

# CURRENT CHALLENGES CONCERNING THE LAW OF WATER SERVICES IN HUNGARY

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## Abstract

*Water-related challenges exist in almost every country all around the world. These challenges encompass problems connected to different scientific fields, including law. The legal background of water issues is quite fragmented and, furthermore, consists of different levels of law – i.e. international, EU and national law – as well. Though, the present paper focuses on the Hungarian water-related legal challenges, it is absolutely clear that these challenges might not be solved without the achievements of other scientific fields (beyond law), and without a multi-level and comprehensive legal approach. This paper presents the most important focal points of the Hungarian water-legislation (i.e. water law concepts) in consideration of which the law-makers adopt the law concerning water management and water protection. By now, these water law concepts have been developed separately from each other. The present paper draws attention to the importance of integrative instruments among water law concepts. These integrative instruments are elementary to solve the challenges of the 21<sup>st</sup> century. The paper provides some examples of these integrative instruments. Afterwards, one of the water law concepts is analysed in a deeper way; that is the so-called ‘water as a natural resource and the subject of commercial deals’, and especially its sub-category, water services. In connection with water services, the paper also assesses the so-called Arad-Békés water service agreement according to which the Hungarian and Romanian parties endeavor to transfer drinking water from Romania to Hungary. Such solutions in water utility supplies may be regarded relatively rare.*

**Keywords:** *water management law, water law concepts, water services, water utility supplies, agricultural water services.*

## 1. Introduction

Water and the connected social issues are regarded as the most significant challenges of the 21<sup>st</sup> century. These challenges might merely be solved in a transdisciplinary and multi-level (i.e. international and national) way. The

decision-makers at both international (including the European Union) and national level are dealing with these challenges<sup>1</sup>, nevertheless, it should be noted that their responses so far have not provided a final solution to the raised problems. In the present paper, the author endeavours to focus on the legal aspects of the water-related social issues, and intends to assess

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<sup>1</sup> See e.g. Bruce Aylward et al., edit., *Law for water management: a guide to concepts and effective approaches* (Rome: Food and Agriculture Organization, 2009); Laurence Boisson de Chazournes, *Fresh Water in International Law* (Oxford: Oxford University Press, 2015); Daniel D. Bradlow and Salman M. A. Salman, *Regulatory frameworks for water resources management* (Washington D.C.: The World Bank, 2006); David H. Getches, Sandra B. Zellmer and Adell L. Amos, *Water Law in a Nutshell* (St. Paul: West Academic Publishing Co., 1997); Antoinette Hildering, *International law, sustainable development and water management* (Delft: Eburon Publishers, 2004); Stephen Hodgson, *Modern water rights: Theory and practice* (Rome: Food and Agriculture Organization, 2006).

the relevant Hungarian theoretical, legislative and practical reactions to the international, EU and national challenges. Taking the quantity limits into consideration, the paper mainly concentrates on the so-called water service issues, which are especially relevant aspects of the Hungarian vocational policies and law. Though some elements of the Hungarian water management and protection law have already been analysed by other authors<sup>2</sup> as well, the integrative approach of this paper (and author) may be regarded as unique.

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## 2. Theoretical Background

The paper especially concentrates on the water services and, in connection with this, on the challenges of the Hungarian water management. The topic of the paper is tightly connected to the main research activity of the author,<sup>3</sup> in which the author, *first*, would like to determine the so-called water law concepts of the, otherwise, utterly fragmented legislation concerning water management and water protection, *second*, endeavours to get to know the decisive links among these water law concepts and, *third*, intends to define some proposals for legislative improvements, i.e. the so-called *de lege ferenda* proposals, taking the integrated approach of all water law concepts into consideration. Nevertheless, it is worth stressing that, all along in the research, the author focused his activity on

the real water problems deriving from the Hungarian situation.

