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LEGAL PERSONALITY OF NATURE ELEMENTS AS A NEW INSTRUMENT OF ENVIRONMENTAL PROTECTION.¹ INTRODUCTORY ISSUES

Abstract

The article examines the concept of giving legal personality to the elements of nature as an innovative instrument of environmental protection. It presents the evolution of this idea, from the theoretical considerations of Christopher D Stone in the 1970s to specific legal solutions currently operating in various legal systems. The Spanish legislative solution for the Mar Menor lagoon, which is the first example in Europe of recognizing an element of nature as a legal entity, is analyzed in detail. It also discusses a citizens' legislative initiative to give legal personality to the Oder River in Poland, which was created in response to the 2022 environmental disaster. The article distinguishes between two main approaches to the concept of rights of nature: the 'indigenous' approach, based on the traditions and beliefs of indigenous peoples, and the 'legal' or 'pragmatic' approach, aimed at increasing the effectiveness of environmental protection. The author argues that giving legal personality to the elements of nature, despite some controversy, can be an effective legal tool to complement existing environmental protection mechanisms, responding to the challenges of today's environmental crisis.

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KEYWORDS

Rights of Nature, the Mar Menor legal personality, the Oder River legal personality

SŁOWA KLUCZOWE

Prawa Natury, osobowość prawna Mar Menor, osobowość prawna rzeki Odry

I. INTRODUCTION

The concept of recognizing elements of nature as having legal personality is slowly ceasing to be an exotic legal construct. In Latin American countries, it is a tool in the hands of those fighting environmental pollution. In New Zealand, Canada, the United States, there are more and more examples of solutions showing a new way in environmental protection – by recognizing particularly valuable natural resources as having their own rights. The purpose of the article is to present the realization of the concept of recognizing the elements of nature as independent subjects of law. The Spanish solution – the recognition of the legal personality of the Mar Menor Lagoon, as the closest to European legal culture, was taken as the object of analysis. The assumptions of the law on the legal personality of the Oder River, which is the subject of a citizens' legislative initiative, are also presented. The article is only an introduction to a much more important issue from a practical point of view, which can be defined as the question of whether giving legal personality to an element of nature (e.g., the Oder River) will allow for its better protection.

II. NATURE'S OWN LAWS OF THE ELEMENTS

Since at least the 1970s, the concept of endowing elements of nature with legal personality has emerged in legal discourse. The forerunner of this concept is considered to be Christopher D Stone, who, in an article published in 1972, 'Should Trees Have Standing? Toward Legal Rights for Natural Objects',² began a scientific discussion on the possibility of granting legal personality to such elements

² Christopher D Stone, 'Should Trees Have Standing? Towards Legal Rights for Natural Objects' (1972) 45 Southern California Law Review 450–501. This article was later developed into a book; see the 2010 3rd edition, published under the title *Should Trees Have Standing? Law, Morality and the Environment* (Oxford University Press 2010). Further references are to the 2010 edition.

of nature as mountains, rivers and ecosystems. The author advocated giving parts of nature legal personality in order to provide them with greater protection, but above all, he called for redefining the relationship between humans and nature.

Currently, the concept of granting legal personality to elements of nature has found its way into both legal discourse and specific legal solutions. The literature on this subject is already very extensive.³ At the same time, more and more legal orders are recognizing this solution as a useful tool for achieving certain environmental protection goals.⁴

The granting of legal personality to the elements of nature is now not just a marketing gimmick or media activity, but represents a search for effective ways to protect valuable natural resources that belong to everyone, but are being systematically degraded. The crisis of existing nature protection regulations is widely recognized, and the search for new, effective mechanisms is becoming a necessity. There are already more than 400 solutions in the world that introduce independent rights of nature into legal orders.⁵ They include not only the best-known examples, such as the Whanganui River in New Zealand, the Magpie River in Canada or the Atrato River in Colombia, but also the Mar Menor lagoon in Spain, which became the first example in Europe of applying the concept in legislative practice.

III. THEORETICAL FOUNDATIONS OF THE CONCEPT OF RIGHTS OF NATURE

Concepts of recognizing elements of nature as having legal personality have been appearing for many years as proposals for a new approach to ecology. Increasingly,

³ See, among others, Hope M Babcock, 'A Brook with Legal Rights: The Rights of Nature in Court' (2019) *Ecology Law Quarterly* <<https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=2118&context=elq>>; Erin L O'Donnell, Michelle Maloney, Christine Parker, 'New Developments in the Legal Status of Rivers' (2017) <https://law.unimelb.edu.au/data/assets/pdf_file/0007/2516479/Legal-rights-for-rivers-Workshop-Report.pdf>; Yenny V Cárdenas, Daniel Turp (eds), *A Legal Personality for the St. Lawrence River and other Rivers of the World* (Montréal 2023).

