

CONTENT AND EFFECTS OF RECOGNITION OF THE RIGHT TO WATER

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Abstract

Since 2010, the list of fundamental human rights is supplemented with Human Right to Water and Sanitation. From a sociological perspective this law is the expression of individual needs, but also social. Following the recognition of the right to water, rather witnessing the intensification of the conflict between economic and non-economic values, which resolves most of the time in favour of the first. The penetration force of the economics values and force for concretization of material contrasts with the inability of the values, called humanitarian (dignity, solidarity, equality, justice etc.) to decisively influence the international law. A major threat to fairness in the management of water is corruption of the entities that are responsible for setting and enforcing rules and also the stakeholders.

Keywords: right to water, individual needs, citizen initiative, obligations

Recognizing the right to water as a fundamental right

The human right to water is considered the most notable innovation² in the field of fundamental rights. John Warwick Montgomery, holder of eight doctorates in philosophy, theology and law maintain that no one is against human rights. No one is against

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² G.S. Mc Graw, *Defining and Defending the Right to Water and Its Minimum Core: Legal Construction and the Role of National Jurisprudence*, in Loyola University Chicago International Law Review, Vol. 8 (1), 2011, p. 134.

human rights. It is obviously a good thing-until one starts to think about the meaning of the term and its implications. Then it shows itself to be an idea that polarizes, encouraging uncritical support and extreme reaction from both secularists and religionists³.

On 28th of July 2010, the General Assembly of United Nations, at the 64th Session, approved an advisory resolution, where for the first time, clean water and sanitation were declared as a fundamental human right. The fact that 41 countries, from 163 countries presented at the vote, abstained from adopting this resolution, the statements of Peter Brabeck, former CEO (Chief Executive Officer) of the Nestle Company, according to which the water is a good as any other, that is not a human right and, like any good, should be privatized, confirms the Montgomery's assumptions. Some of those who abstained from the vote expressed the concern that the text of the resolution doesn't clearly define the scale of this new human right and also the obligations, which he imposes⁴. For the business environment, implementation of protectionist provisions on exploited resource means basis for the assumption of unwanted obligations, fact that creates additional obstacles in relation to the use of resources.

However, since 2010, the list of fundamental human rights is supplemented with Human Right to Water and Sanitation. The United Nations resolution declares that “*the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights*”. The United Nations Committee on Economic, Social and Cultural Rights and the United Nations Special Rapporteur on these rights both consider that water and sanitation are distinct human rights in international law. It is important to specify that these are distinct rights as any national and international programs to promote water and sanitation often tend to ignore the latter. There is a consensus in the development community that sanitation deserves special attention in order to prevent its neglect⁵.

From a sociological perspective this law is the expression of an individual need, and also a social. In both situations, satisfaction of the needs means *participation* in its exercise. Participation implies social action. As in any action, the man enters into relationship with other, the exercise of the right can be considered a special type of *relationship* where members are with unequal powers. For example, the right to life places mother in relation to the fetus in unequal positions. One depends on the other, the fetus on mother, which she, in turn, can take conditional decisions on the material aspects, their

³ J. W. Montgomery, *Human Rights and Human Dignity*, Canadian Institute for Law, Theology & Public; 2 edition, 2005.

⁴ I. Guceac, *Dreptul la apă – un nou drept fundamental al omului*, in Akademos, nr. 3(18), 2010, p. 39.

⁵ UN-HABITAT, *Realising the Human Rights to Water and Sanitation: A Handbook by the UN Special Rapporteur Catarina de Albuquerque*, 2014, p. 19.

mentality, demographic policy, etc. Or, the right to education, expression of the need for education, belongs to those, who believe that school education may come into his possession, can satisfy this individual need⁶.

The claims on declaring this right as a fundamental or intensified when the number of those who had no access to drinking water has reached critical levels: globally about 884 million people didn't have access to improved water sources and more than 2.6 billion people didn't have access to basic sanitation⁷. The resolution target is that in 2015 these figures should be reduced to half.

Peter Donnelly suggests, “one needs human rights principally when they are not effectively guaranteed by law and practice.” For new rights, such as the right to water, this involves the creation of a legal identity for a claim based in a sociological reality.⁸

The content of the right to water

The right to water is defined as “water, in an amount, is sufficient, safe, acceptable and physically and economical accessible for personal and domestic use”⁹. The components of this right are water “availability”, “accessibility” and “quality”. The first element is the fact that water must be available for everyone in the household or nearby, in sufficient quantity and continuously for personal and household. According to experts, the sufficient for personal and household is estimated between 25 and 100 litres of water per person per day¹⁰. The second element consists in that the access to water must be possible for everyone, on the meaning that the pricing systems and subsidies must be developed and, in some cases, free services so that the services are accessible to all. The third term means that water must be safe for human consumption and personal hygiene, do not contain microorganisms, chemicals, etc. that threatens the health of the person¹¹.