As regards the first objective, i.e. the determination of water law concepts, first of all, it is worth defining the substance of these water law concepts. Taking the different levels of law (i.e. international, European and national levels) into account, it should be noted that there is a huge amount of provisions which directly regulate the water-related human behaviours, and there are even significantly more provisions which indirectly regulate these human behaviours. The high number of water-related provisions forces lawyers to make an attempt to somehow categorise these provisions. In the main research of the author, water law concepts constitute the basis of the categorisation and they can be regarded as the core of the water legislation. E.g., in 2015, the author determined four main water law concepts around which the water-related provisions can be grouped. Namely: *first*, ruling over waters, *second*, water as an environmental component, *third*, water as a natural resource and the subject of commercial deals (good or service or investment), *fourth*, water as a cause of damage a.k.a. defence against water.<sup>4</sup> Nonetheless, it is worth emphasizing that these water law concepts are not regarded as incontestable axioms; in fact, they and their contents can be altered and modified considering the topical problems waiting for solutions.

Besides the categorisation of the water-related provisions, the complexity of water issues also needs attention. In other words: jurisprudence has a demand for a tool

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<sup>2</sup> See e.g. Belényesi Pál, "A vízszolgáltatások hatékonyságának javítása a Vízkeretirányelv egyes rendelkezései és a szennyező fizet elvének tükrében" (PhD Diss., University of Debrecen, 2013); Pump Judit "A jog hatása a fenntartható közszolgáltatásra a hulladékgyűjtés és a vízgazdálkodás területén" (PhD Diss., Eötvös Loránd University, 2011); Somlyódy László, edit., *Magyarország vízgazdálkodása: helyzetkép és stratégiai feladatok* (Budapest: Magyar Tudományos Akadémia, 2011).

<sup>3</sup> See Szilágyi János Ede, *Vízjog* (Miskolc: Miskolci Egyetem, 2013).

<sup>4</sup> Szilágyi János Ede, "A vízjogi szabályozási csomópontok továbbfejlesztésének lehetőségei," *Pro Futuro* 5 (2015) 2: 39.

in order that it can contribute to the solution of water-related problems affected numerous other sciences beside jurisprudence. Taking this demand into consideration, there is a need for a so-called transdisciplinary instrument with which jurisprudence might assess the problematic aspects of water management and water protection in a multidisciplinary way. In connection with transdisciplinary instruments, it should be noted that the water-related problems of humankind might not be comprehended, assessed and solved without a comprehensive approach provided by the different branches of sciences, e.g. by natural, social and other sciences. There is a significant challenge how to apply the experience of the other sciences in connection with a legal research concerning such complex phenomena as the hydrological cycle and the related social issues. In the opinion of the author, the strategic documents adopted at international, European and national level are able to provide such a multidisciplinary experience. Hence, a research dealing with water-related issues is to also analyse these strategic documents adopted by the UN organisations,<sup>5</sup> the EU institutions<sup>6</sup> and the national<sup>7</sup> decision makers. These strategic

documents also draw attention to the importance of the integrating and adaptive approach.

In the following parts, the paper focuses on two issues: *first*, law-related instruments transmitting among the water law concepts; namely, the so-called integrative instruments of water law concepts; *and, second*, the water law concept called *water as a natural resource and the subject of commercial deals* to which the water services also belong.

### 3. Law-related instruments transmitting among the water law concepts

As regards the integrative instruments of water law concepts, both European and Hungarian integrative instruments might be drawn attention to. As to integrative instruments of the EU, the Water Framework Directive (WFD)<sup>8</sup>, the supplementing Floods Directive (FD)<sup>9</sup> and the Marine Strategy Framework Directive should be mentioned. As far as Hungary, first of all, the WFD and FD have significance, and Hungary implemented them through numerous acts and decrees.

<sup>5</sup> It is especially worth emphasizing the United Nations (UN) inter-agency mechanism on all freshwater related issues, the so-called *UN Water*. See mainly UN Water's *World Water Development Reports* (1-6). They may be downloaded from <http://www.unwater.org/publications/world-water-development-report/en/>, Accessed February 2, 2016.

<sup>6</sup> See the EU Commission's *Blueprint to Safeguard Europe's Water Resources*, COM(2012) 673 final; see also the EU Commission's *Implementation reports of Water Framework Directive* (1-4): COM(2007) 128 final, COM(2009) 156 final, COM(2012) 670 final, COM(2015) 120 final.

<sup>7</sup> In connection with Hungary, see *Hungarian River Basin Management Plan 1* as the annex of 1042/2012 government resolution; *Hungarian Water Strategy*, final draft: 20.11.2015, accessed February 2, 2016, <http://www.vizugy.hu/index.php?module=vizstrat&programelemid=143>; *Hungarian River Basin Management Plan 2*, final draft: 22.12.2015, accessed February 2, 2016, <http://www.vizugy.hu/index.php?module=vizstrat&programelemid=144>.