⁴ See Australia (Yarra River): Erin L O'Donnell, Julia Talbot-Jones, 'Creating Legal Rights for Rivers: Lessons from Australia, New Zealand, and India' (2018) *Ecology and Society* <<https://www.ecologyandsociety.org/vol23/iss1/art7/>>; Ecuador (Vilcabamba River): Maria V Berros, 'Defending Rivers: Vicamaba in the South of Ecuador' (2017) <<http://www.environmentandsociety.org/perspectives/2017/6/article/defending-rivers-vilcabamba-south-ecuador>>; USA (Colorado River): Cristy Clark and others, 'Can You Hear the Rivers Sing? Legal Personhood, Ontology, and the Nitty, Gritty of Governance' (2017) 45 *Ecology Law Quarterly* 788–844.

⁵ Data from the UN Harmony with Nature website: <<http://www.harmonywithnatureun.org/rightsOfNature/>> and from the interactive map <<https://observatoirenature.org/observatorio/en/interactive-map/>>.

these concepts are also becoming binding law. At different levels and in different legal systems, we can identify at least dozens of solutions operating in the laws of different countries which are based on the recognition of the elements of nature as independent subjects of law. The vast literature on the subject shows that this is a media-carrying issue and raises a number of controversies.⁶ At the same time, the popularity of such solutions shows the problems with the functioning of the measures used so far in nature conservation. The legal system is often helpless in the face of nature protection problems; State bodies do not act or act in a dilatory manner. At the same time, the growing awareness of environmental threats in society is increasing the popularity of ideas such as giving legal personality to elements of nature that are particularly valuable. Also in Poland, on the one hand, this issue is becoming the subject of doctrinal considerations, on the other hand, there are voices on the possibility of recognizing the Oder or Vistula rivers as a legal entity.⁷

Legal entity is an artificial construct, taking its origin in legal doctrinal considerations.⁸ Commercial companies, cooperatives, and foundations do not realisti-

⁶ See, among others, Hope M Babcock, 'A Brook with Legal Rights: The Rights of Nature in Court' (2016) *Ecology Law Quarterly* <<https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=2118&context=elq>> accessed 5 November 2019; O'Donnell, Maloney, Parker 'New developments in the legal status of rivers', 11 August 2017, <https://law.unimelb.edu.au/data/assets/pdf_file/0007/2516479/Legal-rights-for-rivers-Workshop-Report.pdf> accessed 5 November 2019. See also the comprehensive study on The New Zealand Treaty, Tikanga Māori, 'Ecosystem-Based Management, Mainstream Law and Power Sharing for Environmental Integrity in Aotearoa New Zealand – Possible Ways Forward'; Dr. Robert Joseph, Mylene Rakena, Mary Te Kuini Jones, Dr. Rogena Sterling and Celeste Rakena Te Mata Hautū Taketake – the Māori and Indigenous Governance Centre Te Piringa-Faculty of Law, University of Waikato 2019, see also the comprehensive monograph edited by Yolanda V Cárdenas and Daniel Turp, *A Legal Personality for the St. Lawrence River and other Rivers of the World Montréal*, 2023, and literature cited there, also Craig M Kauffman, Pamela L Martin, *The politics of rights of nature*, 2021 <<https://direct.mit.edu/books/oa-monograph/5158/The-Politics-of-Rights-of-NatureStrategies-for>> accessed 10 May 2025.

⁷ Samanta Kowalska, 'Natural law and the rights of nature – in search of more effective environmental protection' (30 December 2023) 15 *Adam Mickiewicz University Law Review* 273–292, <<https://doi.org/10.14746/ppuam.2023.15.13>>; Samanta Kowalska, 'Rights of nature in environmental protection and strengthening environmental security' (20 June 2023) 2 *Legal Studies of the Catholic University of Lublin* 43–61 <<https://doi.org/10.31743/sp.13976>>; Bohdan Widła, 'Rights of Nature? Property and legal subjectivity in the Anthropocene' in Katarzyna Jasikowska, Michał Palasz, (eds), *In five twelfths the end of the world. The climate-ecological crisis with the voice of many sciences* (Kraków: Jagiellonian University in Kraków, Jagiellonian Library 2022) 513–539 <<https://za512.uj.edu.pl/>>; See the 2023 issue of *Pismo* No 8 devoted to this and a number of articles posted there. Also Stanisław Kordasiewicz, 'Explanatory Memorandum to the Draft Law on the Legal Personality of the Oder River', <www.osobaodra.pl> accessed 10 May 2025.

