

Affordability of drinking water and the new Hungarian regulation
concerning water utility supplies

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The present article¹ concentrates on one element of the human right to water (hereinafter referred to as HRTW), namely: financing. In this connection, the paper emphasizes that ensuring the HRTW in a developing country diverges from ensuring it in a developed country. The article also stresses the relationship between financing and the determination of the water price. Besides the social aspects, the determination of the water price is also affected by economic and environmental aspects. The present article makes an attempt to analyse the above mentioned topics and to interpret the nature of the HRTW through the example of a concrete state, i.e. Hungary, and its water utilities' system under reconstruction.

As for the name and the content of the human right to water, there are numerous methods to determine and classify the HRTW both in nominal and substantial ways. Taking the international and national laws into consideration, politicians, experts and stakeholders cannot find a single and universal concept of the HRTW, resulting in a considerable variation of concepts. In the present article, the denomination of the HRTW is applied as a general and comprehensive category of the different variations and concepts.

In Part A of this article, the essential features of the HRTW are summarized.² In Part B, the analysis focuses on the Hungarian

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² Author of the present paper applied the significant and outstanding research of *Anikó Raisz* in the several paragraphs of the Part A; see especially: A. Raisz, *A vízhez való jog*

implementation of the HRTW, especially on the relationship of the affordability of the HRTW with the new Hungarian constitution (called the Hungarian Fundamental Law) and the new Hungarian act concerning water utilities.

A. Introduction to the Concept and the Implementation of the Human Right to Water

I. The Development of the HRTW in International Documents and National Constitutions

The determination of the date when the HRTW appeared in legal documents is complicated, since, besides the documents which explicitly contain the HRTW, also documents which merely implicitly include the HRTW (hereinafter referred to as implicit HRTW) have a significant role in the development of the HRTW.

egyes aktuális kérdéseiről, in Cs. Csák (Ed.), *Jogtudományi tanulmányok a fenntartható természeti erőforrások témakörében*, Miskolci Egyetem, Miskolc, 2012, pp. 151-159. In connection with the human right to water, a considerable amount of books and articles is accessible; see, e.g.,: C. Albuquerque, *On the right track. Good practices in realising the rights to water and sanitation*, Human Rights to Water & Sanitation UN Special Rapporteur, Lisbon, 2012; S. McCaffrey & K. 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*, No. 21, 2008-2009, pp. 679-704; S. Tully, 'A Human Right to Access Water? A Critique of General Comment No. 15', *Netherlands Quarterly of Human Rights*, No. 23, 2005, pp. 35-63; L. Watrous, 'The Right to Water – From Paper to Practice', *Regent Journal of International Law*, No. 8, 2011, pp. 109-136. p. From the articles and books of Hungarian authors see particularly: D. G. Antali, 'A kék bolygó kincse – A vízhez való jog szabályozása nemzetközi és nemzeti szinten', *Jog- és Politikatudományi Folyóirat*, No. 4, 2011, pp. 1-40; G. Kardos, 'A vízhez való jog', *Acta Humana*, No. 1, 2004, pp. 93-98; G. Kecskés, 'A vízhez való jog nemzetközi jogi koncepciója', *Állam- és Jogtudomány*, No. 4, 2009, pp. 569-598; M. Szappanyos, *A vízhez való jog érvényesíthetősége az ENSZ keretében* (PhD theses on file at the University of Pécs, Pécs, 2012).

In connection with the implicit HRTW, the most significant international legal document is General Comment No. 15 on the right to water.³ Up to now, General Comment No. 15 provides the most commonly accepted and the most comprehensive interpretation of the HRTW.

Other relevant universal international conventions including the HRTW are the following: Geneva Convention relative to the Protection of Civilian Persons in Time of War⁴ and the Geneva Convention relative to the Treatment of Prisoners of War;⁵ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);⁶ Convention on the

³ ECOSOC General Comment No. 15, 11-29 November 2002, on *The right to water (arts 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*.

