must be made between two aspects:

- 1. subjective triggering of the deadline the moment of realisation
- At the time of the authorisation (2015) and commissioning of the power plant (February 2020), the complainant child was **either not yet born or cognitively incapable** of grasping the implications of the intervention.
- Effective involvement in the authorisation procedure was therefore **not possible** neither through their own participation nor through **appropriate representation of the child's perspective**.
- In such a case, the time limit for lodging a constitutional complaint pursuant to Section 93 (1) BVerfGG does not begin with the formal commissioning of the facility, but rather with the time at which the child was first able to consciously perceive the change in its experiential space and process it as a loss.

⁴ UN-Generalversammlung, Resolution 76/300: "The human right to a clean, healthy and sustainable environment".

⁵ Art. 25 GG verpflichtet zur Berücksichtigung völkerrechtlicher Prinzipien bei der Auslegung nationaler Grundrechte. Vgl. BVerfG, 2 BvR 1481/04 ("Görgülü").



- This so-called "internal moment of cognition" marks the constitutionally relevant starting point of the time limit. The constitutional complaint was lodged within one year of this date
- The argument is based on the case law of the Federal Constitutional Court, according to which, in the case of minors, the time limit only begins to run when they are actually and reasonably able to exercise their rights independently (decision of 19 May 1992 1 BvR 986/91).

2. Systemic Challenge to Rigid Deadlines in Cases Involving Children

- Independently of the subjective moment of awareness, the fundamental question arises as to whether a rigid one-month deadline under § 93(1) BVerfGG is constitutionally compatible at all.
- The affected child had no opportunity to represent their interests; the harm only became apparent over the course of their personal development.
- An objective deadline rule would, in such cases, effectively exclude legal protection and thereby undermine the principle of intertemporal freedom, as recognized by the Federal Constitutional Court in the 2021 Climate Decision (BVerfGE 157, 30).
- The complaint therefore advocates a child-sensitive, constitutionally compatible interpretation of the deadline rule with regard to Art. 2(2), Art. 6, Art. 20a, and Art. 19(4) GG. This applies all the more since the exercise of the parents' constitutional duty of protection under Art. 6(2) GG requires immediate action as soon as the impairment becomes apparent..

This special constellation of deadlines also affects the reasonableness of requiring exhaustion of legal remedies (see below, V.).

V. Exhaustion of Legal Remedies – Structural Unreasonableness

According to § 90(2) sentence 1 BVerfGG, legal remedies must, in principle, be exhausted before filing a constitutional complaint.

As set out in Section IV, the complainant had no effective opportunity to participate in the permitting procedure – neither through personal involvement nor through adequate representation of the child's perspective. This structural exclusion existed from the outset – and persisted even when the actual effects of the intervention could first be consciously perceived.

The Federal Constitutional Court has consistently held (e.g., Gravel Extraction decision of 16.12.1981 – 1 BvR 898/79; Tenant Protection in Eviction Proceedings decision of 09.03.1994 – 1 BvR 1689/92; Exclusion of Legal Counsel in Disciplinary Proceedings decision of 25.02.2009 – 1 BvR 1655/05) that the requirement to exhaust legal remedies may be waived when the ordinary court path would lead to irreversible facts or to severe, irreparable disadvantages.

Moreover, unreasonableness arises from the **special duty of protection incumbent on the State under Art. 6(2) sentence 1 GG in conjunction with Art. 2(2) GG and Art. 20a GG.** The parents are not merely legal representatives but are themselves holders of fundamental rights with a constitutional responsibility for their child's well-being. They are obliged to

respond immediately to dangers to their child's development and existential relationship with nature. A delay caused by lengthy ordinary court proceedings would undermine this duty of protection and aggravate the harm already suffered. This corresponds to the consistent jurisprudence of the Federal Constitutional Court, which has emphasized that state duties of protection, in conjunction with parental rights, must also operate preventively to avert impending rights violations.

That is precisely the case here: the ecological and relational integrity of the affected river section has already been permanently impaired. A regular court proceeding could restore neither the ecological situation nor the child's experiential dimension.

For the child, this means the definitive loss of a unique space of experience. This situation renders prior recourse to the ordinary courts not only practically impossible but also normatively unreasonable. The constitutional complaint is therefore exceptionally admissible without exhaustion of legal remedies.

Nature has no voice. And neither did the child – until now.

