

Legal Protection of Water - an Analysis from an Administrative Law Perspective

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ABSTRACT: This study proposes an analysis of water in general and drinking water in particular, considering that it is indispensable for living on our beautiful blue planet. Water wastage, floods, global warming, wars, waste of all kinds, and pollution, are just some of the causes that can endanger natural water resources, with a direct effect on the present but also on future generations. From this perspective, in relation to climate change, the subject is topical and of interest to both specialists and private individuals, because water is consumed by everyone and it is in the public interest to protect it. The scope of the study is to carry out a comprehensive analysis of water from an interdisciplinary perspective, taking administrative law as a starting point. In terms of methodology, the paperwork is divided into three parts: part I will analyze the national legal framework on water, part II will present relevant international documents describing drinking water standards, and part III will identify several current issues related to public water supply service arising from day-to-day work of public administration. The paperwork will conclude that citizens and public authorities on all continents must behave responsibly on a daily basis in order not to waste water, which is both a legal and a moral obligation.

KEYWORDS: drinking water, public service, public authority, public administration, Directive on the quality of water intended for human consumption

Introduction

This study takes as a starting point a media report according to which, on the occasion of World Water Day - 22 March 2024, Mr. Mircea Fechet, Romanian Minister of the Environment, Water and Forests (2024), delivered a public message stating that “water is one of nature's most precious gifts. Although about 70% of our planet is covered in water, only a small part of it is drinkable and accessible for human consumption.” This message of the Minister has led us to an extensive process of personal reflection, which made us curious to know whether water is legally regulated and what the main legal acts in this regard would be. This scientific research will combine the theoretical component of the topic involving legislation and literature with the practical component, which involves the analysis of official reports of public authorities on the current situation of water issue in our country, so that we can legally construe the information. We note in this regard, the concerns of specialists, analyzing the rules of legal interpretation (Popa et al. 2017, 197-202, Boghirnea 2018, 50-57; Bădescu 2018, 167-187).

The doctrine underlines the special link between state and law. It is stated in this context that “the state creates law, in this sense, it enforces rules of conduct, binding regulations for all” (Muraru et al. 2020, 3). Moreover, according to the law, “public administration authorities implement their activity in several categories of legal acts” (Apostol Tofan 2020, 3). As far as we are concerned, starting from this reality, of the relationship between the state and law, between social needs and their reflection in normative acts, this paperwork will try to answer the following questions: “*Which is the legal regime of water?*” and “*Which public authority determines the regime for the use of water resources?*”

By using research methods specific to law, the conclusion of the paperwork will be underlined, namely that compliance with the law, in the sense of protecting water, is required to individuals, as well as to public authorities. Otherwise, legal liability will be incurred, according to the law. In this field of water, including the states have the obligation to harmonize legislation with international documents. As recently stated: “regulations have

general applicability” (Fuerea 2010, 141) and “legal regulation requires acceptance of and compliance with the prescribed conduct” (Hegheş 2022, 153). On the other hand, it is well known that “the EU’s external action entails various policies and mechanisms” (Conea 2019, 10). Therefore, whether we talk about private persons, authorities or states, there is a general obligation to comply with the law, and the paperwork makes this clear in its content. Furthermore, we hereby stress out that “the principle of legality is not a principle specific to administrative law but applies to all branches of law and all forms of activity, whether under public or private law” (Ştefan 2022, 33). In this respect, the principle of legality is naturally reflected in the day-to-day work of the administration, as stated in Article 1 of the Constitution which provides the following in para. (5): “*In Romania, the observance of the Constitution, its supremacy and the laws shall be mandatory*”. Furthermore, it is a fact that “administrative law is dominated by the principle of legality, in the sense that the work of the public administration is carried out on the basis of and in accordance with the laws, and is primarily concerned with their implementation” (Cliza & Ulariu 2023, 112).

Several highlights on the national legal framework applicable to water

The national legal framework on water protection consists of several normative acts from which we will present selectively only those we consider relevant for the analysis of our topic.