⁴ 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War, 75 UNTS 287. According to Articles 85 and 89:

Internees shall have for their use, day and night, sanitary conveniences which conform to the rules of hygiene and are constantly maintained in a state of cleanliness. They shall be provided with sufficient water and soap for their daily personal toilet and for washing their personal laundry; installations and facilities necessary for this purpose shall be granted to them. Showers or baths shall also be available. The necessary time shall be set aside for washing and for cleaning...

Sufficient drinking water shall be supplied to internees.

⁵ 1949 Geneva Convention relative to the Treatment of Prisoners of War, 75 UNTS 135. According to Articles 20, 26, 29 and 46:

The Detaining Power shall supply prisoners of war who are being evacuated with sufficient food and potable water, and with the necessary clothing and medical attention...

Sufficient drinking water shall be supplied to prisoners of war...

...prisoners of war shall be provided with sufficient water and soap for their personal toilet and for washing their personal laundry; the necessary installations, facilities and time shall be granted them for that purpose...

The Detaining Power shall supply prisoners of war during transfer with ... drinking water to keep them in good health...

⁶ 1979 Convention on the Elimination of All Forms of Discrimination Against Women, 1249 UNTS 13. According to Article 14 (2) (h) of CEDAW provides:

Rights of the Child;⁷ Convention on the Rights of Persons with Disabilities.⁸ Besides these conventions, the UN General Assembly Resolution A/RES/64/292⁹ is also considerable in a political sense (i.e. this decision does not create or stipulate any legal obligation of the states). Resolution A/RES/64/292 formally recognises the right to water and sanitation and acknowledges that clean drinking water and sanitation are essential to the realisation of all human rights.

The HRTW appears in numerous national constitutions (e.g. Republic of South Africa, Oriental Republic of Uruguay, Republic of the Gambia).

States parties shall take all appropriate measures to eliminate discrimination..., in particular, shall ensure to such women the right: ... (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communication.

⁷ 1989 Convention on the Rights of the Child, 1577 UNTS 3. According to Article 24 (2):

States Parties... shall take appropriate measures: ...
c) to combat disease and malnutrition... through the provision of... clean drinking water, taking into consideration the dangers and risks of environmental pollution.

⁸ 2006 Convention on the Rights of Persons with Disabilities, 2515 UNTS 3. According to Article 28:

2. States Parties... shall take appropriate steps to safeguard and promote the realization of this right, including measures: (a) To ensure equal access by persons with disabilities to clean water services.

⁹ GA Res. 64/292, 28 July 2010. According to Resolution on *the human right to water and sanitation*:

The General Assembly ...
1. Recognizes 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;
2. Calls upon States and international organizations to provide financial resources ... through international assistance and cooperation ... in order to scale up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all.

The new Hungarian constitution (the Fundamental Law of Hungary) adopted in 2011 also recognised the HRTW.

II. Classification and place of the HRTW in the system of human rights

The classification of the HRTW is controversial from the aspect of the classical system of the human rights; i.e. the first, second or third generations of human rights. The significance of this classification lies in the way the HRTW may be enforced in international and national laws. According to the most commonly accepted approach confirmed even by the UN General Assembly Resolution A/RES/64/292, the HRTW is essential to the realisation of numerous human rights.

III. The classes of the HRTW and the normative content of the HRTW(s)

The HRTW is referred to under different names in international documents and national constitutions. Thus, we can speak of, *inter alia*, the right to sufficient drinking water, the right to clean drinking water, the right to equal access to clean water services, the right to safe and clean drinking water and sanitation. Recently, the tendency is that the HRTW includes sanitation services as well.

The different denominations cover (or may cover) different contents. There are various ways to determine these contents. One of these methods is based on the approach correlating the HRTW with various human rights. As far as this approach is concerned, the question is which other human right is the basis, the source of the HRTW. The most frequently mentioned human rights are the following: right to life, right to human dignity, right to health, right to a healthy environment, right to food, right to an adequate standard of living, etc. Thanks to this variegation, the concept of the HRTW enables states to adopt a flexible legislation concerning the implementation of the HRTW taking their own demands into consideration. The implementation of the HRTW could give rise to different solutions in a developing country and a developed country. E.g. while it is the lack of water utilities that cause trouble in an African country, the developed countries of Eastern Europe struggle with

the maintenance of their existing water utilities. Both of the above mentioned problems have a strong relationship with the implementation of the HRTW.