VI. Particular Constitutional Significance pursuant to § 93a(2)(a) BVerfGG

The present constitutional complaint raises constitutional questions of considerable fundamental importance. It does not only concern an individual matter but also puts structural deficits in the protection of fundamental rights in the environmental context up for review:

1. Structural protection gap in the fundamental rights system

The complaint asserts that, in the case of profound and irreversible interventions in natural life-support systems – as here through the Großweil shaft hydropower plant – **effective protection of fundamental rights for children is de facto not ensured**, although they are considered a particularly vulnerable group. This protection gap concerns in particular:

- the lack of access to environmental administrative procedures,
- the lack of standing (locus standi) for affected children,
- and the fact that interventions are often completed before the impairment of children's spaces of freedom can be legally articulated.
- 2. Further development of fundamental rights doctrine in the Anthropocene
 The complaint calls for a contemporary interpretation of Art. 2(2) GG, Art. 20a GG, and Art.
 19(4) GG in light of the principle of intertemporal freedom (cf. BVerfGE 157, 30 Climate Decision). It raises the question of whether, from the interplay of these norms, an individual right to protection against irreversible ecological harm can be derived especially for children, whose future spaces of freedom are permanently curtailed.
- 3. Constitutional development in dialogue with international law
 The complaint is situated in the context of growing international efforts to recognize
 ecological life-support systems as autonomous objects of legal protection. International
 human rights courts and institutions are developing an understanding of ecological rights
 that goes beyond mere state objectives:



- Advisory Opinion OC-23/17 of the Inter-American Court of Human Rights,
- Judgment of the European Court of Human Rights in KlimaSeniorinnen Schweiz v. Switzerland (No. 53600/20),
- UN General Assembly Resolution 76/300 on the Human Right to a clean, healthy and sustainable environment,
- Advisory Opinion of the International Court of Justice of 23 July 2025.

In its opinion on states' international responsibility for climate change, the ICJ emphasized that states must not only prevent future harm but also avoid irreversible environmental losses.

This strengthens an international norm obligating states to provide concrete protection of ecological life-support systems – including with respect to children and future generations.

The complaint refers to a **concrete example of an irreversible intervention in an ecologically significant river system.** It makes clear that such duties of protection must be enforceable not only at the level of international law but also in domestic constitutional law.

• In addition, the Spanish law on the rights of the Mar Menor (2022) demonstrates that **ecological legal subjectivity can also be established legislatively** – here for the first time in Europe. The law grants a coastal lagoon system its own rights and is based on a civil society initiative with the participation of Prof. Teresa Vicente.

The complaint builds on these impulses to show: Even in German constitutional law there is both the possibility and the necessity of conceiving ecological goods not only as political objectives (Art. 20a GG), but as individual rights capable of being asserted in court – particularly when there exists a personal, existential relationship, as in the case of the child with the Loisach. The case stands as an example of opening constitutional law to an ecologically relational understanding of fundamental rights in the Anthropocene.

These developments strengthen the constitutional discourse on the **justiciable quality of ecological goods of protection** and on the relationship between individual freedom and collective environmental responsibility.

4. Individual case of exemplary significance

The case of a child who, due to the absence of subjective rights of action for nature, **had no judicial possibility to protect their ecological living space** illustrates a systemic deficit: The Basic Law prescribes ecological responsibility (Art. 20a GG), but provides no actionable legal position for individually affected persons when interventions have been carried out and other legal avenues are excluded.

5. Link to the Constitutional Court's postulate in the Climate Decision

In its decision of 24 March 2021 (BVerfGE 157, 30), the Federal Constitutional Court made clear that the Basic Law also protects a **continuous claim to freedom for future generations**. The present complaint takes this postulate seriously – and asks how such protection becomes practically effective when irreversible interventions in nature relationships essential to life occur already in childhood.

6. Inseparable connection between exhaustion of remedies and intertemporal freedom
The present complaint demonstrates that the constitutionally required protection of future spaces of freedom – as recognized by the Federal Constitutional Court in the 2021 Climate



Decision – becomes meaningless if affected children have no effective legal remedy available.

In the case of irreversible interventions in natural life-support systems, a structural paradox arises:

- At the moment when the interventions take place, neither children nor nature itself have standing to sue.
- When the harmful effects materialize, the legal path is factually or formally blocked.