<sup>8</sup> Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy. See Stuart Bell and Donald McGillivray, *Environmental law* (New York: Oxford University Press, 2008), 586-595; Ludwig Krämer, edit, *EU Environmental Law* (London: Sweet & Maxwell – Thomson Reuters, 2012), 252-259; Jan H. Jans, and Hans H.B. Vedder, *European Environmental Law: After Lisbon* (Groningen: Europa Law Publishing, 2012), 391-413.

<sup>9</sup> Directive 2007/60/EC of the European Parliament and of the Council on the assessment and management of flood risks.

Concerning the national integrative instruments of Hungary, the following instruments have to be highlighted.

(1) The *Fundamental Law*, i.e. the *Hungarian Constitution*.<sup>10</sup> The Fundamental Law plays an essential role in the integration of different water law concepts. From the several relevant provisions and instruments of the Fundamental Law, it is worth highlighting the following ones: (1a) *Fundamental rights*, especially the right to environment and the right to health;<sup>11</sup> it should be noted that the latter one shall be facilitated, *inter alia*, by providing access to potable water. (1b) Constitutional provisions concerning the protection of *future generations' interests* are also significant.<sup>12</sup> For example, according to Article 36, the Parliament may not pass an act on the central budget in consequence of which the state debt would exceed the half of the gross domestic product. Or, specifically concerning waters, Article P) states that the responsibility to protect and preserve the water resources for future generations lies with the Hungarian

State and every individual. (1c) Also Article P) regulates that the Hungarian water resources belong to the so-called *nation's common heritage*. Although, the Hungarian Constitution does not provide an exact definition on nation's common heritage, the nation's common heritage concept could be regarded as the expression of the sovereignty over the waters situated in the territory of Hungary. Taking into consideration that there are numerous cross-border surface and ground waters in Hungary, the Article Q) of the Fundamental Law shall apply as well. By virtue of Article Q), Hungary shall strive for cooperation with every nation and country of the world. (1d) The Fundamental Law established the category of the so-called *national assets*. The category of national assets includes the properties of the Hungarian State and local governments. According to Article 38 of the Fundamental Law, the requirements concerning the national assets shall be defined by a cardinal Act. Cardinal Act means an act the adoption of which requires a two-thirds majority of the votes of the Members of the Hungarian Parliament present. As the significant

<sup>10</sup> See Raisz Anikó, "A Constitution's Environment, Environment in the Constitution," *Est Europa* (2012) special edition 1: 47-51. On the relationship between constitution and water, see Fodor László, "A víz az Alaptörvény környezeti értékrendjében," *Publicationes Universitatis Miskolcensis. Sectio Juridica et Politica* (2013) XXXI: 334-345; Szabó Marcel, "A vízbázisok védelmének új koncepciója," *Jogtudományi Közöny* 69 (2014): 248-253.

<sup>11</sup> In connection with the Hungarian right to environment see: Bándi Gyula, "Gondolatok a környezethez való jogról," in *A nemzetközi környezetjog aktuális kihívásai*, ed. by Raisz Anikó (Miskolc: Miskolci Egyetem, 2012) 6-15; Fodor László, *Környezetvédelem az Alkotmányban* (Budapest: Gondolat Kiadó – Debreceni Egyetem ÁJK, 2006); etc.