General Comment No. 15 is the most frequently applied source in connection with the interpretation and analysis of the HRTW. General Comment No. 15 interprets the HRTW as a second generation human right under Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights, namely in the frame of the right to an adequate standard of living and the right to the highest attainable standard of physical and mental health.

According to General Comment No. 15, the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. Necessarily, the different elements of the HRTW's normative content could be analysed only in consideration of each other. The individual elements cannot be examined independently of the others. They are interdependent. Although the present article focuses on the issue of affordability, it also reckons with the other elements of the content of the HRTW.

As regards affordability, General Comment No. 15 emphasizes that “water should be treated as a social and cultural good, and not primarily as an economic good”.¹⁰ In connection with this, General Comment No. 15 determines the definition of *affordability* (referring to this as *economic accessibility*): “[w]ater, and water facilities and services, must be affordable for all. The direct and indirect costs and charges associated with securing water must be affordable, and must not compromise or threaten the realization of other Covenant rights.”¹¹ As for the price of water, General Comment No. 15 also emphasizes the unacceptable practice of “discriminatory or unaffordable increases in the price of water”.¹²

Besides determining the elements of the HRTW's normative content, General Comment No. 15 highlights the strong relationship between the

¹⁰ General Comment No. 15, 11.

¹¹ General Comment No. 15, 12 (b) (ii).

¹² General Comment No. 15, 44 (a).

HRTW and the protection of water resources from pollution. The Comment also notes the importance of ensuring sustainable access to water resources for agriculture to realize the right to adequate food. Taking these statements into consideration, the affordability of the HRTW might only be assessed in conjunction with the environmental and economic relations besides social relations. These environmental and economic relations shall also be taken into account in the course of the determination of the price of water and the price of water (utilities') services.

General Comment No. 15 notes the progressive realization of the HRTW and states that “retrogressive measures taken in relation to the right to water are prohibited”.¹³ Finally, it is worth stressing that with regard to the HRTW, “states have to refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries”; and they are obliged “to prevent their own citizens and companies from violating the right to water of individuals and communities in other countries”.¹⁴

B. Application of the Human Right to Water in the Sector of the Hungarian Water Utilities

I. The interpretation of the concerned provisions of the Fundamental Law of Hungary

Article XX of the Hungarian constitution which entered into force in 2012 deals primarily with the right to water in connection with the right to physical and mental health.

According to Article XX of the Fundamental Law of Hungary (25 April 2011):¹⁵

¹³ General Comment No. 15, 19.

¹⁴ General Comment No. 31, 33.

¹⁵ For an analysis of the new Hungarian constitution in connection with the environment and water, see especially: A. Raisz ‘A Constitution’s Environment, Environment in the Constitution – Process and Background of the New Hungarian Constitution’, *Revue Est Europe*, Special Edition 1, 2012, pp. 37-70. See furthermore Gy. Bándi, Gondolatok a környezethez való jogról, in A. Raisz (Ed.), *A nemzetközi környezetjog aktuális*

(1) Every person shall have the right to physical and mental health.

(2) Hungary shall promote the exercise of the right set out in Paragraph (1) by ensuring that its agriculture remains free from any genetically modified organism, by *providing access to* healthy food and *drinking water*, by managing industrial safety and healthcare, by supporting sports and regular physical exercise, and by ensuring environmental protection.