⁸ See more extensively Józef Frąckowiak, 'Legal Persons' in Marek Safjan (ed), *System Prawa Prywatnego. Volume 1. civil law – general part*, (Warsaw 2007) 1003–1108.

cally exist as physical entities. They have their assets (or not), authorities, but it is difficult to attribute to them a real, material existence. In the case of a limited liability company, its legal personality is based on the fulfillment of several abstract conditions – the collection of a certain amount of share capital, the signing of a memorandum of association, the election of a registered office, the appointment of the company’s board of directors and the filing of an application with the court of registration.⁹ Thus, a new legal entity is created. Recognizing a river as a legal entity is not so far from the already accepted solutions in the legal system. In the case of a river, we are dealing with a real designator; we can physically see it, determine its interests and scope of protection. The legislator decides which entity has legal personality, and in the case of legal entities, also determines the scope of their powers and duties. Likewise, the legislature may decide to establish new categories of legal entities and determine their method of representation as well as rules of functioning in legal transactions.

The argument for extending the concept of legal personality to environmental elements is based in large part on the ineffectiveness of existing solutions. Nature needs protection, and in order to receive it, it should obtain legal personality and its own independent rights – in this way, it could, through its representatives, act against those causing its degradation and obtain appropriate compensation.¹⁰ In this concept, there is a fundamental reevaluation – it is not man that is in the center of attention, but nature.¹¹ The court would assess the damage to the environment without the need to show a direct connection to human interest.

At the same time, as Christopher D Stone stated, ‘to say that the environment should have rights does not mean that it should have every right we can imagine, or even the same rights that human beings have. Nor can it be said that everything in the environment should have the same rights as every other thing in the environment’.¹² The scope of the rights of a legal entity that is an element of nature can, therefore, be shaped differently from the rights of other legal entities, taking into account the specifics of the protected object.

⁹ This is the case in Polish law; in other legal systems, the formation of a legal entity may be even more simplified.

¹⁰ As Stone (n 2) 6–7, puts it, even if an aggrieved party (an individual or legal entity) wins a case in court for river pollution, ‘no money goes to the stream itself to repair its damage’.

¹¹ See consideration of the changing relationship between nature and man in the context of property rights: Anne De Vries-Stotijn, Ilon Van Ham, Kees Bastmeijer, ‘Protection through Property: From Private to River-Held Rights’ (2019) *Water International* <https://www.tandfonline.com/doi/full/10.1080/02508060.2019.1641882>, 4–5.

¹² Stone (n 2) 4.

IV. TWO APPROACHES TO THE RIGHTS OF NATURE: INDIGENOUS AND LEGAL

In legal practice, we can observe two main approaches to recognizing the rights of nature. The first, which can be described as ‘indigenous’, derives from the traditions and beliefs of indigenous peoples, for whom elements of nature have special, often spiritual significance. An example of this approach is the recognition of the Whanganui River in New Zealand as a legal entity, which respected the beliefs and traditions of the Maori, for whom the river has special cultural and spiritual significance.¹³ Concepts of natural rights in Latin America often derive from the worldview of indigenous peoples. The Bolivian constitution directly refers to the power of the Pachamama (Mother Earth) to rebuild the country. The influence of animistic beliefs is evident here, as well as the fundamental idea that a good life is only possible in harmony with nature.

The roots of this concept go back to the various local worldviews of the peoples of Oceania, Africa and the Americas. Respect for the beliefs of indigenous peoples (Maori) was the basis for the recognition of the Whanganui River as a legal entity in New Zealand.¹⁴ The Inter-American Court of Human Rights, in its ruling in the *Awas Tingni* case, stated: ‘Indigenous peoples, by the very fact of their existence, have the right to live freely in their territories; the close relationship that indigenous peoples have with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity and their economic survival. For indigenous communities, the relationship with the land is not merely a matter of possession and production, but a material and spiritual element that they must make full use of, including to preserve their cultural heritage and pass it on to future generations’.¹⁵

¹³ See Report ‘The Treaty, Tikanga Māori, Ecosystem-Based Management, Mainstream Law and Power Sharing for Environmental Integrity in Aotearoa New Zealand – Possible Ways Forward’, University of Waikato 2019 <<https://sustainableseaschallenge.co.nz/sites/default/files/2019-02/MAIN%20TuhonohonoSSeas%20Final%20Report%20Nov%202019.pdf>>. From the literature, see, among others, Jerzy Bieluk, ‘River as a Legal Person’ (2020) 3 *Studia Iuridica Lublinensia* <<https://journals.umcs.pl/sil/article/view/10517>> accessed 10 May 2025.