<sup>12</sup> As regards the future generations in the Hungarian law, see Bándi Gyula, "A fenntartható fejlődés jogáról," *Pro Futuro* 3 (2013) 1: 11-30; Bányai Orsolya, *Energiajog az ökológiai fenntarthatóság szolgálatában* (Debrecen: DELA, 2014), 16-55; Csák Csilla and Jakab Nóra, "The Hungarian National Report on Agriculture and the requirements of a sustainable development," *Journal of Agricultural and Environmental Law* 7 (2012) 12: 50-55; Fodor László, "A természeti tárgyak helye és szerepe az új alkotmányban," in *Alkotmányozás Magyarországon 2010-2011*, ed. Drinóczi Tímea and Jakab András (Budapest-Pécs: PPKE JÁK – PTE ÁJK, 2012), 89-103; Horváth Zsuzsanna and Pánovics Attila, "Környezetvédelem és fenntarthatóság az új Alaptörvényben," in *Magyarország új alkotmányossága*, ed. Drinóczi Tímea (Pécs: PTE-ÁJK, 2011), 77-95; Nagy Zoltán, *Környezeti adózás szabályozása a környezetpolitika rendszerében* (Miskolc: Miskolci Egyetem, 2013), 8-18; Olajos István, *A vidékfejlesztési jog kialakulása és története* (Miskolc: Novotni Kiadó, 2008), 28-31; Olajos István, *Támogatási rendszereink és a megújuló energiák*. Miskolc: Miskolci Egyetem, 2013, 15-17; Pánovics Attila, "A fenntartható fejlődés belső és külső dimenziói az Európai Unióban," *Európai Tükör* 12 (2007) 12: 120-127; Szabó Marcel, "A fenntartható fejlődés: nemzetközi jogi elmélet és szerződéses gyakorlat," in *A nemzetközi környezetjog aktuális kihívásai*, ed. Raisz Anikó (Miskolc: Miskolci Egyetem, 2012), 161-174.

categories of waters belong to the Hungarian State and the local governments, the ownership and use of these waters are regulated by a cardinal Act; i.e. by the Act CXCVI of 2011 on the national assets. Taking these points into consideration, the Fundamental Law grants a high level of protection for these waters.

(2) The Hungarian *Environmental Act* (Act LIII of 1995) and the Hungarian *Water Management Act* (Act LVII of 1995). Both the Environmental Act and the Water Management Act have a determining role in the coordination of water legislation.<sup>13</sup> Merely in connection with the water management legislation, the draft of the Hungarian Water Strategy refers to approximately 80 acts and decrees which regulate the water management directly.<sup>14</sup> The number of acts and decrees regulating indirectly this subject is much higher. Therefore, it is utterly significant to somehow orientate this huge amount of water-related legislation. According to the Hungarian Water Strategy, which is underway to be adopted, it is essential to rearrange the relationship between the Environmental Act and the Water Management Act, because the regulated subjects of the current acts are confused. According to the Hungarian Water Strategy, it is also high time to adopt a new Water Management Act, as the current Water Management Act has become fragmented by

the countless amendments of the Act since its adoption.<sup>15</sup>

(3) The Hungarian *Critical Infrastructures Act*. By virtue of the EU's European critical infrastructures Directive,<sup>16</sup> the Member States had to adopt their connected national rules concerning critical infrastructures. Hence, Hungary adopted its rules as well. The main aim of the EU directive, and similarly of the Hungarian provisions is to prevent terrorist attacks against the critical infrastructures of Member States. Beside energy, transport, agricultural and other critical infrastructures, Act CLXVI of 2012 on the Hungarian critical infrastructures also regulates a wide range of rules connected to different water law concepts,<sup>17</sup> such as water transport, water utility supplies, protection of water bases, quality control of surface and ground waters, dikes and other ramparts against flood. Taking this comprehensive approach of the act into consideration, it can be regarded as an integrative instrument of water law as well.

(4) Etc.

Beside the Hungarian acts concerning the contents of water law, the organizational aspects of integration are also significant. In connection with this, it is worth noticing that the administrative bodies dealing with water management and protection are rather fragmentary.<sup>18</sup> There are numerous

<sup>13</sup> See Bándi Gyula, *Környezetjog* (Budapest: Szent István Társulat, 2011), 451-464; Csák Csilla, *Környezetjog* (Miskolc: Novotni Kiadó, 2008), 100-115; Fodor László, *Környezetjog* (Debrecen: Debrecen University Press, 2014), 210-233; Kurucz Mihály, *Föld- és vízvédelmi jog* (Budapest: ELTE Jogi Továbbképző Intézet, 2002), 253-381; Miklós László, "A vízvédelem szabályozása," in *A környezetjog alapjai*, ed. Miklós László (Szeged: SZTE ÁJK – JATEPress, 2011), 75-81; Szilágyi, *Vízjog*, 140-167.

<sup>14</sup> *Hungarian Water Strategy*, 96.

<sup>15</sup> *Hungarian Water Strategy*, 96-98. A similar conclusion was previously determined in: Szilágyi, *Vízjog*, 148.