According to the interpretation of *Anikó Raisz*, the right to water applied in the Hungarian constitution points towards a narrower concept and content in comparison with General Comment No. 15 and Resolution A/RES/64/292. Owing to this, the narrower determination of the HRTW in the Hungarian constitution does not include numerous aspects of the HRTW in a wider sense. In this manner, the Fundamental Law of Hungary does not guarantee, *inter alia*, sanitation services, the financial affordability of drinking water, other aspects of domestic use of water and the agricultural use of water. Nevertheless, the Fundamental Law of Hungary can be considered as a progressive constitution, because the acceptance of the HRTW in the international law is still in its early phase.¹⁶

Although the Hungarian constitution includes only a narrower concept of the HRTW, the Hungarian legal order may comply with the wider concept of the HRTW. For this reason, the present article shall assess the Hungarian legal order, especially the law concerning water utilities, in connection with the HRTW in a wider sense (e.g. from the perspective of affordability).

II. The new Hungarian law concerning water utilities

kihívásai, Miskolci Egyetem, Miskolc, 2012, pp. 6-15; L. Fodor ‘Természeti tárgyak egy új alkotmányban’, *Pázmány Law Working Papers*, No. 21, 2011, pp. 1-9; A. Pánovics, ‘Környezetvédelem az új alkotmányban’, *Kül-Világ*, No. 1-2, 2011, pp. 117-133.

¹⁶ Raisz 2012, pp. 156-157.

At the end of December 2011, the Hungarian Parliament adopted Act CCIX of 2011 on water public utility supply (hereinafter referred to as ActWPUS). The new Hungarian law concerning water utilities enters into force progressively (approximately between 2012 and 2016). The financing of the water utilities and maintenance of the existing water utilities are cardinal questions of the new system.

Before analysing the financing of the Hungarian water public utilities however, it is worth focusing on the ActWPUS provisions fulfilling the social standards of the HRTW. Certain provisions of the ActWPUS, especially in Article 58, ensure everybody's right to a certain quantity of drinking water and prohibit exclusion from the access to drinking water. Besides the fulfilment of appropriate water for purposes of material needs, sanitation and disaster management, the water company responsible for water service can restrain the service concerning drinking tap water if the residential consumers do not meet their payment obligations (i.e. in the case of default in payment). The requirement of 'appropriate (quantity of) water for material needs' can be considered as fulfilled in case access to 20 litre/person/day drinking water is ensured with a water withdrawal opportunity (e.g. public well, fireplug, transported water) (a) in a distance of 150 meters if the height of the concerned building is up to four storeys; or (b) within four levels if the height of the concerned building is above four storeys. Finally, it is worth stressing that the access to drinking water can be provided not only through the water public utilities. Where the proper water public utility supply is not ensured, the responsible authorities shall provide the appropriate quality and quantity drinking water for the people concerned in other ways.

The financial bases for sustainable water utility supplies can be acquired from various sources (and a community has to endeavour to create a careful diversification of the financial sources). Thus, besides the state's and local governments' budget, the typical financial sources can be the following: EU supports,¹⁷ (foreign) investment¹⁸ and the financial

¹⁷ Supports of the EU's cohesion policy are typically co-financed by the Hungarian national budget and the budgets of local governments.

¹⁸ About the unfavourable experience of the privatization and foreign investment in Hungary see L. Somlyódy (Ed.), *Magyarország vízgazdálkodása: helyzetkép és*

contributions of the users themselves. As for these financial sources, owing to the significant impact on sovereignty issues, and otherwise following the tendencies perceptible abroad, the Hungarian government that came into power in 2010 attempts to become as independent from (foreign) investors as possible (or at least achieve a negotiating position that is more acceptable from the aspect of Hungary's long-term interests). Due to this governmental intention and since the EU sources – supposedly – are not going to be available in perpetuity, the Hungarian society can only charge the costs to the users of the water utilities in the long run. Therefore, the *price of water and water utility supply*¹⁹ and the issue of related fees, which is also suitable to consider *environmental*²⁰ and *social* aspects (*inter alia* in the form of price subsidies²¹), in addition to *economic* considerations, may be deemed one of the most significant elements of water utility provisions. Namely, numerous criticisms were formulated regarding the previous system of water utilities in connection

stratégiai feladatok – Water Strategy of the Hungarian Academy of Sciences, Hungarian Academy of Sciences, Budapest, 2011, p. 265.