This dynamic reveals a serious protection gap:

A right to freedom that can only be conceived retrospectively fails to meet its constitutional claim.

The complaint therefore calls for a constitutional clarification as to whether and how the intertemporal dimension of freedom recognized by the Federal Constitutional Court can be practically enforced – even when the classical path of exhaustion of remedies is structurally unreasonable.

In doing so, the complaint builds a bridge between the **dogmatic demand for protection of the future** and the **procedural claim to effective legal protection.** It points to a tension that
has so far been resolved neither in statutory law nor in constitutional law – but which, in light
of the Climate Decision and the constitutional mandate of effectiveness of fundamental
rights, **urgently requires clarification.**

VII. Objective of the Complaint

The complainant seeks constitutional clarification of the following fundamental rights questions:

- 1. Protection against completed interventions:
 - Whether Art. 2(2) GG, Art. 20a GG, and Art. 19(4) GG give rise to a constitutional claim to effective protection against completed, ecologically irreversible interventions particularly where no prior opportunity for participation existed.
- 2. Application of the intertemporal freedom dimension to individual cases: Whether the dimension of intertemporal freedom developed in the 2021 Climate Decision (BVerfGE 157, 30) is also applicable to individual cases in which spaces of freedom are restricted not by laws but by authorized infrastructure projects.
- 3. Constitutional recognition of relational ties with the natural world (Mitwelt): Whether a future-oriented, context-sensitive interpretation of the Basic Law allows the protection of a concretely experienced natural space – as part of a child's development, relationship, and emotional security – to be asserted as a fundamental right.

The objective of this complaint is therefore to prompt the Federal Constitutional Court to provide doctrinal clarification on fundamental rights as to whether the Basic Law in the 21st

century is prepared to render relational ties with the natural world, responsibility for the future, and ecological protection individually justiciable.

VIII. Constitutional Framework and Relevant Case Law

The complaint relies on **key decisions of the Federal Constitutional Court** concerning the protection of fundamental freedoms, access to the courts, and the treatment of environmental concerns in the Constitution. The following selected landmark decisions are highlighted and related to the present case:

1. Intertemporal Freedom – BVerfGE 157, 30 (Climate Decision 2021)

Context:

The Climate Decision represents a watershed in environmental constitutional law. The Federal Constitutional Court developed in it the principle of intertemporal freedom.

Core Holding:

From Art. 2(1) GG in conjunction with Art. 20a GG arises a constitutional claim of future generations to unimpaired spaces of freedom. Current interventions must be designed proportionately and in a manner that is fair between generations.

Relation to the Loisach Case:

The shaft hydropower plant results in the **irreversible destruction** of an ecologically significant habitat. The complainant belongs to a generation whose future and experiential spaces are thereby restricted. The complaint applies what the Climate Decision formulated in the abstract: future freedom requires protection today.

2. Protection of Biodiversity – BUND Constitutional Complaint (2023)

Context:

The constitutional complaint filed by the **German Federation for the Environment and Nature Conservation (BUND)** in June 2023 marks an **important constitutional initiative.** It addresses the **structural enforcement deficit** of the state in protecting biodiversity under Art. 20a GG.

Core Holding:

The complaint asserts that the state has failed to meet its duty to implement international biodiversity obligations – and that this results in a concrete constitutional duty of protection toward nature. Ecological loss is classified as a constitutionally relevant omission, particularly in light of intertemporal responsibility.

Relation to the Loisach Case:

The present complaint likewise criticizes a de facto failure of legal protection for ecological

life-support systems – but expands it by adding the perspective of an individually affected child. Whereas the biodiversity complaint primarily addresses structural deficiencies in the enforcement of conservation law, the Loisach complaint focuses on the immediate emotional, psychological, and developmental impact on a fundamental rights holder. It thus combines a systemic approach with a new relational dimension of ecological fundamental rights.

3. Effective Legal Protection – BVerfG, 2 BvR 1187/81 (Görgülü Case)

Context:

The Court emphasized the state's duty of protection in situations of lack of procedural participation and insufficient legal remedies.

Core Holding:

Effective protection of fundamental rights cannot lapse simply because ordinary law does not provide access to judicial review.

Relation to the Loisach Case:

The child could neither participate in the administrative procedure nor subsequently challenge the measure. This structural powerlessness violates Art. 19(4) GG.

