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Abstract:

In the aftermath of the ecological disaster in the Oder River in 2022 there has been a discussion in Poland on the effectiveness of the current protection of the environment and its elements (including rivers). Inspired by the Rights of Nature movement and to address the problem of deficiencies in rivers’ protection – J. Bieluk, S. Kordasiewicz and R. Rient (who initiated the cause) proposed the ‘bill to recognize the legal personality of the Oder River’. The bill attracts people’s attention and is supposed to be proceeded as the citizens’ bill (when reaches the required quota of 100 000 signatures). The paper critically evaluates in general and in detail the solutions proposed in the bill but also challenges pragmatically the notion of using legal personality as means to protect rivers or any kind of element of environment. It is argued that public, not private law should govern the resources of environment and model the behaviour of people in interaction with environment. Moreover, the paper indicates that environment has an indirect standing awarded by provisions of the Environmental Protection Law of 2001 (EPL). According to Article 322-2 of EPL in case when the environment as a common good is threatened or harmed by an unlawful environmental impact the State Treasury, a local government unit or an environmental organisation may demand that the person responsible for the threat or breach restore the situation to a lawful state and take preventive measures, particularly by setting up installations or equipment to safeguard against the threat or breach. Where this is impossible or extremely difficult, the aforementioned representatives of the environment may also demand the cessation of the activity causing the threat or breach. Following the New Zealand’s example, the construct of a legal personality granted to elements of nature may not necessarily be a response to the deteriorating condition of nature but may merely be an expression of a compromise in the property dispute between the post-colonial state and, for example, Indigenous tribes. The paper hence recognizes that when discussing

environmental protection and the use of legal personality for this purpose, a comparative error is very often made, which consists primarily in not attempting to reconstruct the legal state of environmental protection in its entirety in the referenced and native legal systems but doing so merely selectively. The promoters of legal personality for nature being the authors of the study 'Towards an EU Charter of the Fundamental Rights of Nature' (2019) are therefore probably right in describing the granting of legal personality to nature as the introduction of a Trojan horse into the legal system. The use of such an analogy, however, is not only unfortunate, but may also be a Cassandra vision of what effects such a proposal would have on the legal system. The literature also has already drawn attention to the paradox of legal personhood for rivers: nature conservation is increasing, but drastically altered relationship between people and nature both undermines people's willingness to protect nature and drives the need for renewed reform lowering (back) the level of river protection. The paper relying on the NGOs' reports concerning the ecological disaster in the Oder River in 2022 obviously acknowledges the necessity to improve the protection of rivers in Poland but rejects the idea of attributing legal personhood for that purpose.