¹⁴ See Report ‘The Treaty, Tikanga Māori, Ecosystem-Based Management, Mainstream Law and Power Sharing for Environmental Integrity in Aotearoa New Zealand – Possible Ways Forward’, University of Waikato 2019 <<https://sustainableseaschallenge.co.nz/sites/default/files/201902/MAIN%20TuhonohonoSSeas%20Final%20Report%20Nov%202019.pdf>>.

¹⁵ Judgment *Mayagna (Sumo) Community of Awas Tingni v Nicaragua*, C/79 (31 August 2001) <https://www.corteidh.or.cr/docs/casos/articulos/seriec_79_ing.pdf>.

Several avenues for the recognition of rights of nature can be distinguished, which are particularly evident in Latin American countries.¹⁶ In some countries, such as Ecuador and Bolivia, rights of nature have been recognized at the constitutional level. The preamble of Ecuador's 2008 constitution, like the preamble of Bolivia's 2009 constitution, contains references to the rights of nature. Such provisions can provide the basis for specific legal arrangements to protect certain natural goods. The second avenue for recognizing the legal personality of parts of nature is through reinterpretation of laws by the courts. An example of this path is the decision of the Colombian Constitutional Court, which in 2016 recognized the Atrato River as a subject of law.¹⁷ This law-making action by the courts paved the way for further rulings, including the recognition of the Colombian Amazon as a legal entity. Similarly, in the case of the Ganges, it was a court decision that led to the river's (temporary) recognition as a legal entity.

The second approach, which can be described as 'legal' or 'pragmatic,' is based on the desire to increase the effectiveness of environmental protection by giving the elements of nature the status of legal subjects. In this approach, we do not refer to man's spiritual bond with nature, but to the practical benefits of recognizing nature as a legal subject equipped with its own rights. The starting point becomes the ineffectiveness of existing nature protection regulations and the search for new mechanisms, but based on the existing legal system and its values. This approach is represented by the case of the Mar Menor lagoon in Spain, recognized as a legal entity on 18 February 2022. A similar direction can be seen in the draft law on the legal personality of the Oder River.

The Spanish legislator is not appealing to indigenous beliefs or relying on a supernatural bond between man and nature. Instead, it creates a pragmatic legal solution as an effective tool to protect the Mar Menor lagoon. This solution fits into the concept of a private legal entity – the lagoon has its own interests, can suffer damage on its own account, can go to court, and can claim compensation. This is not a concept as alien to the European legal order as it might initially seem.

As Marco Aparicio rightly points out,¹⁸ writing about the regulation of the Mar Menor, we are far from the anthropocentric turn advocated in Latin America,

¹⁶ See Maria V Berros, 'Los dos caminos del reconocimiento de los derechos de la naturaleza en América Latina' (2022) *Revista Catalana de Dret Ambiental* <<https://revistes.urv.cat/index.php/rcda/article/view/3297>> accessed 11 May 2025.

¹⁷ Decision of the Constitutional Court of Colombia on the rights of the Atrato River, reference T. 622 of 2016.

¹⁸ Marco Aparicio, *Derechos colectivos, derechos de la Naturaleza y defensa de lo común. Hoja de ruta para un futuro posible* s. 311 <<https://opo.iisj.net/index.php/osls/article/view/1761>> accessed 11 May 2025.

among others. We are far from incorporating the rights of nature into the constitution or appealing to a spiritual connection with nature. The European view is much more utilitarian. It seems that we are still far from conceiving the rights of non-human subjects similarly to the rights of humans. Rather, the idea is to green the law, to create a tool to serve people through the lens of public goods. It is not because Mar Menor has been recognized as a legal entity that we want a paradigm shift from anthropocentric to biocentric, but because there has been an ecological catastrophe that previous legislation has failed to prevent. Similarly, in Poland, the sources of the desired changes in the law are sought in existing legal constructs. Which is not at all to say that the spiritual narrative is not present in the argument (see personodra.pl), still more than we are a river, it suits us to be safe in the river.¹⁹

V. MAR MENOR – GENESIS AND ENACTMENT OF THE LAW

On 18 February 2022, the Parliament of the Region of Murcia passed a law granting legal personality to the Mar Menor. The law, the first of its kind in Europe, treats the lagoon as a living, dynamic ecosystem with its own rights to maintain ecological integrity, natural regeneration and protection from harmful human activities.²⁰ The law defines a lagoon as a legal entity capable of having rights, an ecosystem in need of comprehensive protection, and an integral ecological system of great importance.