<sup>16</sup> Directive 2008/114/EC of the European Council on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection.

<sup>17</sup> See Szilágyi János Ede, "A vízágazgat létfontosságú rendszereinek biztonságpolitikai védelme és a magyar vízjog," *Publicationes Universitatis Miskolcensis. Sectio Juridica et Politica* (2015) XXXIII: 354-366.

<sup>18</sup> *Hungarian Water Strategy*, 96-97. Cf. Somlyódy, *Magyarország vízgazdálkodása*, 293-294; Barta Judit et al., *Speciális társaságok*, (Budapest: Közgazdasági és Jogi Könyvkiadó, 2003), 299-320; Fodor, *Környezetvédelem az*

ministries and inferior authorities and administrative bodies, therefore, it is not so simple to handle the water-related problems in this fragmented administrative frame. It would be quite useful if the water authorities and environmental authorities could be again operated under one minister, especially as a joined authority. Nevertheless, it is worth stressing that there were also some quite positive initiatives connected to the organisational aspects of water management. The Hungarian decision-makers set up the supervisory body of water utility supplies,<sup>19</sup> and also established a new administrative system for the agricultural water services (such as irrigation) in which system the state has a more stressful role than previously had.<sup>20</sup>

#### 4. Water as a natural resource and the subject of commercial deals

As far as the water law concept called *water as a natural resource and the subject of commercial deals* is concerned, first, it should be defined what water as a natural resource means. The aspect differing the concept of natural resource from the concept of environmental component is the possibility that an environmental component may be used for satisfying the needs of the society. In a certain sense, according to the

definition of the Water Management Act, the management of water *resources* is connected to this concept, and in a wider sense, the direct satisfaction of personal demands as well. The question arises which kind of natural resource the water is according to the law. The different answers derive from the complexity of the hydrologic cycle. For instance, *under the Water Framework Directive*, waters are in principle renewable natural resources,<sup>21</sup> but, *by virtue of the Hungarian Environmental Act*, water is merely a “limited resource”.<sup>22</sup>

As regards water as a *subject of commercial deals*, water can become the subject of commercial deals in a *transformed way*. This is the so-called *virtual water trade* and also known as trade in *embodied water*.<sup>23</sup> By the way, this virtual water trade has a strong relationship with another topical question of international issues, namely with the so-called *land-grabbing*.<sup>24</sup> Although, both virtual water trade and land-grabbing are incredibly relevant and interesting topics, in the following parts of my paper I intend to focus on more classic aspects of this water law concept. In the significant literature, water as a subject of commercial deals is analysed in a complex way. Namely, water can be regarded as good, service and/or, in a certain sense, as subject of investments. The distinction between these

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*Alkotmányban*, 117, 178; Pánovics Attila, “A környezetvédelmi, természetvédelmi és vízügyi intézményrendszer egységesítése,” *Jogtudományi Közlöny* 62 (2007) 5: 205-215; Szilágyi, *Vízjog*, 217-224. etc.

<sup>19</sup> See Szilágyi János Ede, “A magyar víziközmű-szolgáltatók integrációja jogi nézőpontból,” *Pro Futuro* 4 (2014) 1: 144-162.

<sup>20</sup> See Szilágyi János Ede, “A mezőgazdasági öntözéssel összefüggő egyes jogi problémákról,” *Miskolci Jogi Szemle* 10 (2015) 1: 33-51.

<sup>21</sup> Preamble (28) of the WFD.

<sup>22</sup> § 19 (1) of the Hungarian Environmental Act.

<sup>23</sup> UN Water’s *World Water Development Reports* 4, 33-34.

<sup>24</sup> See Christian Häberli and Fiona Smith, “Food security and agri-foreign direct investment in weak states – Finding the governance gap to avoid ‘land grab’,” *Modern Law Review* 77 (2014) 2: 189-222; Olivier De Schutter, “The green rush: The global race for farmland and the rights of land users,” *Harvard International Law Journal* 52 (2011) 2: 503-559; Elizabeth R. Gorman, “When the poor have nothing left to eat: the United States’ obligation to regulate American investment in the African land grab,” *Ohio State Law Journal* 75 (2014) 1: 199-235.

categories is absolutely a problematic issue of the current international private law,<sup>25</sup> nevertheless, I endeavour to concentrate merely on the service aspects of water.

