

# **Bill to recognize the legal personality of the Oder River**

## **Preamble.**

Whereas:

- 1) the Oder River is of fundamental importance for the environmental, economic and social well-being of much of the territory of Poland,
- 2) the obligation to protect water resources, including rivers, is regulated by national legislation, in particular the Law of July 20, 2017. - Water Law (Journal of Laws of 2017, item 1566, as amended), which indicates the need for rational management of water and protection of its quality and quantity,
- 3) dangers associated with human activity, industrial development, and agricultural activities are growing at an alarming rate,
- 4) it is necessary to protect the unique ecosystem of the Oder River as a distinctive natural entity,
- 5) existing protection mechanisms have proven ineffective,
- 6) our world is threatened by climate catastrophe, and measures to protect the environment, nature is an absolute necessity,
- 7) sustainable development cannot be an empty slogan, and it is necessary to take concrete measures to save the Oder River,
- 8) recognizing the legal personality of rivers or other ecosystems is an effective response to the challenges of modern times regarding nature conservation and an essential strategy for rebuilding the relationship between humans and nature,
- 9) the number of countries implementing this solution is growing dynamically, with the Whanganui River in New Zealand's Aotearoa (2017), the Yarra River in Australia (2017), the Atrato River in Colombia (2017), the Muteheaku shipu/Magpie River in Canada (2021), the Mar Menor lagoon in Spain (2022) and many others obtaining legal personality,
- 10) Poland has signed the Kunming-Montreal Global Biodiversity Framework document, developed at the 15th UN Conference on Biological Diversity in 2022, which recognizes the empowerment of nature as an essential tool for implementing the Convention on Biological Diversity,

- 11) The recognition of the legal personality of the Oder River implements the basic principles of European and international environmental law, such as the principle of prevention and the principle of financial responsibility of the polluter. Moreover, it aligns with the objectives of the Water Framework Directive (2000/60/EC), which begins by stating: "Water is not a commodity, but an inherited good that must be protected and defended and treated as such." It will also implement Regulation (EU) 2024/1991 of the European Parliament and of the Council of June 24, 2024, on the restoration of natural resources, which seeks, among other things, to restore degraded ecosystems (Article 1) and to restore the natural connectivity of rivers and the natural functions of associated flood plains (Article 9).

It is resolved as follows:

**Article 1.**

The Oder River has a legal personality.

**Article 2.**

By the Oder River is meant:

- 1) The Oder River, within the borders of the Republic of Poland, is a unified geographical, biological, and hydrological unit, including in particular:
  - a) Flowing surface waters, including their quantity and quality,
  - b) Bottom sediments, aquifers, and tributary recharge,
  - c) The riverbed, banks and floodplains,
  - d) Organisms living in the river, including species of flora and fauna.
- 2) The Oder River Valley is understood as a geographic natural unit and ecosystem supporting the river's functioning, including areas associated with its natural hydrological, environmental, and biological processes, including floodplains, wetlands, and coastal ecosystems.
- 3) The Oder River is an integral ecosystem whose resources, functions, and rights are subject to protection by the provisions of this Law.

### **Article 3.**

1. The Oder River has the right to exist, to flow freely, to evolve naturally as an ecosystem, and to perform the functions necessary within that ecosystem, to preserve its native biodiversity, to regenerate its resources, and to recharge and be fed by aquifers and tributaries.
2. The Oder has the right to protection from unauthorized interference, in particular, the right to freedom from pollution and the right to compensation for damage caused.
3. The Oder River's resources are its property. Under the Civil Code, the Oder River has the right to protect its property. The Oder River's resources include, in particular, its waters, bottom sediments, aquifers, fauna and flora, and other elements of its ecosystem.