The Mar Menor is a shallow, brackish-water body of water of about 170 square kilometers, separated from the Mediterranean Sea by a narrow strip of land called La Manga. The ecosystem is extremely fragile and has a unique biodiversity, including numerous species of fish, birds and marine organisms.²¹ Over the past decades, the lagoon has experienced severe ecological degradation due to:

- intensive agriculture in the surrounding region,
- chemical pollution from fertilizers and pesticides,
- overexploitation of water resources,

¹⁹ See Aparicio *ibid* 312.

²⁰ Law on the Mar Menor (Ley 19/2022), passed by the Parliament of the Region of Murcia on 18 February 2022.

²¹ Eduardo Salazar-Ortuño & Teresa V Giménez, ‘La iniciativa legislativa popular para el reconocimiento de personalidad jurídica y derechos propios al Mar Menor y su cuenca’ (2022) 13(1) *Revista Catalana De Dret Ambiental* <<https://doi.org/10.17345/RCDA3312>>.

- uncontrolled urbanization of adjacent areas,
- runoff of nutrients that cause eutrophication.²²

The immediate impetus for legislative action was the ecological disaster associated with, among other things, the mass extinction of fish in the lagoon. The images of beaches strewn with dead, decomposing fish became a clear signal to take action of a different nature from what had previously been used.²³

The preamble to the law clearly states the reasons for its enactment: ‘There are two reasons for this law: on the one hand, the serious socio-environmental, ecological and humanitarian crisis that the Mar Menor and the residents of its coastal municipalities are experiencing; on the other hand, the inadequacy of the current legal system of protection, despite the important regulations and instruments of a legal nature that have been introduced over the past twenty-five years’.²⁴

VI. SCOPE OF THE MAR MENOR LAGOON RIGHTS

The Law defines the basis for the existence of the Mar Menor lagoon in the legal environment. Article 2 (2) of the Law defines the scope of the lagoon’s rights:

- a) Right to exist and natural evolution: The Mar Menor is subject to a natural order or ecological law that allows it to exist as a lagoon ecosystem and as a terrestrial ecosystem in its basin. The right to exist means respecting this ecological law to ensure the ecosystem’s equilibrium and regulatory capacity in the face of imbalances caused by anthropogenic pressure, mainly from the basin.
- b) Right to Conservation: The right to protect means to limit, stop and not authorize those activities that pose a risk or harm to the ecosystem.
- c) Right to Conservation: The right to conservation requires action to protect species and terrestrial and marine habitats and manage associated protected natural areas.
- d) Right to Restoration: The right to restoration requires, after damage has occurred, remedial actions in the lagoon and its catchment area that

²² Andrea García de Enterría Ramos, ‘La personalidad jurídica de los entes naturales: ¿un cambio de paradigma?’ (2023) 4 *Legebiltzarreko Aldizkaria – LEGAL – Revista del Parlamento Vasco* 8–37 <<https://doi.org/10.47984/legal.2023.007>>.

²³ Media information documenting the environmental disaster in the Mar Menor lagoon <<https://www.portalmorski.pl/rybolowstwo/49139-tony-martwych-ryb-u-poludniowo-wschodnie-go-coast-spain>>.

²⁴ Preamble to the Mar Menor Law (Ley 19/2022).

restore natural dynamics and resilience, as well as related ecosystem services'.²⁵

The Mar Menor lagoon's rights thus defined form the basis for determining possible actions directed at enforcing those rights. The scope of the lagoon's rights determines the points at which it can, through its representatives, act to protect its own interests. The Mar Menor lagoon becomes an autonomous legal entity with a defined scope of authority and with a defined sphere, the violation of which will meet a legal response. The lagoon ceases to be an object of protection and becomes a subject with its own rights and the power to protect them.

VII. MAR MENOR LAGOON REPRESENTATION SYSTEM

Laguna Mar Menor, like other legal entities, operates through its bodies. According to Article 3 of the law, the representation and management of the Laguna Mar Menor and its river basin are handled by three bodies:

1. Representative Committee consisting of representatives of the public administration operating in the area and citizens of the riverine municipalities;²⁶
2. Monitoring Commission (Guardians of the Mar Menor Lagoon);
3. Scientific Committee, which is an independent body consisting of scientists and experts, representatives of universities and research centers.