In the present part of the paper, the nature of *water services* will be analysed in the context of the EU law, especially the Water Framework Directive. Namely, the water service definition of Water Framework Directive became the subject of a dispute between the EU Commission and Germany. The EU Commission stuck to a definition which regarded water services rather as environmental services. Contrarily, Germany interpreted the considered definition of the Water Framework Directive as a commercial category. The 2014 judgement<sup>26</sup> of the Court of Justice of the EU reflects rather the commercial approach of the water service definition. The Court also interpreted the exemptions connected to the water services and to the so-called cost-recovery-principle. In my eye, the judgement proved that these provisions of the Water Framework Directive are hardly enforceable. The draft of the new (i.e. second) Hungarian River Basin Management Plan already reflects this judgement of the CJEU, and the competence provided for the Member States by this

judgement. According to the final draft published on 22.12.2015,<sup>27</sup> water services include (a) water utility supplies, (b) agricultural water services (such as irrigation), (c) impoundment and storage for production of hydropower, (d) certain abstraction of groundwater for industry, households and agriculture. The special field of the latter one is the abstraction of thermal waters. In the last part of my paper, taking their significance into consideration, I am about to focus on the first two groups of water services mentioned by the final draft of the second Hungarian River Basin Management Plan.

In connection with water utility supplies, the *right to water and sanitation*<sup>28</sup> should be mentioned. First of all, it is worth emphasizing that the right to water and sanitation do not include merely the water utility supplies, but e.g. the direct human consumption from water resources beyond water utility supplies as well. Nevertheless, it is indisputable that in Hungary, similarly to the other developed countries, water utility supplies present a quite strong relationship with the right to water and sanitation. *At the EU level*, it is worth noticing that the first EU citizens' initiative petition asked the EU Commission, among

<sup>25</sup> Katsumi Matsuoka, "Tradable water in GATT/WTO law: need for new legal frameworks?" (paper presented at AWRA/IWLRI-University of Dundee International Specialty Conference on Globalization and Water Resources Management: the Changing Value of Water, August 6-8, 2001) 2-5; Markus Krajewski and Elisabeth Türk, "The right to water and trade in services: Assessing the impact of GATS negotiations on water regulation" (paper presented at CAT+E Conference: Mowing forward from Cancún, Berlin, Germany, October 30-31, 2003) 6-7; David Hall and Stephen Thomas, *GATS and the electricity and water sector*, PSIRU, March 3, 2006, 5-6, accessed July 08, 2011, [www.psiru.org/reports/2006-03-WE-GATS.doc](http://www.psiru.org/reports/2006-03-WE-GATS.doc).

<sup>26</sup> C-525/12, judgment of the Court of 11 September 2014, European Commission v Federal Republic of Germany.

<sup>27</sup> *Hungarian River Basin Management Plan 2*, 246-247, 248-260.

<sup>28</sup> See Catarina de Albuquerque, *On the right track. Good practices in realising the rights to water and sanitation* (Lissabon: Human Rights to Water & Sanitation UN Special Rapporteur, 2012); Stephen McCaffrey and Kate J. Neville, "Small Capacity and Big Responsibilities: Financial and Legal Implications of a Human Right to Water for Developing Countries," *The Georgetown International Environmental Law Review* 21 (2009) 4: 679-704; Stephen Tully, "A Human Right to Access Water? A Critique of General Comment No. 15," *Netherlands Quarterly of Human Rights*, 23 (2005) 1: 35-63; Leanne Watrous, "The Right to Water – From Paper to Practice," *Regent Journal of International Law* 8 (2011) 1: 109-136.

others, to guarantee access to water and sanitation as a human right, and in connection with this, the EU Parliament adopted a resolution<sup>29</sup> in 2015, through which the EU Parliament called upon the EU Commission to submit legislative proposals concerning the right to water and sanitation. At national level, the Fundamental Law was previously mentioned, according to which, the Hungarian State shall provide access to potable water.<sup>30</sup> Otherwise, in 2015, the Office of the Commissioner for Fundamental Rights assessed its own activity in connection with the right to water and sanitation.<sup>31</sup> Its analyses drew attention to the fact that the Commissioner and its ancestors could act for the proper access to water and sanitation on the basis of the other fundamental rights even before the adoption of the Fundamental Law.

