

Water - Public Good Vital for Humanity

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In the background of the climate change, we estimate that one of the problems that humanity is to face in the near future concerns natural resources. In our view, water is one of the resources that will become increasingly important in the coming years by being on the way to diminishing. Force majeure events such as the vegetation fires or floods in the summer of 2023 show us that people and nature must be friends. Given that drinking water is vital for human existence, we believe that the proposed topic is of general interest and should be of concern not only to public authorities, but to the entire scientific community and to individuals, which makes it topical and important. The scope of the study is to analyse the issue of water, which means that, on the one hand, we will investigate the national regulatory framework but also comparative law to know how the legislator relates to water and, on the other hand, we will capture the current international trends in this field. By using research methods specific to law, we will underline the conclusion of our paperwork, that the protection of water resources is the responsibility of all of us: individuals, authorities, states, taking into consideration present and future generations.

Keywords: *public authorities; water; public good; Administrative Code; case-law.*

Introduction

From the birth of man to his passing away, water is essential to life. If man can survive without food for a short period of time, without drinking water his chances of living are considerably reduced. Nowadays, in the context of climate change and natural resource depletion, public authorities are permanently forced to identify solutions, from a legal but also an ethical or moral point of view, regarding access to drinking water for the population. Therefore, “*human coexistence increasingly feels the need for security, clarity and order within its inner relationships*”¹.

This issue raised our interest by starting from the fact that the right to drinking water is regulated in the Constitution of Slovenia: “*Everyone has the right to drinking water*”² (Article 70a). Besides, “*perhaps more than ever, humanity is faced with this reality: The imperative to identify legislative solutions for the present and for the future generations, at the boundary between law, ethics and*

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¹See Popa (2008) at 63.

²See in this respect the public source at https://www.constituteproject.org/constitution/Slovenia_2016

morality³. The *World Water Day*⁴ is celebrated internationally on the 22nd of March since 1993, and water conferences are regularly held⁵.

In recent years, more and more force majeure events have taken place on almost all continents and have raised the question of the survival of humans as a species: floods, wildfires or even war. No matter what natural catastrophe we speak of, water and food, medicine and housing are basic human needs. Public authorities believe that “*due to a number of factors, including population growth, industrialization and climate change, water resources around the world are under high pressure, not only in terms of quality but also in terms of quantity*”⁶.

The purpose of the paper is to study the legislation, doctrine and case-law in order to know as much as possible about the legal regime of water. In this context, we aim to reflect on the importance of water as a non-renewable natural resource and to answer the following questions: “*Is there international legislation applicable to the quality of water intended for human consumption*”? or “*does the Constitution of Romania expressly provide for the right to drinking water?*”

We focus on the following specific objectives:

1. know the concepts and present the legal framework applicable to water;
2. identify the national authorities involved in managing water-related issues;
3. research the national literature and the comparative law relating to water;
4. analyse the relevant case-law of the European Court of Human Rights on water.

The present paper proposes an interdisciplinary analysis on a subject matter that has an impact on life on this planet, namely water, therefore we consider that its research topic is topical, both for scientific and for practical, applicative purposes.

Literature Review

The analysis of the literature reveals that water has been a concern for specialists from all over the world. For a long time, researchers have debated on how to refer to water: as a public good, as a public service or as a human right. The international scientific community analyses topics such as: the right to water, water pollution, causes of water scarcity, water governance crisis.

According to the doctrine, *access to water* means “*that right of fundamental value, according to which natural and legal persons use water in the necessary quantity and of an adequate quality*”⁷. It is stated in the same context that, “*considering that water is vital for human life and human health, and also*

³See Ștefan (2023) at 397.

⁴See in this respect the public source at <https://www.worldwaterday.org/>

⁵For example, the OECD Conference on 22-24 March 2023, New York. See in this respect the public source at <https://www.oecd.org/water/oecdathun2023waterconference.htm>

⁶See in this respect the public source at <https://insp.gov.ro/2023/03/22/22-martie-ziua-mondiala-a-apei/>

⁷See Dogaru & Kajcsa (2021) at 35.

essential for the management of ecosystems, for agriculture, energy and global security of the planet, since 2010, access to water and sewerage has been recognized as a human right⁸”.