As with other rights the states must respect, protect and fulfil. The state obligations stemming from a right to water are often broken into three duties: to respect, protect and fulfil. Respect for water rights requires that states refrain from interfering with the enjoyment of the right. Individuals must also be protected from third party exploitation (for instance, from resource pollution by corporations). Finally, states must expeditiously

⁶ M. Voinea, *Sociologia drepturilor omului*, <http://ebooks.unibuc.ro/Sociologie/voinea/1.htm>

⁷ OMS/UNICEF, *Progresele înregistrate în sanitație și apă potabilă*, Raport, 2010 actualizat.

⁸ G.S. McGraw, op.cit., p.134

⁹ <http://www.righttowater.info/progress-so-far/general-comments-2>

¹⁰ U. Peña, *Echitatea Socială și Managementul Integrat al Resurselor de Apă*, Elanders, Parteneriatul Global al Apei, 2011, p.48

¹¹ C. Humă, *Consumul de apă – indicator al calității vieții*, in Calitatea vieții, XXVI, nr. 1, 2015, p. 67–84

fulfil water rights by maintaining respect and protection while simultaneously promoting the full realization of the right through targeted efforts aimed at assisting individuals incapable of realizing the right themselves. These efforts must involve stakeholder participation. States also have international obligations related to each of these three duties that they must subsume into their external relations. Finally, a right to water requires that states coordinate internal efforts, clearly designate responsibilities, and when violations surface, provide effective remedy both nationally and internationally. National institutions should be responsive to human need and accountable to stakeholders.¹²

The right to water in Europe

Community law of water contains a set of sectoral provisions and a framework directive, which must lead to the harmonization of national legislation in domain of EU Member States.

On March 2009, the European Parliament adopted a resolution stating that “water is the common property of humanity” and that the “water handling does not obey to internal market rules¹³”. Through this resolution the European Parliament calls to make “all necessary steps to ensure that at the latest in 2015 all poor people have access to drinking water and requires to all Member States, that despite the economic crisis, not to give up from official projects and to contribute to achieving the goal “.

On September 2015, a large majority (363 votes in favour, 96 against, and 61 abstentions), the European Parliament vote in favour of a report on the action taken on the European Citizens' Initiative “Right2Water” (Right to water).

European Citizens' Initiative “Right2Water” is the first European Citizens' Initiative which met the requirements set out in European Parliament and Council's Regulation. It was formally presented to the Commission by the organizers on 20th of December, 2013, after receiving the support from 1.6 million citizens. The initiative “requires:

- EU institutions and Member States are obliged to ensure that all people enjoy the right to water and sanitation;
- water supply and management of water resources should not be subject to “internal market rules”, and services related to water use should be exempted from liberalization;
- EU should increase efforts to provide universal access to water and sanitation¹⁴”

¹² G.S. McGraw, op.cit., p.151

¹³ <http://www.europarl.europa.eu/sides/getDoc.do?language=ro&type=IM-PRESS&reference>

¹⁴ Comisia Europeană, *Comunicarea Comisiei privind inițiativa cetățenească europeană „Apa și salubritatea sunt un drept al omului! Apa este un bun public, nu o marfă!”* Bruxelles, 2014, p.2

European Parliamentarian Lynn Boylan considers the citizens' initiative 'Right to water' first successful example of this democratic mechanism. Ownership and management of water services are clearly the key concerns for citizens and cannot be ignored. “But, at the same time, also he noted that” it is pitiful that the European Commission didn't submit legislative proposals to enshrine water as a human right and a legal requirement at the European Union level (...). Profits should not be made on public goods such as water”.

Deputies regret that in the European Commission's communication, the answer on the citizens' initiative is “... lacks of ambition, do not meet the specific requirements (...) and merely reiterate the existing commitments”¹⁵.