Coming to the point of commercial water services, in connection with the Hungarian *water utility supplies*, the Hungarian Parliament adopted a new act in 2011.<sup>32</sup> According to this new act, Hungary has changed its water utility supplies system. The basis of this new system is the regularization, nationalization and (re)municipalisation of the sector. The first stage of the new system might be regarded

successful, but nowadays, the reform seems broken. The problematic question is connected to the financing of the water utility supplies. Namely, who will finance the huge cost of the reconstruction of the run-down water supply system? According to the cost-recovery-principle<sup>33</sup> of the Water Framework Directive, primarily, the consumers are to finance this cost which has accumulated in the last 30 years. But according to the affordability principle, it is almost impossible to impose this cost on the present generations of consumers.

Besides the financial issues, there are other topical questions in connection with the Hungarian water utility supplies. One of these topical questions is connected to the *international aspects* of the water utility supplies. From these international aspects, it is worth emphasizing, among others, at least four: (a) After the change of regime in 1989-1990, foreign investors played an important role in the privatization of numerous Hungarian water companies. (b) After approximately 2005, and especially after the 2010 parliamentary election, when the new Hungarian government have absolutely changed the policy and the legislation concerning water utility supplies, a new tendency has begun with the nationalization and (re)municipalisation of the sector. Some

<sup>29</sup> See European Parliament resolution of 8 September 2015 on the follow-up to the European Citizens' Initiative Right2Water (2014/2239(INI)).

<sup>30</sup> See Szappanyos Melinda, *Víz és jog* (Veszprém: Veszprémi Humán Tudományokért Alapítvány, 2013), 11-130; Greksza Veronika and Szabó Marcel, edit, *Right to Water and the Protection of Fundamental Rights in Hungary* (Pécs, University of Pécs, 2013), 2-15 (Szabó), 34-48 (Bujdos-Fodor), 49-67 (Kardos Kaponyi), 97-114 (Kéri), 116-135 (Baillat-Schmitz), 136-154 (Buxhoeveden-Belényesi), 155-169 (Pánovics), 170-179 (Szemesi), 180-193 (Szappanyos), 194-211 (Greksza); Kecskés Gábor, "A vízhez való jog nemzetközi jogi koncepciója," *Állam- és Jogtudomány* 50 (2009) 4: 569-598; Raisz Anikó, "A vízhez való jog egyes aktuális kérdéseiről," in *Jogtudományi tanulmányok a fenntartható természeti erőforrások témakörében*, ed. Csák Csilla (Miskolc: Miskolci Egyetem, 2012), 151-159.

<sup>31</sup> The assessment was presented at the Conference for the Hungarian implementation of the UNECE's 1999 Protocol on Water and Health, Budapest, Hungary, June 2, 2015.

<sup>32</sup> Act CCIX of 2011 on Water Utility Supply; See Hegedűs József and Tönkö Andrea, "A víz- és csatornaszolgáltatás alternatív strukturális modelljei és ezek változási irányai," in *Külön utak*, ed. Horváth M. Tamás (Budapest-Pécs: Dialóg Campus, 2014), 11-31; Szilágyi, *Vízjog*, 180-214.

<sup>33</sup> Szilágyi János Ede, "A magyar víziközmű-szolgáltatások és a Víz-keretirányelv költségmegtérülésének elve," *Miskolci Jogi Szemle* 9 (2014) 1: 77-92.

foreign investors were also affected with this procedure, and parties – on the one hand: the foreign investors, on the other hand: the Hungarian state and/or local governments – could mainly find a proper and peaceful solution, but sometimes these nationalization and municipalisation led to legal debates.<sup>34</sup> (c) Hungarian water companies also have opportunities on the water markets of other countries; e.g. one of the water companies in the Hungarian capital (i.e. *Fővárosi Vízművek*) help providing water services in 35 Indonesian settlements. (d) The domestic water utility supplies from the water resources of another country might be regarded one of the most controversial of international affairs. As regards Hungary, previously, for instance, the 1959 Austrian-Hungarian water management agreement defined the water utility supplies of two Hungarian towns (i.e. *Sopron, Kőszeg*) provided from the territory of Austria.<sup>35</sup> However, the topical case of this international relationship is undisputedly the so-called *Arad-Békés* water service agreement. In the background of this agreement, there is an EU directive according to which the arsenic parameter of the drinking water does not meet the requirements of the Directive 98/83/EC in the southern parts of the Hungarian Great Plain (especially in Békés county). In 2011, to fulfil the requirements of the EU directive, the Arad Water Company (AWC) and the Békés County Water Company (today: *Alföldvíz* Water Company) established a Romania-based joint venture (*Aqua Trans Mureș S.A.*; ATM) to transfer water from Romania to Hungary.<sup>36</sup> ATM won a 49-year concession (furthermore an added 24-year