¹⁹ In connection with determining the price of water, see particularly: World Water Assessment Programme (WWAP), *The United Nations World Water Development Report 4*. UNESCO, Paris, 2012, pp. 276-288, pp. 533-550; the prices of the environmental services see for example: S. Wunder, *Payments for environmental services. Some nuts and bolts*, CIFOR Occasional Paper No. 42. Centre for International Forestry Research, [-], 2005; ECO2, *Assessment of Environmental and Resource Costs in the Water Framework Directive*, July 2004, http://circa.europa.eu/Public/irc/env/wfd/library?l=/framework_directive/thematic_documents/economic_issues/environmental_resource/version_05-07-04pdf/_EN_1.0_&a=d; *The Hungarian River Basin Management Plan – part of the Danube River Basin Management Plan* (hereinafter referred to as HRBMPlan), April 2010, pp. 268-269; Koskovics Éva & Ungvári Gábor: *Áttekintés a magyar víziközmű-ágazatról*, in Kiss Ferenc László & Nagy Csongor István & Valentiny Pál (Ed.), *Verseny és szabályozás 2010*, Hungarian Academy of Sciences, Budapest, 2011, pp. 305-328.

²⁰ Under the relevant EU survey, in connection with the statement on *'The price of the water should reflect the environmental effects of the water usage'*, the Hungarian population was the most dismissive of the EU member states; *Attitudes of Europeans towards water – related issues*, Flash Eurobarometer 344., March 2012, pp. 15-16.

²¹ See furthermore the *Hungarian Environmental Protection Program 2009-2014* which is the annex of the Parliament decision 96/2009. (XII.9.), p. 40; Hungarian Competition Authority (hereinafter referred to as HCA), *A hazai víz- és csatornamű üzemeltetési piac feltárása, a víz- és csatornaközművek árazási, árszabályozási gyakorlatának vizsgálata*, HCA & Expert Management Consulting Kft., Budapest, 15 December 2008, p. 10.

with their financing model.²² On the one hand, the local governments were appointed as the pricing authorities of the water utilities but this decision had several unfavourable effects. Because of their other roles played in the economic and legal relationship of water utility supplies (water utility owner, owner of the company operating water utility, customer), the local governments often determined the price of water utility supplies considering political²³ (short-term) interests (i.e. they were motivated by the results of the approaching elections). On the other hand, applying the legal opportunity of *cross-financing*²⁴ it could also happen that the local governments used the profits arising from the water utility industry to finance their other activities which happened to be in a disadvantageous situation, instead of developing the water utility supplies and their sustainable operation. In addition to these causes, as the industry lacked the objective assessment and evaluation of its water utilities, the introduction of any tariff system serving a sustainable operation was almost impossible. Consequently, the restorations performed in the Hungarian water-utility-supply-industry proved to be practically unsuitable even to maintain the existing standard and status.²⁵

Before introducing the provisions in effect, it is worth stressing that in the course of determining the pricing policy related to water utility supplies, it is not enough (for an EU member state²⁶) to consider the

²² In 2010, in regard with the previous price regime, the National Water Technology Platform formulated as criticism on (a) the lack of the legal provisions concerning the prices, (b) the high proportion of the Hungarian water prices compared to the Hungarian households' income, (c) the anarchy in the system of the price support. Nemzeti Víztechnológiai Platform, *Stratégiai Kutatási Terv – 2010*, p. 27, http://www.maviz.org/system/files/filemanager/private/active/5/NVP_skt_2010_marc_2_2.pdf. On the previous Hungarian legislation concerning public water utility supplies and water companies see the analysis of J. Pump, *A jog hatása a fenntartható közszolgáltatásra a hulladékgazdálkodás és a vízgazdálkodás területén* (PhD theses on file at the Eötvös Loránd University, Budapest, 2011).

²³ The State Audit Office of Hungary (hereinafter referred to as SAOH) called attention to the phenomenon: Some local government stood off the Union support because it is a provision in such projects, the service done by the new utilities has to cover the price of the maintaining of the asset; SAOH, *Jelentés a vizek védelmének és a vízgazdálkodási feladatok ellátásának ellenőrzéséről*, Report No. 1049, February 2011, p. 28.