In line with the criticism by the members of European Parliament is the decision adopted at the meeting on September 9, 2014 by the Chamber of Deputies of the Romanian Parliament. Chamber of Deputies welcomes the exercise the right to the citizens' initiative, expressed by Right2Water initiative, but notes the following:

- communication (made by the Commission) is limited to a description of non-legislative measures which the European Commission intends to take them to respond to the concerns expressed by the citizens' initiative, but didn't provide precise justification for the absence of legislative acts from this list;
- communication repeatedly states the decision of the European Commission to remain neutral in relation to the manner of service delivery of water, sewerage and sanitation obligation laid down by the constituent treaties, but does not mention what administrative mechanism intended to modify or create for ensuring this, as long as it is clear, that the existing procedures are not convincing for citizens;
- The European Commission emphasizes the horizontal nature of water policy objectives at European Union level and their connection with sustainable development and human rights, but fails to precisely indicate the points where rules or European policies should be analyzed from this perspective and possibly revised.

The Chamber of Deputies draw the attention of the European Commission that the obligation assumed by it, as a result of the citizens' initiative, mainly, to inform in more details citizens and governments, is not capable to convincingly respond to the concern of 1.88479 million citizens towards the insufficient action at the European level. Fears expressed by such a large number of citizens actually indicate to the European Commission the need to develop new draft laws in the field or at least to initiate a comprehensive training policy with such finality¹⁶.

¹⁵ <http://www.green-report.ro/video-parlamentul-european-apa-este-un-bun-public-nu-o-marfa/>

¹⁶ Hotărârea nr. 40/2014 pentru aprobarea opiniei referitoare la comunicarea Comisiei privind inițiativa cetățenească europeană „Apa și salubritatea sunt un drept al omului! Apa este un bun public, nu o marfă!” Publicată în Monitorul Oficial al României Partea I nr. 666 din 10.09.2014 10 Septembrie 2014

Following this initiative, the members of European Parliament ask the Commission to present legislative proposals, if it is necessary, including a revision of the Directive Framework about the Water in European Union, in order to recognize that the access to affordable prices of water is a fundamental human right. The members of European Parliament underlined that EU member states have the duty to ensure that the access to water is guaranteed for all, regardless of provider. Also, the members of European Parliament stipulate that the production, distribution and treatment of water and sanitation services must remain excluded from the Directive concessions in any future revision. Moreover, due to the special nature of water and sanitation services, such as production, distribution and treatment, this must be excluded from all EU trade agreements¹⁷. In particular mode, the European institutions and Member States are urged to ensure that all citizens enjoy the right to water and sanitation, that the water supply and water management are not a subject to internal market rules and water services are excluded from liberalization measures¹⁸.

On the Plenary Session of the European Parliament on September 8, 2015, Romanian member of European Parliament Monica Macovei noted that the states (1) must impose the water suppliers to indicate the physical and chemical properties of water on water bills, (2) to approve urban plans that have been developed depending on water resources from those places and also (3) to develop immediate actions for cleaning the toxic substances from drinking water and for removing them¹⁹.

Access to water in Romania

Romania gave a commitment to bring the standards imposed by the European Union across the network of drinking water. The Accession Treaty, Romania has agreed to invest in infrastructure of water supply and sanitation and to ensuring the decent living conditions for its residents. So, until 31 December 2015, it had to be made the systems of water supply in most major cities, and the degree of wastewater collection had to be 100% for towns with over 10,000 population equivalent (p.e.), and 80 % for settlements of over 2,000 population equivalent, while wastewater treatment had performed at 100% for cities above 10,000 population equivalent and at 77% for towns with more than 2,000 population equivalent.

¹⁷ <http://www.green-report.ro/video-parlamentul-european-apa-este-un-bun-public-nu-o-marfa/>

¹⁸ http://www.europarl.europa.eu/atyourservice/ro/displayFtu.html?ftuId=FTU_5.4.4.html

¹⁹ <http://www.monica-macovei.ro/blog/2015/09/10/cer-comisiei-europene-sa-propuna-o-direc-tiva-privind-dreptul-la-apa-curata-%C8%99i-la-salubritate/>

According to Directive 91/271 / EEC (transposed 188/2002) a population-equivalents (P. E.) is the organic biodegradable load having a biochemical oxygen demand in five days – BOD5 – 60 g oxygen/day. How has honoured Romania its obligation? According to the National Institute of Statistics, only 3 months before the assumed deadlines in the Accession Treaty, the investments in infrastructure of water supply and sanitation are insufficient, only 65% of the population receives drinking water and 50% of the population has access to sewage.