option) over 20 fountains in Arad and also an opportunity to set up and manage a water pipe to the Hungarian-Romanian border. The ATM is to exploit the EU-law-conform water from the underground source, and to transfer this water through a 20 km long pipeline to the transfer point at the Hungarian-Romanian border (*Kevermes*). In connection with this cross-border drinking water transfer, numerous concerns might arise. Nevertheless, the Arad-Békés water service agreement includes several guarantees which are able to reassuringly answer to the concerns:<sup>37</sup> (d1) *Alföldvíz* buys the water not from the AWC but directly from the ATM. (d2) *Alföldvíz* and AWC are 50%-50% owners of the ATM. (d3) The costs of ATM are also shared in two equal portions by the *Alföldvíz* and the AWC. (d4) The appointment of the ATM-management is the right of the *Alföldvíz*. (d5) The fountains providing water for the Hungarian party are separated from the system of the AWC. The ATM is responsible to manage and restore these fountains. (d6) The pipeline built for this project is owned by the ATM. (d7) The concession rights of the 20 fountains are won by the ATM. (d8) The water from these fountains are appropriate for the direct human consumptions without any additional treatment. (d9) The components of the system managed by the ATM are operated in harmony with the Hungarian process control. (d10) In case of a legal dispute, merely the Vienna International Arbitral Centre has the competence to decide. (d11) The Arad-Békés water service agreement also includes a water-resource-protection clause. According to this clause, the ATM as

<sup>34</sup> Szilágyi, *Vízjog*, 192-194.

<sup>35</sup> Szilágyi, *Vízjog*, 105.

<sup>36</sup> Szilágyi, *Vízjog*, 126-128.

<sup>37</sup> Jancsó Edina and Farkas Kristóf, Declaration of *Alföldvíz* “on the water supply utility consortium for Arad-Békés water-transfer” to author, (*Békéscsaba*, July 6, 2015), 3-5.

a Romanian legal entity can directly take part in the Romanian water protection procedures. Taking these features of the agreement into consideration, the agreement provides a large-scale guarantee for the Hungarian and Romanian parties.

As regards *agricultural water services*, especially irrigation, the reform was also inevitable.<sup>38</sup> After the change of regime, the irrigation system of agriculture was almost devastated. The reconstruction of this system is unimaginable without a centralised solution. Approximately in 2014, the Hungarian State undertook the task to repair the national system of irrigation and, in connection with this decision, the Hungarian Parliament adopted new rules. In my eye, the decision of the Hungarian Parliament was inevitable as well, but the source of financing is unknown. Similarly to the water utility supplies, the affordability of the service for agricultural producers is questionable in the long run. Namely, at this moment, the service fee for agricultural irrigation is free for agricultural producers, but this could be problematic taking into consideration the cost-recovery principle of the Water Framework Directive.

## 5. Conclusions

Consequently, (a) numerous regulations of the Water Framework Directive should be re-defined more exactly, (b) the integration of the Hungarian administrative organisations is about to continue, (c) Hungary has to adopt a new and up-to-date water management act, furthermore (d) in connection with water utility supplies and agricultural irrigation service, it is worth emphasizing that the reform of their legal background was inevitable and supportable, but the decision-makers also have to provide the financial source for them taking the cost-recovery principle and the aspect of affordability into consideration. (e) As regards the Arad-Békés water service agreement, it might be regarded as a unique solution concerning the cross-border drinking water service not merely in the relationship between Hungary and Romania, but in other regions as well. The legal guarantees of this agreement can provide a good model for other similar cases.

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<sup>38</sup> Szilágyi, "A mezőgazdasági öntözéssel összefüggő egyes jogi problémákról," 35-41.

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