### **Article 4.**

1. Economic and recreational use of the Oder River may be carried out only in accordance with the provisions of the law and with the agreements concluded in the manner specified below. The scope of economic and recreational use of the Oder River will be determined through negotiations between the Oder River's representation and the relevant state and local government bodies and other interested parties.
2. The conclusion of an agreement with the representation of the Oder River is not required in the case of recreational use of the river, as long as it does not violate the fundamental rights of the river indicated in Article 3. Recreational use means, in particular, activities such as swimming, canoeing, fishing, and other non-commercial forms of recreation that do not cause significant impacts on the rights and integrity of the river's ecosystem. Commercial use of the river for recreational purposes (e.g., organized kayaking or sports competitions) requires an agreement whenever it might affect the rights of the river or its ecosystem.
3. Agreements must comply with the principle of proportionality, understood as the need for river users to demonstrate that economic or recreational use of the Oder River leading to a restriction of one of the fundamental rights listed in Article 3 is necessary, taking into account the following factors:
  - the user is pursuing a legitimate purpose (e.g., farming, fishing, swimming, canoeing) or another form of river use that is either socially acceptable or in the public interest (e.g., climate change adaptation, flood risk management)
  - the measures to be taken are necessary to achieve a legitimate goal

- another measure, particularly one that is less polluting or would have less impact on the river's rights, could not be taken. In this case, the interested party will have to demonstrate that among several suitable measures, the least harmful to the interests and rights of the river was chosen.
4. If a river's fundamental rights conflict with those of other individuals or groups, a balance between the various interests should be sought in good faith and based on the current state of research, either to reconcile them or to give priority to one of them. Decisions on such matters will be made by the Representative Committee in consultation with the Scientific Committee.
  5. Anyone can apply to a court or administrative body to establish that a specific use of a river violates the principle of proportionality, particularly when there is a risk of serious and irreversible damage to the river's ecosystem.

#### **Article 5.**

1. The Oder is represented by the Oder Representative Committee.
2. The Committee of Representatives should act in the best interests of the Oder River, with particular attention to protecting the river's fundamental rights listed in Article 3.
3. The Committee of Representatives shall be appointed by the Minister responsible for the environment within 30 days of the Law's entry into force.
4. The members of the Committee of Representatives must not have a conflict of interest regarding the rights of the river and should have knowledge, experience, and a willingness to work for the protection of the Oder River. The composition of the Committee of Representatives should strive to ensure gender balance.
5. The Committee of Representatives consists of 15 people:
  1. one (1) person will be designated by the minister responsible for the environment
  2. two (2) persons will be designated by the State Water Holding - Polish Waters
  3. three (3) persons will be designated under their own regulations by the local governments of the municipalities through which the Oder River flows
  4. three (3) people will be identified by the most important groups of users of the Oder River (e.g., representatives of local communities, the recreation and tourism sector, the agricultural industry, or entrepreneurs)
  5. six (6) people will be identified by social organizations involved in environmental protection and regional development and representatives of an initiative group

promoting and leading a legislative initiative to recognize the legal personality of the Oder River.

6. The Committee of Representatives is in charge, among the others, of:

- Protecting the interests of the Oder River in proceedings before courts and administrative bodies, including in particular the protection of the fundamental rights of the Oder River as described in Article 3, and seeking compensation for the Oder River in accordance with Article 10.
- Concluding agreements on the scope of economic and recreational use of the Oder River in accordance with Article 4.
- Coordinate and develop with the Scientific Committee a long-term strategy for realizing the fundamental rights of the Oder River, restoring its ecosystem, and ensuring its stability and security, taking into account adaptation to climate change.
- Monitoring the progress of the strategy's implementation and consulting on the restoration and welfare of the Oder River.
- Cooperation with state authorities, local government units, social organizations, and other entities involved in activities for the Oder River.
- Conducting a multi-stakeholder dialogue around issues of importance to the Oder River.
- Providing advice and recommendations to the government or local government units on the implementation and protection of the rights of the Oder River.
- Establishing and conducting cross-border cooperation with public administration bodies, institutions, and organizations working for the Oder River in the Czech Republic and Germany.
- Conducting educational activities and developing civic awareness of the rights of the Oder River.
- Preparation of annual reports containing the most essential information on the activities undertaken, including any legal or administrative proceedings and their effects.
- Protection and management of the assets of the Oder River, including, in particular, carrying out activities for the realization of the fundamental rights of the river described in Article 3.

#### **Article 6.**

1. The advisory body of the Oder Representative Committee is the Oder Scientific Committee. The Oder Scientific Committee consists of 10 members. Two (2) members are appointed by the State Water Holding - Polish Waters. Eight (8) members are selected by the Committee of Representatives from among persons engaged in scientific activities in disciplines and scientific fields relevant to the Oder River (e.g., environmental protection, biology, geography, hydrology, earth and environmental sciences, zootechnics and fisheries, law, and social sciences).
2. The Scientific Committee may establish greater cooperation with scientific institutions to ensure the best possible implementation of the fundamental rights of the Oder River described in Article 3.