In 2014, the population served by public water supply system was 12,454,909 people, representing 62.4% of the Romanian population. Although, there were registered growth (in 2014, they had access to public water supply system with 296 925 people more than in 2013) figures remain to be sad. There are places where over 80% of the population have access to water from the public system (Bucharest and Ilfov), and regions, where the percentage falls below 50%. From 2861 communes that include Romania, just a little over 2000 of them, are connected to water network. In 2015, in urban areas are still exists three cities without running water. In the European Union, Bulgaria reported from 2013 that 99.28% of the population is connected to public water conduit. Outside the EU, Albania had over 80% of the population with access to running water. Bosnia-Herzegovina had only 58%, but in case of the Former Yugoslav Republic, much of water conduit and sewage was destroyed in the war. Romania hasn't an advantageous position in terms of water resources, being at the bottom of the ranking of EU countries (only 40 billion. M3 are actually used, the amount of water per capita is only 1894 m3 / year / capita). Taking into account the phenomenon of desertification and prolonged droughts installed in recent years in this area, Romania should take urgent action²⁰.

Conclusions or about the value of recognizing the right to water

The universal claim of human rights has generated sufficient arguments on their necessity, but, also the systematic critique. For Kerry Kennedy, the author of the book "Courage without Borders", the human rights provide inspiration and they are practical²¹. For Michel Villey, human rights are unreal, hence their failure manifests. Their mistake is that they are promise too much, are inconsistent and incomplete, the statements and their formulations giving way to numerous internal contradictions, contradictions that in social and political practice, become the main source of injustice²². In

²⁰ <http://totb.ro/dreptul-la-apa-un-drept-constitutional/>

²¹ K. Kennedy *Curaj fara frontiere* http://rfkcenter.org/media/filer_public/9d/17/9d177418-1610-4f71-a99a-166c33d09a13/romanian_1.pdf

²² C. Mihali, Drept, dreptate, drepturile omului – dincoace de fanatism, in *Ideea artă+societate*. Nr.28, 2008. <http://www.idea.ro/revista/?q=ro/node/40&articol=499>

the long term, says Professor Dănișor, human rights encourage selfishness to the detriment of community spirit²³. In 2015, it is estimated that 663 million people worldwide still use unimproved drinking water sources, including unprotected wells and springs and surface water²⁴. Although, the progress has been made, the resolution target is not reached. Therefore, how much it inspires and how practical is the human right to water? As I mentioned earlier that recognizing of the right to water obliges states to ensure necessary institutional, economic and social environment to help individuals to progressively achieve these rights. This obligation must be assumed also when individuals are unable to meet basic needs for reasons beyond their control, including disasters, discrimination, economic poverty, age or disability; the states must ensure their basic needs²⁵. Monitoring reports show that while many countries face stalled water reform, others have made great strides in implementing various aspects of integrated water resources management (IWRM), including decentralized management and the creation of river basin organizations. As IWRM implementation has too often been geared towards economic efficiency, there is a need to put more emphasis on issues of equity and environmental sustainability and adopt measures to strengthen social, administrative and political accountability. Water pricing also provides signals for how to allocate scarce water resources to the highest-value uses – in financial terms or other types of benefits. Equitable pricing and water permits need to adequately assure that abstraction as well as releases of used water support efficient operations and environmental sustainability in ways that are adapted to the abilities and needs of industry and larger-scale irrigation as well as small-scale and subsistence farming activities²⁶. Unsustainable development pathways and governance failures have affected the quality and availability of water resources, compromising their capacity to generate social and economic benefits²⁷.

A result of the recognition of the right to water, we are rather witnessing at intensification of the conflict between economic and non-economic values, which resolves most of the time in favour of the first. The penetration force of the economics values and force for concretization of material contrasts with the inability of the values, called humanitarian (dignity, solidarity, equality, justice etc.) to decisively influence the international law. A major threat to fairness in the management of water is corruption of the entities that are responsible for setting and enforcing rules and also the stakeholders. According

to a wide range of reports, the most common areas for corruption involve the awarding of water permits and of water distribution, pollution control and environmental protection, performance and operation of systems for water supply, construction, as well as expanded irrigation systems or hydropower.

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²³ Gh. Danisor, *Filosofia drepturilor omului*. Universul juridic, 2011

²⁴ UNICEF, *Progress on Sanitation and Drinking Water – 2015 update and MDG assessment*, UNICEF and World Health Organization, 2015, p.7

²⁵ P. Gleick, *The Human Right to Water* Published in 1(5) Water Policy 487-503, 1999.p.10

²⁶ UNESCO, World Water Development Report 2015, „*Water for a sustainable World*”, UNESCO 2015, p.6

²⁷ UNESCO, op.cit., p.2