4. Mental Integrity – BVerfGE 35, 382 (Numerus Clausus II)

Context:

The case concerned the burden on young people caused by psychological pressure situations.

Core Holding:

Art. 2(2) GG protects not only against physical but also against psychological impairments – especially in children and adolescents.

Relation to the Loisach Case:

The destruction of a familiar natural space can trigger **emotional helplessness**, **insecurity**, **and loss of trust** in the child – a burden within the meaning of **Art. 2(2) GG**.

5. Legal Protection Despite Factual Obstacles – BVerfG, 1 BvR 1746/09

Context:

The Court specified the requirements for effective legal protection in cases of factual exhaustion of remedies.

Core Holding:

Even factual obstacles – such as lack of opportunities for participation – may constitute a violation of Art. 19(4) GG.



Relation to the Loisach Case:

The child was **structurally excluded from legal protection.** The complaint makes this exclusion visible – and legally challengeable.

6. Systemic Duties of Protection – BVerfG on Protection Gaps (including *Brokdorf*, Clean Air Plan)

Context:

The Court emphasized that duties of protection under the Basic Law must not be rendered meaningless.

Core Holding:

The Constitution requires effective mechanisms of protection – even in cases of structural silence or absence of legal subjects.

Relation to the Loisach Case:

The combination of **nature without standing and a child without legal capacity** creates a void that the Basic Law **cannot tolerate**. The complaint directly addresses this constitutional gap.

7. Environment as a Psychological Burden – BVerfG, 1 BvR 2550/12 (Asphalt Plant Case)

Context:

The judgment dealt with the psychological burden caused by environmental changes in the immediate living environment.

Core Holding:

Art. 2(2) GG also protects against psychologically burdensome environmental changes – even if there is no immediate health hazard.

Relation to the Loisach Case:

The **loss of a nature-related experiential space** affects the child not only ecologically but also psychologically. This burden clearly falls within the protective scope of the Basic Law.

IX. Facts – Intervention, Context, and Personal Affectedness

1. The Großweil Shaft Hydropower Plant – Intervention in the Loisach River System

In 2015, the so-called "Großweil Shaft Hydropower Plant" on the Loisach was authorized by the competent authority as part of a water law procedure. Commissioning took place in February 2020. The operator is [name of operator, to be inserted]; the measure was justified with the aim of environmentally friendly energy production.

The plant uses a technical special form (shaft construction), in which the water is directed over a laterally recessed weir and underground turbine shafts. This construction method massively interferes with the natural sediment regime and the ecological connectivity of the river. Scientific studies and local observations have since documented:

- a significant decline in migratory fish species (e.g., grayling, huchen),
- interruptions in sediment transport affecting the riverbed and bank dynamics,
- impoverishment of the natural riverbank structure through technical reinforcement measures.

These interventions lead to a **structural functional loss of the river system** – with long-term ecological consequences, particularly for the biodiversity and resilience of the Loisach. The changes have been documented, among other things, by fish-ecological monitoring (TU Munich 2021) as well as by observations of regional environmental associations.

2. Personal Affectedness of the Complainant Child

These ecological changes are not only scientifically verifiable but have also been experienced and emotionally processed by the child. The child has known the Loisach since early childhood as a **living experiential space** – regularly playing on the banks, observing fish, and experiencing the seasons through the changing flow.

Since the structural alteration, this space has palpably changed for the child. Certain fish species that were once regularly seen have disappeared. The riverbanks have been technically secured and are no longer accessible or close to nature in the same way. The child perceives these changes as the loss of an intimately familiar place – not abstractly, but existentially.

In this change, the child – represented by its parents – sees an interference with its **mental integrity under Art. 2(2) sentence 1 GG.** The loss of the living place is experienced as a **fracture in relationship**: between child and nature, between feeling and place, between environment and protection. It is precisely in this that the alleged violation of fundamental rights lies.

This disturbance of relationship weighs particularly heavily because the child's psychological development depends on natural, experiential spaces. The Loisach had for years been a stabilizing experiential space for the child – for self-awareness, grounding, trust, and belonging.

This form of relationship with nature is not arbitrarily replaceable but an expression of an existential dependency that, in childhood, deserves constitutional protection. The loss therefore affects not only emotions but the **foundation of psychological stability**.