The law stipulates certain powers of the various bodies. The Representative Committee is tasked with proposing measures for the protection, conservation, maintenance and restoration of the lagoon, as well as supervising and monitoring compliance with the rights of the lagoon and its basin, based on the actions of the Monitoring Committee and the Scientific Committee.

The Monitoring Commission is composed of individuals representing the municipalities bordering the Lagoon and its basin (Cartagena, Los Alcázares, San Javier, San Pedro del Pinatar, Fuente Álamo, La Unión, Murcia and Torre Pacheco), appointed by the respective City Councils, and representatives from various economic, social and environmental sectors: business associations, union associations, neighborhood associations, fishing associations, agricultural asso-

²⁵ Article 2(2) of the Mar Menor Law (Ley 19/2022).

²⁶ The Committee of Representatives is composed of thirteen members: three from the General State Administration, three from the Autonomous Community and seven citizens, initially members of the Promoters Group of the People's Legislative Initiative.

ciations, livestock associations (with representation from organic farming and traditional breeding), environmental organizations, gender equality entities and youth. These individuals are elected for a four-year term and must have a previous record of defending the Mar Menor ecosystem.

The Monitoring Committee's tasks include disseminating information on the law, monitoring and controlling compliance with the rights of the lagoon and its basin, and periodically reporting on compliance with the law, taking into account indicators set by the Committee to analyze the ecological status of the Mar Menor.

The Scientific Committee is composed of scientists and independent experts specializing in Mar Menor research proposed by the Universities of Murcia and Alicante, the Spanish Institute of Oceanography (Oceanographic Center of Murcia), the Iberian Society of Ecology and the Higher Council for Scientific Research. They are appointed for a renewable period of four years. The independence of the Scientific Committee is ensured by two conditions: The recognized scientific prestige of the members and the absence of remuneration for their work.

The Scientific Committee is tasked with advising the Committee of Representatives and the Monitoring Commission and identifying indicators of the ecological status of the ecosystem, associated threats and appropriate measures for its restoration.

The lagoon representation system is therefore complex and multifaceted, which in practice has proven difficult to implement effectively.²⁷

VIII. ACTIO POPULARIS IN DEFENSE OF LAGOON RIGHTS

The law²⁸ also provides for an extremely interesting type of *actio popularis*. According to this regulation: 'Any natural or legal person shall be entitled to defend the Mar Menor ecosystem and may enforce the rights and prohibitions under this law and the regulations developing it through an action brought before the appropriate court or public administration. The said legal action shall be brought on behalf of the Mar Menor ecosystem as a real party in interest. The person who brings such an action, and whose claim is successful, will be entitled to recover the entire costs of the ongoing legal proceedings, including, among

²⁷ According to the information provided by Spanish lawyers, there have been significant difficulties in practice regarding the selection of individuals for the various bodies representing the Mar Menor lagoon. There have also been tensions between different levels of administration (regional and national) over competencies and responsibilities in implementing the law.

²⁸ Article 6 of the Mar Menor Law (Ley 19/2022).

other things, the fees of attorneys, counselors, experts and witnesses, and will be relieved of litigation costs and security deposits on precautionary measures'. This is a solution that significantly expands the legal options for protecting the lagoon, as it allows any entity to take legal action on behalf of the ecosystem, without having to prove its own legal interest.

IX. WHY THE ODER RIVER? THE CASE OF POLAND

The 2022 environmental disaster on the Oder River was a turning point in Poland's thinking about conservation methods and measures. In August 2022, there was a massive fish die-off. By 12 September 2022, a total of about 360 tons of dead fish had been reported.²⁹

According to a preliminary report by the Oder River Situation Team, the fish die-off was caused primarily by a multi-factorial golden algae (*Prymnesium parvum*) bloom. Of key importance was the excessive salinity of the water, increased chloride and sulfate concentrations, which, combined with low water levels and high temperatures, led to the golden algae bloom and consequently to an ecological disaster on an unprecedented scale.³⁰

The ecological catastrophe on the Oder River demonstrated the defectiveness of Poland's water protection system: 'The key public administration bodies responsible for the safety of citizens remained passive during the first phase of the ecological disaster on the Oder River. Although thousands of dead fish appeared in the river for unknown reasons, appropriate action was not taken. The effective circulation of information required in such situations was not ensured. The appropriate crisis management structures were also not activated. As a result, warning alerts and bans on the use of the Oder River were addressed to the population with a delay of at least several days. The crisis on the Oder exposed the State's lack of due concern for the good condition of the waters. This is the result of years of omission by State bodies, erroneous actions, as well as insufficient legal solutions'.³¹

²⁹ European Commission, Joint Research Center, Gary Free and others, 'EU analysis of the 2022 Oder ecological disaster: conclusions and recommendations to avoid future ecological damage to EU rivers', Publications Office of the European Union (2023) <<https://data.europa.eu/doi/10.2760/536489>>.