#### **Article 7.**

1. Internal organization and the functioning of the organs of the Oder River, in particular the terms of office of individual bodies, the rules for resigning from office, for complementing their composition, the forms of decision-making, and the manner of representation before courts, administrative bodies, or other entities, are regulated by the Statutes and the rules of procedure of the Oder Representative Committee and the Oder Scientific Committee.
2. The Oder Representative Committee shall adopt or amend the statutes and rules of procedure by simple majority. The first statutes and rules of procedure should be within 30 days of the body's establishment.
3. The Oder Scientific Committee shall adopt its statutes and rules of procedure by simple majority. The first statutes and rules of procedure should be adopted within 30 days of the body's establishment.

#### **Article 8.**

The acquisition of property by the Oder River by way of inheritance, compensation, bequest, or donation, as well as from all other sources, is exempt from taxation.

#### **Article 9.**

River Oder is not allowed to conduct business.

## Article 10.

1. If, through the fault or wrongful act of a person, enterprise, local authority, or other entity, the rights of the River are violated, in particular by altering its physical, chemical, or biological properties, its ecological functions, or its quantitative status, the Representative Committee may, on behalf of the river, bring an action against the perpetrator of the damage to:
  1. restore the original condition or a condition close to it
  2. if the above is not possible, repair the damage by paying compensation
  3. in the case of gross negligence or repetition of the act, in addition to the reparation of damages specified above, the Representatives Committee may request that a financial penalty be applied to the perpetrator in proportion to the value of the damage suffered by the River, also taking into account the value of the benefits enjoyed by the perpetrator of the damage.
2. For the purpose of assessing the value of the damage caused to the Oder River, the "initial state" refers to the state of the ecosystem that existed prior to the damaging activity in accordance with the available historical, scientific, and environmental data.
3. The Oder Scientific Committee, on the basis of all available information and current scientific knowledge, provides its opinion on the causes and full extent of the damage, the actions necessary to repair the damage, in particular, to restore the previous state or one close to it, and the valuation of the damage.
4. If the damage was caused by more than one person or entity, liability to the River is joint and several.
5. If the damage was caused by the long-term and dispersed actions of multiple actors, the obligation to restore the original condition or to pay compensation is distributed proportionally to all perpetrators of the damage. The Oder Scientific Committee will provide, based on all available information and current scientific knowledge, guidance on the best way to restore the damage or assess the value of compensation and the impact of individual actors on the long-term or dispersed damage.
6. In compensation proceedings, the Oder River is represented by the Oder Representatives Committee under the terms of its statutes and regulations.

#### **Article 11.**

1. The Oder River shall not be liable to any person, group of people, government, local authority, or other entity for damages resulting from the performance of natural functions, including but not limited to natural flow, flood, or drought.
2. While preserving the Oder River's fundamental rights as indicated in Article 3, the government, local authorities, citizens, and other entities may take measures to protect themselves from threats arising from the Oder River's fulfillment of its natural functions

#### **Article 12.**

The Minister of the Environment shall provide the funding necessary to achieve the objectives of the Act, including, first and foremost, ensuring the protection of the fundamental rights of the Oder River as listed in Article 3 and the efficient and effective functioning of the Oder River authorities.

#### **Article 13.**

The Minister of the Environment supervises the activities of the Oder River.

#### **Article 14.**

The Government of the Republic of Poland represents the Oder in international relations. When representing the Oder in international relations, the Government of the Republic of Poland consults with the Oder Representative Committee on matters concerning the protection and management of the river.

#### **Article 15.**

The Ministry of the Environment, together with the State Water Holding - Polish Waters, will be responsible for the application of this Act in consultation with other institutions and the local authorities concerned. With regard to activities related to the Oder River, the tasks assigned to the State Water Holding - Polish Waters by the Act of July 20, 2017. - Water Law (Journal of Laws of 2017, item 1566, as amended) will be modified in accordance with the content of this Law.

*Authors: Prof. Jerzy Bieluk, Dr. Stanisław Kordasiewicz, Robert Rient.*

*Consultation: Agata Foksa-Biegaj.*