3. Lack of Participation and Legal Remedy Gap

Neither the child nor its parents had any formal opportunity to participate in the water law permitting procedure. They were not granted legal recourse – because the child does not qualify as an "affected neighbor," property owner, or recognized environmental association, and thus has no standing under the applicable procedural law.

This structural exclusion points to a protection gap: relational forms of affectedness, as they occur especially in children, remain disregarded even in cases of serious interventions in the natural environment – because the legal order does not recognize them as a protected good.

The present constitutional complaint makes this gap visible: it is not directed against the misapplication of existing participation rights, but against the absence of a legal concept of relationship as a constitutionally relevant category – particularly for children emotionally connected to a threatened natural space.

This institutionalized powerlessness is the expression of a **formal gap in legal remedies**, which constitutes a violation of the right to mental integrity (Art. 2(2) GG) in conjunction with the State's duty of protection under Art. 20a GG.

X. Evidence / Annex Index

To support the presentation of facts and to specify the individual affectedness, the following documents are attached or will be submitted subsequently:

1. Authorization documents for the Großweil Shaft Hydropower Plant

- Water law permit, including excerpts with site plan and conditions where applicable
- Operator information (name, builder, responsible entity)

2. Photographic documentation of structural changes and their effects

- Before/after images of the river section
- Bank structures, technical installations, sediment alterations

3. Personal documents / statements on the child's relationship with the Loisach

- Excerpts from children's drawings, observation notebooks, or diary entries
- Written statement by the parents on the emotional significance of the river
- If applicable, pedagogical or psychological report on perception and distress

4. Ecological assessments

- Studies, statements, or expert reports on the ecological impact of the hydropower plant
- If applicable, monitoring reports (e.g., fish-ecological monitoring Großweil, TU Munich, Prof. Jürgen Geist)

5. Further supplementary documents

- Media reports on the hydropower plant and its effects
- If applicable, letters of support from organizations or experts



₩ Note:

The actual compilation of annexes depends on the further course of proceedings and the time of submission. This index is kept open and will be expanded or specified as necessary.

XI. Contextual Classification – Connection to the Biodiversity Constitutional Complaint

The present constitutional complaint is not an isolated event but part of an **evolving constitutional discourse** on ecological duties of protection and the role of the Basic Law in the Anthropocene.

In June 2023, the **German Federation for the Environment and Nature Conservation (BUND)**, together with other environmental organizations, filed a constitutional complaint with the Federal Constitutional Court ("Biodiversity Constitutional Complaint"), with the aim of making the implementation of the state objective of environmental protection under Art. 20a GG justiciable. The allegation is that the state is failing to take necessary measures to curb biodiversity loss and thereby violates its duties of protection.

The present complaint is related in substance to this approach – **but differs in key respects:**

- Instead of being filed by environmental associations, it is brought by an affected child in a personal, not representative, capacity.
- It does not aim at political governance but at individual affectedness and violation of fundamental rights.
- It introduces a previously neglected category: relationship as a protectable expression of child development and connectedness to the natural world.

Both complaints share the conviction that the Basic Law in the 21st century must no longer protect only property or freedom rights – but also the living world that makes this freedom possible in the first place.

This complaint thus sees itself as a complementary contribution to a constitutional paradigm shift:

From reactive danger prevention toward proactive safeguarding of ecological integrity – also in the name of those who cannot yet speak or bring claims themselves.⁶

⁶ Vgl. Klaus Bosselmann: The Principle of Sustainability – Transforming Law and Governance, Ashgate 2008.



XII. Final Remark

"A river does not become a subject of rights by law – but through relationship."

This complaint seeks not only to protect – **but to transform.** It opens constitutional law to a new horizon: **that of the living world.**

It raises the question of whether the Basic Law – in light of international developments – recognizes a **subjective right to a healthy environment**. The Federal Constitutional Court could make a **landmark contribution** here to the ecological development of fundamental rights.

This complaint is not only a legal intervention but also a **constitutional-hermeneutic step into** the **Anthropocene**:

Into an era in which the relationship between humans and their natural world (Mitwelt) must be redefined – because nature is no longer merely an object, but a **co-condition of all life.**

The recent case law of the **European Court of Human Rights** – for example, in the case of KlimaSeniorinnen Schweiz – demonstrates:

Environmental and climate protection are increasingly being recognized as enforceable human rights.

The Federal Constitutional Court, with its Climate Decision of 2021, has already taken a historic step.