³⁰ 'Preliminary Report of the Team on the Situation on the Oder River', Institute for Environmental Protection (2022) <<https://ios.edu.pl/wp-content/uploads/2022/10/Wstepny-raport-zespołu-ds-sytuacji-na-rzece-Odrze.pdf>> 253–258.

³¹ Materials from the NIK press conference, 'Odra ecological crisis', <<https://www.nik.gov.pl/news/odra-kryzys-ekologiczny.html>>; Iwona Zyman, Janusz Madej, 'Kryzys ekologiczny na Odrze' <<https://www.nik.gov.pl/plik/id.29291.pdf>>.

In response to this situation, there was an initiative to give the Oder River legal personality, inspired by solutions from Spain and other countries. As Stanisław Kordasiewicz states in the justification of the draft law on the Oder River: ‘the new law should put the broadly understood welfare of the entire Oder River system in the forefront, especially in the context of the need to rebuild the river after the 2022 disaster and ensure future safety.’³²

X. THE CONSTRUCTION OF THE POLISH DRAFT LAW

The bill grants the Oder River legal personality, recognizing it as an integral ecosystem that includes the waters, bottom sediments, riverbed, banks, floodplains and the organisms living in it. The bill defines the fundamental rights of the river, including the right to exist, flow freely, evolve naturally, preserve biodiversity and regenerate.

The river is to be represented by a 15-member Representative Committee, consisting of representatives of the ministry, Polish Waters, local governments, river users and community organizations. The committee is to protect the river’s interests in legal proceedings, conclude agreements on the use of the river and manage its assets. It is to be supported by a 10-member Scientific Committee in an advisory capacity.

The bill regulates the economic and recreational use of the river, which must be in accordance with the law and agreements. It also defines the mechanism for claiming compensation for damage caused to the Oder River, with the river itself not to be held liable for damage resulting from its natural functions.

The Minister of the Environment is to supervise the river’s activities and provide funding to achieve the Act’s goals. In international relations, the river is to be represented by the Polish government, consulting with the Committee of Representatives. According to the bill, the river can acquire property (e.g., by inheritance or donation), which is exempt from taxation, but cannot conduct business activities.

Economic and recreational use of the Oder River is, of course, also possible, but it must be in accordance with current regulations, and the scope of use will be determined through negotiations between the representation of the Oder River and the relevant State and local government bodies and other interested parties.

³² Stanisław Kordasiewicz, ‘Explanatory Memorandum of the Bill on the Recognition of the Legal Personality of the Oder River’ <www.osobaodra.pl>.

As can be seen, the Polish solution was modeled on the Spanish regulation. There is no reference to beliefs, connectivity with nature; there is a specific legal regulation that fits fully into the Polish legal system. Placing a legal entity such as a river in the Polish legal system would not cause a revolution in the concept of legal personality. It can be compared to existing solutions, such as foundations, which have specific purposes and are endowed with assets by the founders, but are separate entities that may or may not be influenced by the founders.³³ The foundation's assets are separate assets, belonging to the foundation – there is no ownership relationship.

Another example is a national park, which, according to Article 8a of the Law on Nature Protection, is a State legal entity within the meaning of Article 9(14) of the Law on Public Finance.³⁴ National parks have legal personality, their own governing bodies and their own assets. However, they are limited in their activities by the objectives set forth in the Law on Nature Protection.