The first normative act that we mention is GEO no. 195/2005 on environmental protection (published in Official Journal no. 1196 of 30 December 2005) which provides the following in art. 6 para. (1): “*the environmental protection is the obligation and responsibility of central and local public authorities and of all natural and legal persons*”. Art. 55 para. (1) of Chapter IX - Protection of water and aquatic ecosystems provides the following: “*the activities for the management and protection of water resources and aquatic ecosystems are subject to the provisions of this Ordinance and to the specific legislation in force*”.

Then, Water Law no. 107/1996 (published in Official Journal no. 244 of 8 October 1996) details the legal regime of water in our country, establishing in art. 1 para. (2) that “*water is part of the public domain of the State*”, while “*Romania’s groundwater and surface water are a wealth of public interest (art. 1 para 1²)*”. At the same time, in the legislator's view, according to art. 1 para. (1¹): “*water is not just any commercial product but a natural heritage that must be protected, treated and defended as such, being a strategic safety and national security resource*”. All actions relating to water resources are actions of general interest. We note in this sense a study on the public interest in environmental decision (Manu 2021, 18; Buzatu, N-E. 2012, 1123).

The scope of the Water Law is the following: “*conservation, development and protection of water resources and ensuring free flow of water; ensuring drinking water supply to the population and public sanitation; sustainable water management and the rational and balanced allocation of this resource, maintaining and improving the quality and natural regeneration of water; integration of quantitative and qualitative aspects for both surface water and groundwater belonging to the same ecological, hydrological and hydrogeological system; promoting sustainable water use based on long-term protection of available water resources, etc.*”.

Water in the public domain is entrusted for administration to “Apele Române” National Administration by the central public water authority. According to Art. 4 para. (1) of the law “*surface and groundwater resources are a natural monopoly of strategic interest. The determination of the regime for the use of water resources, irrespective of the form of ownership, is an exclusive right of the Government, exercised through the central public water authority*”. Therefore, “*the purpose of administration is to serve the interests of the people*” (Vedinaş 2023, 26).

A final piece of legislation highlighted is Government Ordinance no. 7/2023 on the quality of water intended for human consumption (published in Official Journal no. 63 of 25

January 2023). This one transposed Directive EU 2020/2184 on the quality of water intended for human consumption. The normative act tries to reach two goals referred to in art.1: *“to protect human health against the adverse effects of contamination of water intended for human consumption by ensuring its quality as wholesome and clean water; to improve access to safe drinking water”*.

Brief considerations on international drinking water legislation

International water protection is not a new topic, by preoccupying legislators on all continents. As noted, “for a long time it did not even occur to man that he should spare nature, for the action exerted upon it seemed to him insignificant” (Dușcă 2021, 5). Ethically, it is no longer acceptable nowadays to be passive or not to care about the resources that ensure your survival, and yet water is an indispensable resource of life.

As another author points out, at the international level there is a great number of regulations on water protection: “Water Charter, adopted in 1968 under the aegis of the European Council; Mar del Plata – Action Plan Argentina 1997; The Dublin Statement on Water and Sustainable Development of 1992” (Hanciu 2021, 140). Furthermore, “from the historical point of view, we note the signing of Helsinki Convention of 17 March 1992 on the protection and use of transboundary watercourses and international lakes approved by Council Decision of 24 July 1995 on the conclusion of the Convention on behalf of the Community (...)” (Ștefan 2024, 212-213). Romania ratified the 1999 Protocol on Water and Health by G.O. no. 95/2000 (...) (Idem, 2013).

Currently, the European legislation on the quality of water intended for human consumption is Directive EU 2020/2184 of the European Parliament and of the Council of 16 December 2020 on the quality of water intended for human consumption (published in Official Journal of the European Union L 435/23.12.2020). The Preamble provides the following: *“The nature of materials that come into contact with water intended for human consumption can have an impact on the quality of such water (...)”* (par.21). The directive defines *water intended for human consumption*, as follows:

“a) all water, either in its original state or after treatment, intended for drinking, cooking, food preparation or other domestic purposes in both public and private premises, regardless of its origin and whether it is supplied from a distribution network, supplied from a tanker or put into bottles or containers, including spring waters;

b) all water used in any food business for the manufacture, processing, preservation or marketing of products or substances intended for human consumption”.