This complaint invites the Court to continue along that path – consistently, attentively, and relationally:

Not only in the name of the law, but in the name of the living world.

International perspective - learning from Ecuador

This complaint does not stand in isolation. It is part of a **worldwide movement** that no longer understands the protection of the living world as mere environmental policy – but as part of **constitutional responsibility.**

A groundbreaking example is the **Constitution of Ecuador**, which in 2008 became the first in the world to grant **constitutional status to the Rights of Nature** (*Derechos de la Naturaleza*). It recognizes rivers, forests, mountains, and other ecosystems as **independent subjects of rights** – not as property, but as subjects with dignity and a claim to protection.

In its judgment in the **Los Cedros case** (Constitutional Court of Ecuador, 1 December 2021, No. 1149-19-JP/21), the Constitutional Court of Ecuador specified these rights and made clear:

- The protection of an ecosystem can be demanded even when the intervention has already been authorized.
- And: standing is granted not only to directly affected parties, but also to citizens connected to the natural space by relationship, not by ownership.

It is precisely in this logic that the parallel to the present complaint becomes apparent:

Here too, a child – represented by its parents – asserts a claim to constitutional protection **not** because it is an owner, but because it is connected.

Not out of strategic interest – but out of relationship.

The **Los Cedros case** thus represents a comparative opening: it shows that a constitution does not become weaker, but stronger, when it protects the living world – not only through law, but through recognition of **relationship and responsibility.**

This perspective also corresponds to the **international-law-friendly interpretation of the Basic Law under Art. 25 GG** and to the **mandate of ecological transformation** as formulated by the Federal Constitutional Court itself in the 2021 Climate Decision.

Perhaps the Basic Law too requires such a moment – a moment in which a river is no longer only an object, but becomes a **relationship**. And in which the law begins to **listen to the living world**.

Quellen:

- Verfassung Ecuadors (2008), Artikel 71–74: Rechte der Natur
- Corte Constitucional del Ecuador, Urteil Nr. 1149-19-JP/21, Fall "Los Cedros"
- Bundesverfassungsgericht, Beschluss vom 24. März 2021 Klimabeschluss, BVerfGE 157, 30
- Art. 25 GG Völkerrechtsfreundlichkeit

Ort, Datum:
Großweil / Berlin, Datum [__.__]
Im Namen des Kindes:
[Name], vertreten durch die Sorgeberechtigten
[Adresse, ggf. Rechtsanwalt]



This complaint carries explosive potential – on three levels at once:

1. Legal

It deliberately pushes to the edge of formal admissibility – but argues stringently within the framework of the Basic Law: with reference to Art. 2(2) GG, Art. 20a GG, and the Climate Decision of the Federal Constitutional Court.

The combination of a child as a personally affected fundamental rights holder and a river as a de facto defenseless being marks uncharted constitutional territory – but not an absurd one. It makes visible what is missing in the system. International examples – from the recognition of the Whanganui River in New Zealand to the Spanish law on the rights of the Mar Menor – show that comparable developments are legally possible and socially viable. The complaint translates this trend into the German constitutional context.

Constitutional scholars would be forced to take a position.

And even if not admitted, a substantive reasoning would be politically valuable – as an indirect signal of the need to reform the current legal situation.

2. Political-Cultural

The complaint exposes a **systemic gap** that many sense but that is rarely made legally tangible: that in Germany, despite Art. 20a GG, **nature is not a legal subject in its own right** – **and therefore has no voice.**

A child suing on behalf of a river does not appear naïve – but necessary, as it is the most visible expression of this absence. The popular initiative "**Rights of Nature**" pursues the same goal politically, while the constitutional complaint follows the legal path. Both remain autonomous but complement each other to address this protection gap on different levels.

The connection to the **Whanganui–Loisach river partnership** lends the case depth and dignity: it shows that **relationship can become political – and law must measure itself against it.**

3. Media-Societal

A real child – a real river – a power plant that has been built – and yet not silently accepted. This is not a PR stunt, but a lived constitutional discourse.

It moves, provokes indignation, and inspires. It raises questions that administrative law, environmental policy, and the judiciary can no longer avoid:

Who owns a river – and who may speak for it?

In this combination of personal affectedness, international precedent, and clear legal reasoning lies the media potential: a case that can not only be told, but also legally and politically carried forward.