Another author analysed the disparities in the quality of drinking water. He conducted a case study on California and examined violations of drinking water quality, identifying the categories of communities disproportionately affected by contaminated water⁹. The public interest in the environmental decision is another matter analysed by the doctrine, being expressed worldwide as “*general interest of humanity*”¹⁰. Other authors note: “*We witness a drop in groundwater levels due to irrigation at a rate that exceeds natural recharging (through rain and snow melting); thus, the overpumping of water in the aquifer basins in India, China, North Africa, Saudi Arabia and the US exceeds 160 million tons annually*”¹¹”.

Among the specialists’ concerns we find the corporate social responsibility in environmental issues, discovering that economic operators are also involved in taking measures to reduce pollution. A study states that “*the importance of corporate social responsibility activities has increased in recent years*”¹²”. Other authors believe that “*there are expectations that economic operators will find solutions to key social problems and environmental challenges, such as access to water and healthcare at affordable prices*”¹³. Also, as emphasised by the doctrine “*in the context of global concerns of the States to regulate and implement measures with direct impact on climate change, there is an increasing need for regulatory certainty*”¹⁴”.

Another paper analyses the industrial pollution. It is a case study about a city in Ethiopia¹⁵ stating that “*four types of pollution have prevailed in this city: water pollution, air pollution, land pollution and noise pollution. All these types of pollution come from the failure of government, factories and society to act according to the law*”¹⁶”. Another author believes that “*the infrastructure deficit in water and waste management, especially in the southern regions, generates environmental and health impacts, leads to considerable costs and revenue losses for the Italian economy*”¹⁷”.

The literature also investigates bioethical issues related to the principle of utility in residential drinking water consumption. The authors highlight that “*the tariff policy has rationalized the basic water consumption in vulnerable populations, but with a regressive trend, the utility principle prioritizes financial sufficiency over efficiency and equity considerations*”¹⁸”. Another paper presents the situation

⁸*Ibid.*

⁹See Acquah & Allaire (2023) at 69-86.

¹⁰See Manu (2021) at 18.

¹¹See Ioniță & Ioniță - Burda (2022) at 9.

¹²See Lazăr (2023) at 407.

¹³See Gajadhur (2022) at 205.

¹⁴See Stefan (2023) at 575.

¹⁵See Choram (2021) at 517-540.

¹⁶*Ibid.*, at 538.

¹⁷See Caponetti (2023) at 281.

¹⁸See Zambrano & Rodriguez (2023) at 1079.

in Argentina, with the authors considering that “*the current water crisis is largely a governance crisis, so improving water governance will help address current and future water challenges*”¹⁹.

Methods of Research

The architecture of this paper includes several research directions that combine the national plan with the comparative law. Chronologically, first the research topic was chosen and a research plan was drawn up. Subsequently, with the help of law-specific research methods, the documentation and data collection were carried out, and then the logical analysis and interpretation²⁰ of the information was carried out in order to draw some conclusions.

The emphasis in the work was placed on the knowledge of the practical ways in which the analysed concepts are reflected in the social life. Therefore, from a methodological perspective, the research was not limited to the analysis of the applicable normative acts, but was extended to the doctrine as well. The purpose of the research of the doctrine was to provide a panoramic view on the subject, which is why specialised opinions were gathered, selected from different corners of the world, with the intention of supporting the scientific community to find new legislative solutions to global water-related challenges.

In order to fulfil the proposed purpose, an interdisciplinary analysis of the topic was conducted, since it is at the intersection of several disciplines: administrative law, environmental law, public international law and European Union law. At the same time, in order to highlight the topicality and importance of the subject, two case studies conducted by the European Court of Human Rights were selected.

International Legal Framework for Water Protection - A Few Milestones

The legal framework includes several international normative acts applicable to water issues, of which we will selectively present the most important ones. From the Commission Communication on the European citizens' initiative “*water and sanitation are a human right! Water is a public good, not a commodity*”, it turns out that the European Union introduced minimum water quality requirements in 1970, gradually expanding its water legislation over the past four decades²¹.

Historically, at the international level, the Helsinki Convention of 17 March 1992 on the Protection and use of transboundary watercourses and international lakes²², as approved by the Council Decision of 24 July 1995 on the conclusion on

¹⁹See Velasco, Calderon, Lima, Matencon & Massone (2023) at 623.

²⁰On the interpretation of the legal norm, see Bădescu (2018) at 167-187.

²¹See in this respect the public information at <https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX%3A52014DC0177>

²²Published in the Official Journal of the European Union L 186/44, 5.08.1985.

behalf of the Community of the Convention [...] ²³. Romania has ratified the Protocol on water and health since 1999 through its Government Ordinance no. 95/2000 [...] ²⁴. Article 2(2) of the Protocol defines *drinking water* as “*water that is used or intended to be supplied for human use for drinking, cooking, preparing food, personal hygiene or similar purposes*”.