Furthermore, the Directive also lays down: quality standards, compliance with which determines the quality of water intended for human consumption as wholesome and clean; minimum hygiene requirements for materials in contact with water intended for human consumption, laying down obligations for Member States but also minimum requirements for treatment chemicals and filter media in contact with water intended for human consumption.

Current water issues - case study

Drinking water supply is a public service and at national level there is a dedicated normative act, Law no. 241/2006 on the water supply and sewerage service (republished in Official Journal no. 679 of 7 September 2015), but in relation to the topic under consideration we choose not to develop this normative act.

Starting from the idea that “public services are undoubtedly a pillar of society” (Cliza 2023, 49), this section will capture the practical component of the public water supply service, revealing what would be the main problems the water sector is faced with, as reflected in public reports. At the same time, as the doctrine pointed out, “together with population and form of government, territory is an essential component of the state (Popescu 2023, 186). From this point of view, drinking water supply services must cover the whole country.

Moreover, “art. 560 of the Administrative Code regulates the principles underlying the establishment, organization and provision of public services: the principle of transparency, the principle of equal treatment, the principle of continuity, the principle of adaptability of the public service, the principle of accessibility, the principle of responsibility for providing the public service, the principle of providing public services at a high level of quality” (Negruț 2020, 6). According to an official Report of the Competition Council (2017), “*from the administrative point of view, Romania has 41 counties, 103 municipalities, 217 cities and 2,861 communes. The public drinking water supply service is organized in 2,506 localities, representing 78.78% of all localities in the country.*” The same document states that the main current shortages and issues of public water and sewerage services were found to be: “*relatively low access of the population to the drinking water network; sometimes poor quality of drinking water; sometimes poor management of the water supply and sewerage system; lack of coherent and predictable investment programmes to ensure the development and maintenance of existing water and sewerage systems*” (Idem).

Furthermore, according to a report by ANRSC (National Authority for Community Services of Public Utilities 2023), “*there are currently over 1,000 water and/or wastewater operators in Romania.*” It was found that “the difference between water abstracted from sources and water invoiced is one of the major problems of the water and wastewater sector in Romania (Idem). Furthermore, “*there is a major shortage at universities in the country, which puts major pressure on the recruitment process in the sector*” (Idem).

At the same time, according to another report prepared by the World Bank called: “Romania Water Diagnostic Report” of June 2018, the analysis suggested to focus on 4 thematic priorities to accelerate Romania’s pace towards compliance, inclusion and water security: “(I) *achieve compliance with the Urban Waste Water Treatment Directive by 2017; (II) revisit the water supply and sanitation reform to ensure a sustainable service for all; (III) rethinking the management of hydraulic assets (...) to adapt them to changing demand and needs and (IV) better use the leverage of the water sector for green growth*”(World Bank 2018).

Conclusions

As a result of the documentation carried out, we consider that the established research goal of analyzing water from an interdisciplinary point of view has been reached, and answers to the proposed research questions have been identified. Water is legally regulated, both nationally and internationally. At national level, the legal framework includes, for example, Water Law no. 107/1996 or Government Ordinance no. 7/2023 on the quality of water intended for human consumption, and Romania has fulfilled its obligation to ratify international documents on the quality of water intended for human consumption, namely Directive EU 2020/2184 of the European Parliament and of the Council. This European normative act is important because it sets quality standards the fulfilment of which establishes the quality of water intended for human consumption as wholesome and clean.

With regard to the public authority establishing the regime for the use of water resources, according to Water Law no. 107/1996, it appears that this is the Government, which has an exclusive right, exercised through the central public authority in the water sector.

The paperwork also contains a practical part, documenting official reports on the state of Romanian waters, from the analysis of which it emerges that our country faces certain problems in the water sector. Several such situations were nominated and ideas were selected and presented to help public authorities overcome a potential water crisis in Romania. In our opinion, it is not enough to simply demand that public authorities have obligations in relation to water without taking into account that citizens must also be more responsible by not wasting water.

Finally, in the background of the climate change and global warming, we are concerned about one of the findings of the official reports, according to which there is currently relatively low access to safe drinking water in our country. In this situation, we can talk about the urgency for public authorities to identify these situations, allocate resources and support the population in need in what concerns access to water.

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