However, conversations with Polish lawyers indicate great resistance to introducing such mechanisms into Polish law. Arguments to the contrary are based, on the one hand, on the assumption that the current tools of nature protection are sufficient, only they need to be applied more rigorously, on the other hand, on the aversion to new legal constructions, alien to the Polish tradition, and above all, departing from anthropocentrism in the understanding of the legal interest.³⁵

The Polish (as well as Spanish) solution focuses on a specific ecosystem (lagoon, river). The concept of the rights of nature, understood broadly, flows in large part from the beliefs of the peoples living in the area. The concept of Pachamama or nature as a partner of man, is rooted in the beliefs of indigenous peoples, the legal culture of Europe definitely sticks more to specific concepts. The idea behind the Oder River Legal Personality Law³⁶ was to use the well-established legal person construct as a tool to better secure the rights of the Oder River. It is hard to deny that the river needs to be protected, but the existing methods of protecting it are not effective. So it is necessary to try a new tool, which at the same time will not constitute a revolution in the legal system and which will fit into the existing reality.

³³ Law on Foundations of 6 April 1984, Journal of Laws of 2020, item 2167.

³⁴ Article 8a of the Law of 16 April 2004 on Nature Protection, Journal of Laws 2022, item 916, as amended, states: 'A national park is a state legal entity within the meaning of Article 9(14) of the Public Finance Act of 27 August 2009 (Journal of Laws 2023, item 1270, as amended)'.

³⁵ The author of the article has had a number of discussions with representatives of Polish legal science concerning primarily the legal personality of the Oder River, but the prevailing view is that such a construction is unnecessary.

³⁶ The author of this article is one of the co-authors of the bill on the legal personality of the Oder River, along with Stanisław Kordasiewicz and Robert Rient.

The basic revolutionary change is the very attitude that a river can have its own representation, its own budget, and act in its own interests. In turn, the implementation of such an assumption is already within the understandable traditional legal constructs. Unfortunately, the bill will not exist as a citizen legislative initiative. The ‘Clean Order’ Legislative Initiative Committee, from 5 February 2025, conducted a collection of signatures in accordance with the Act of 24 June 1999 on the exercise of legislative initiative by citizens.³⁷ It failed, despite the work of hundreds of volunteers, to collect the 100,000 votes required for a legislative initiative (Article 2 of the aforementioned law). 92,998 votes were collected, so 7002 votes were missing.³⁸ However, it should be recognized that this is only the beginning of a scientific, journalistic and social discussion of the need for new forms of nature protection – including the construction of the legal personality of the river.

XI. SUMMARY

On the one hand, we must look at the reality around us and the problems that affect us every day. The response to problems such as the poisoning of the Oder River should be appropriate to their severity. If the State is failing to protect valuable ecosystems and citizens perceive the helplessness of existing legal regulations, the appropriate response is to seek solutions that meet both the ecological needs and the legal culture of the country. Recognizing the Oder River as a legal entity could be such a solution.

On the other hand, we must not lose sight of the global context. Climate change and pollution are problems on a much larger scale than even the largest river. We cannot, while focusing on local problems, forget the need to look for global solutions. Even a partial departure from the anthropocentric view allows us to find a new perspective and see that striving to autonomize the rights of nature can be one of the important tools to protect the environment on a global scale.

The Spanish solution shows that it is possible to effectively apply the concept of legal personality of nature’s elements in the European legal order. The goal of this solution is not to protect the supernatural link to nature, but to provide more effective protection of the valuable ecosystem through legal tools that complement existing mechanisms.

³⁷ Journal of Laws 1999, No 62, item 688.

³⁸ See <<https://www.facebook.com/share/v/18yLCDLyfv/>> accessed 20 May 2025.

However, the author of the article takes the position that nature protection is one of the most important issues facing any legal system, and if this legal system is incompetent, ineffective, other solutions should be sought, including the granting of legal personality to particularly valuable and endangered elements of nature.

Giving legal personality to the Oder River would, therefore, not constitute a revolution in the Polish legal order, but rather an extension of existing legal constructions to a new area, in order to better protect a valuable natural resource. This would be a solution in line with the European legal tradition, while at the same time responding to the challenges of modern times related to environmental protection.

Granting legal personality to the Oder River would represent a novel approach to environmental protection in Poland. Despite numerous legal, practical and scientific challenges, the initiative signals the need for a fundamental change in the perception of the relationship between humans and nature.

The experience with the Mar Menor lagoon shows that this is a workable solution in the European legal order. At the same time, it should be remembered that the mere granting of legal personality will not solve all environmental problems. It is also necessary to strengthen existing protection mechanisms, environmental education of the public and the development of technologies that enable effective monitoring and protection of valuable ecosystems.

Incorporating the view of nature as a partner in the legal discourse representing a particular position allows for a decisively enriched approach to environmental protection. A change in the paradigm of nature protection – from a sovereign view to a partner view – can contribute to more effective protection of ecosystems, not only in the local, but also in the global context.

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