Also, the United Nations General Assembly Resolution no. 64/292 of 28 July 2010 on the right to water and sanitation recognises that “*the right to safe and clean drinking water and sanitation is an essential human right for a normal life and for the exercise of all human rights*” ²⁵ (point 1). According to public information “*Right2Water*” is the first European citizens’ initiative to meet the requirements set out in the Regulation of the European Parliament and of the Council on the citizens’ initiative, which was officially presented to the Commission on 20 December 2013, after receiving the support of 1.6 million citizens ²⁶.

Broadly speaking, the European water regulatory framework includes the Directive establishing a framework for Community water policy ²⁷, the Directive on the quality of water intended for human consumption ²⁸ and the Directive on urban waste water treatment ²⁹. Considering the analysed topic, we choose to present only the EU Directive 2020/2184 of the European Parliament and of the Council of 16 December 2020 on the *quality of water intended for human consumption*.

Article 1 states as objectives of the directive: “*protect the human health from the adverse effects of contamination of water intended for human consumption by ensuring its quality as safe and healthy water, and to improve access to water intended for human consumption*”.

For the purposes of the Directive, *water intended for human consumption* means:

- a. *any type of water, whether in its original state or after treatment, intended for drinking, cooking, food preparation or any other household purpose, both in public and private premises, irrespective of its origin and whether it is supplied from a distribution network or from a tanker or is bottled in bottles or containers, including spring water;*
- b. *any type of water used in any food business for the production, processing, preservation or marketing of products or substances intended for human consumption.*

²³See in this respect the public information at <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=celex%3A31995D0308>

²⁴Published in Official Journal no 433 of 3 September 2000.

²⁵See in this respect the public information at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N09/479/35/PDF/N0947935.pdf?OpenElement>

²⁶See in this respect the public information at <https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX%3A52014DC0177>

²⁷Published in Official Journal of the European Union L 327/22.07.2000.

²⁸Published in Official Journal of the European Union L 435/23.12.2020.

²⁹Published in Official Journal of the European Union L 135/30.05.1991.

The European normative act provides for quality standards for water, more specifically that water intended for human consumption is “*sanogenic and clean*” if:

- a. *water does not contain any micro-organisms, parasites and any other substances which, by their number or concentration, constitute a potential danger to human health* (article 4).

We also recall the *European Parliament Resolution of 5 October 2022 on access to water as one of the human rights – the external dimension*³⁰ that “*reaffirms the right to safe drinking water and sanitation as one of human rights [...] (point 1)*”.

Brief Retrospective of the Legislation on Legal Protection of Water - The National Plan

In this section, the research methodology involved investigating first the general framework applicable to water: the Constitution of Romania, the Administrative Code³¹ and the Civil Code³², then the water specific legislation was mentioned. From this perspective, the logical thread of the information that is presented reflects the expression “*from general to particular*”.

The Constitution of Romania regulates “*property*” under its Article 136: “*the riches of public interest of the subsoil, the airspace, the waters with a recoverable energy potential, of national interest, the beaches, the territorial sea, the natural resources of the economic area and of the continental shelf, as well as other goods established by the organic law shall be exclusively subject to public property*” (paragraph 3).

Public property is regulated in the Administrative Code (Part IV - *Specific rules on public and private property of the State or of administrative-territorial units*) and in the Civil Code (Book III - *On goods*, Title VI - *Public property*).

In the administrative law doctrine, the concepts of public property and public domain have often been analysed. According to one opinion, “*the notion of public domain becomes a topical notion again after 1989 [...]*”³³. In another opinion, the notion of public domain “*cannot be limited only to goods that are subject to public property [...]*”³⁴. We agree with the opinion that “*in the narrow sense, the public domain identifies itself with the sphere of public property goods, while in the broad sense the scope of the public domain includes, in addition to all public property goods and some private property goods, which [...] is under the guard*

³⁰See in this respect the public information at <https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:52022IP0346&from=EN>

³¹GEO No 57/2019 on the Administrative Code, published in Official Journal no. 555 of 5 July 2019, as further amended and supplemented.

³²Law no. 287/2009 on the Civil Code, published in Official Journal no. 511 of 24 July 2009, as further amended and supplemented.

³³See Negruț (2020) at 32.

³⁴See Iorgovan (2005) at 167.

and protection of the State or of the administrative-territorial units, being subject, besides the rules of private law, to a regime of public law³⁵.

The Civil Code provides in its Article 859: “*The riches of public interest existing in the subsoil, the airspace, the waters with an recoverable energy potential, of national interest [...] as well as other goods established by organic law are the exclusive object of public property*”.

According to Article 286 (1) of the Administrative Code: “*The public domain of the State or of the administrative-territorial units consists of the goods referred to in Article 136 (3) of the Constitution, of those established in Annexes 2 to 4, and of any other goods which, according to the law or by their nature, are of public use or of public interest and are acquired by the State or by the administrative-territorial units by one of the ways provided by the law*”.

Once the general regulatory framework applicable to water has been specified, which shows that it is an exclusive object of public property, we will briefly mention the state of transposition of the European legislation on the legal regime of water. As shown above, “*the purpose of the administration is to satisfy the interests of the people*”³⁶. Considering the international normative acts, we make two clarifications regarding the transposition of the European legislation in Romania:

- a. Law no. 458/2002 on the quality of drinking water³⁷ transposed the Directive 98/83/EC on the quality of water intended for human consumption;
- b. Government Ordinance no. 7/2023 on the quality of water intended for human consumption³⁸ transposed the EU Directive 2020/2184.

The normative act adopted in 2023 regulates the quality of water intended for human consumption and has two objectives: to protect the human health against the adverse effects of contamination of water intended for human consumption, by ensuring its quality as sanogenic and clean water, as well as improving access to drinking water. At the same time, “*the legal norm requires acceptance and observance of the prescribed conduct*”³⁹.

According to Article 4 (7) of the Government Ordinance no. 7/2023, the competent authority in the field of supervising, monitoring and control of drinking water quality is the *Ministry of Health, through the public health directorates* of each county and of the Municipality of Bucharest and the *National Institute of Public Health*. At the same time, the competent authority for water management is the “Romanian Waters” National Administration (“Apele Române”) and its subordinated units.

³⁵See Apostol Tofan (2020) at 237.

³⁶See Vedinaş (2023) at 26.

³⁷Published in Official Journal no. 552 of July 29, 2002.

³⁸Published in Official Journal no. 63 of January 25, 2023.

³⁹See Hegheş (2022) at 153.

Water-related Disputes arising in Practice, as found in the Case-law of the ECHR

In this section, we will present two case studies from the case-law of the European Court of Human Rights. The first case, *Tatar v. Romania*, settled on 27 January 2009, deals with the pollution of some rivers as a result of an environmental accident as a result of an industrial procedure, while in the second case, *T.N.B. and C.D. v. Romania*, settled on 14 February 2008, the public authorities failed to get involved in solving a problem that concerned access to drinking water for the citizens.

In the first case, *Tatar v. Romania*, the two applicants, VGT and PT, father and son, brought the case before the Court on 17 July 2000 and complained about the fact that the technological process used by company A. was endangering their lives, as well as about the passivity of the authorities toward this situation⁴⁰. In short, the facts were as follows: “On 30 January 2000, an environmental accident happened, with a large amount of polluted water (estimated at almost 100,000 m³) containing, among others, sodium cyanide, being discharged into the river Săsar, then into the rivers Lăpuș and Someș. The polluted water reaching the river Someș got discharged into the river Tisa [...], crossed the border between Romania and Hungary, [...] crossed the border between Romania and Serbia and Montenegro, and entered again the territory of Romania, being subsequently discharged into the Danube. In 14 days, the polluted water covered 800 km, and finally it was discharged into the Black Sea through the Danube Delta” (para. 25)⁴¹.

The Court found that: “the persons concerned were domiciled, at the time of the facts, in the city of Baia Mare, in a housing district located about 100 m from the extraction plant and the Săsar pond, elements of the mining exploitation of company A., which was using a gold and silver extraction technology that involved extraction by dissolution with sodium cyanide” (para. 89). As regards the consequences of the environmental accident of January 2000, the Court found that “according to the exhibits in the file, the industrial activity in question was not stopped by the authorities, who continued to use the same technology” (para. 120).

The Court held that: “the first applicant unsuccessfully took numerous administrative and criminal steps to get to know the potential risks resulting from the environmental accident in January 2000, to which he and his family were exposed, and to sanction the people responsible for that incident” (para. 123). In conclusion, the Court found that “the respondent State failed to fulfil its obligation to guarantee the applicants’ right to privacy and family life, within the meaning of Article 8 of the Convention” (para. 125).

The second case study concerns the case of *T.N.B. and C.D. v. Romania* and concerns two applicants, mother and son (Mr. TNB, son of Ms CD), who brought the case before the Court on 15 May 2006⁴².

In short, after the reading the judgment, it follows that:

⁴⁰ECHR, *Tatar v. Romania*.

⁴¹*Ibid.*, apud Ștefan (2023) at 113-114.

⁴²ECHR, *T.N.B. and C.D. v. Romania*.

“the applicant is the owner of the apartment she occupies with her son, located on the top floor of a building [...]. The supply of drinking water through the public distribution network is made on the basis of a single contract concluded by the owners’ association of the building with company A, which has the quality of concessionaire of the public service.

The applicants’ access to drinking water was interrupted as of 20 October 2001, as the neighbours living on the lower floors of the building stopped the water by turning off the water supply pipes of the apartment occupied by the applicants. As the quarrels with the neighbours continued, the applicants asked the concessionaire company A. to conclude a water supply contract with them (para. 4-9)”.

The applicant stated that *“the concessionaire refused to conclude a contract with the applicants and, by a letter dated 21 August 2003, it communicated to them the refusal to authorize the branching for their exclusive use, besides the one serving the building as a whole”* (para. 9).

In the present case, *“on 26 January 2003, the applicants brought an action against company A. before the first instance court of district 1, with an action to oblige it to conclude a contract for the supply of drinking water. By its final decision issued on 22 November 2005, the High Court of Cassation and Justice, in appeal, allowed that the concessionaire company concluded a drinking water supply contract with the applicant C.D., as owner of the apartment, but the concessionaire company refused to conclude the contract immediately, requesting the installation of a new branching, at the applicants’ expense”* (para. 13-23).

Following its analysis, the Court found that: *“despite the final decision of the High Court of Cassation and Justice of 22 November 2005, which ordered the public service concessionaire company to conclude a supply contract with the applicants and, despite the subsequent steps taken for its performance, this court decision was not enforced”* (para. 33).

The Court also stressed that: *“the obligation was imposed on a private individual, namely a private company [...] but that company, as a concessionaire of the public water distribution service, had concluded with the municipality a contract of administrative law, the performance of which had to be controlled by the public authorities”* (para. 34).

In conclusion, the Court considered that *“the national authorities did not take all reasonable measures which could have been expected of them to enforce the final decision that was favourable to the applicants”* (para. 40).

Conclusions

From the entire analysis carried out, we consider the established research objective fulfilled, as the paper provides a lot of information about the legal regime of water, from an interdisciplinary perspective. The organisation of the research was based on a structure that observed a logical thread: legislation, doctrine and case-law, and the entire documentation carried out allows us to formulate some conclusions we have reached.

A first conclusion is that, unlike the Slovenian Constitution, which expressly enshrines the right to drinking water, the Constitution of Romania does not provide for this, but at national level, water is considered an exclusive object of public property, according to the law.

Another conclusion concerns the relevant authorities in the field of supervising, monitoring and control of drinking water quality. The research shows that it is the Ministry of Health, through the public health directorates of each county and of the Municipality of Bucharest and the National Institute of public Health. At the same time, following the review of the literature, it is found that the topic of water is frequently analysed by researchers. The depletion of non-renewable natural resources concerns the entire international scientific community.

Regarding the legal framework, at the international level, there is a constant concern for regulating the legal protection of water, the paper presenting the legislation from a triple perspective – international, European and national. Our country has transposed the European legislation, namely the EU Directive 2020/2184 on the quality of water intended for human consumption through the Government Ordinance no. 7/2023.

At the same time, the case studies selected from the ECHR case-law refer to water but also to the passivity of public authorities in relation to citizens, both of which have certain peculiarities. The case-law collected provided information showing both the importance of water for the population and the importance of compliance by the public authorities of their obligations towards the citizens.

The final conclusion of the paper is that, in our opinion, drinking water is vital for human existence, so we express our concern about the decrease in water resources, a situation that impacts both present and future generations. Therefore, we consider that water, which sustains the life of all of us (individuals, authorities, States), should be approached more responsibly. The water problem is much broader, the subject not being exhausted in this paper, which urges us to draw new directions of future research that will take into account the analysis of the case-law at international level.

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Legal Instruments

- The Communication from the Commission on the European citizens' Initiative "*Water and sanitation are a human right! Water is a public good, not a commodity!*" <https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX%3A52014DC0177>
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