²⁴ See HCA 2008, pp. 67-69.

²⁵ See SAOH 2011, p. 86.

²⁶ See in detailed on the price regimes of other countries: HCA 2008, pp. 73-92.

domestic needs and characteristics but also the requirements²⁷ included in Article 9 of the Water Framework Directive,²⁸ with special emphasis on the principle of 'recovery of costs for water services' (hereinafter referred to as principle of cost recovery) and the polluter pays principle, as well as the effective use of water resources.²⁹ The reports of the State Audit Office of Hungary (hereinafter referred to as SAOH)³⁰ and the Hungarian Competition Authority (hereinafter referred to as HCA)³¹ related to the determination of charges and prices before 2012 drew attention to serious deficiencies (essentially, to non-compliance with the Water Framework Directive).³²

²⁷ On the aspect of water utility pricing methodology see: European Commission, *Pricing policies for enhancing the sustainability of water resources*, COM(2000) 477 of 26 July 2000. According to the document, it is important to distinguish the groups of the users, (household, industrial, agricultural) and sectors along different realization on prices. See furthermore: European Commission, *Addressing the challenge of water scarcity and droughts in the European Union*, COM(2007) 414 of 18 July 2007, pp. 3-14; European Environment Agency 'Water resources across Europe – confronting water scarcity and drought', *EEA Report*, No. 2, 2009; European Environment Agency 'Towards efficient use of water resources in Europe', *EEA Report*, No. 1, 2012; European Commission *Green Paper on market-based instruments for environment and related policy purposes*, COM(2007) 140 of 28 March 2007, point 4.2.1; HCA 2008, pp. 56-60; it formulates actually this union standard: MINISTRY OF RURAL DEVELOPMENT (hereinafter referred as to MRD): *Az aszály kezelésének hosszú távú koncepciójáról – Concept of the National Drought Strategy*, published: 25 June 2012, p. 35.

²⁸ Parliament and Council Directive 2000/60/EC of 23 October 2000 establishing a framework for Community action in the field of water policy, OJ 2000 L 327/1.

²⁹ On the compliance of the polluter pays principle in Hungary, see furthermore Bobvos et al. 'The polluter pays principle in the agriculture', *Journal of Agricultural and Environmental Law*, No. 1, 2006, pp. 29-54; Belényesi 'A szennyező fizet elv a Víz Keretirányelv fényében,' *Gazdaság és Jog*, No. 4, 2011, pp. 20-24; Cs. Csák 'Thoughts About the Problems of the Enforcement of the 'Polluter Pays' Principle', *European Integration Studies*, No. 1, 2011, pp. 27-40; Cs. Csilla, *A környezet jogi felelősség magánjogi dogmatikája*, Miskolci Egyetem, Miskolc, 2013, pp. 74, 118-123, 184-185; L. Fodor, *Az Alaptörvény esete a szennyező hulladékokkal és az európai jog*, *Magyar Jog*, No. 11, 2012, pp. 641-652. The State Audit Office referred to the opinion of the environment protection and water management ministry; according to this opinion, it is difficult to apply the polluter pays principle in the case of some environmental problems; SAOH 2011, p. 81.

³⁰ SAOH 2011, p. 28.

³¹ HCA 2008, p. 5.

³² On the non-compliance with the Water Framework Directive see: Koskovic & Ungvári 2011, p. 327.

The ActWPUS, according to which the effect of Act LXXXVII of 1990 on the price-determination-regime no longer covers³³ prices determined under the ActWPUS, introduced progressive changes as compared to the previous provisions. On the one hand, the ActWPUS defined numerous water utility servicing principles that have an essential effect on the establishment of the pricing policy. Thus, the ActWPUS determined the polluter pays principle, the principle of solidarity, the principle of cost recovery, the principle of the lowest cost and the principle of the prohibition of cross-financing.³⁴ By coherently realising the *polluter pays principle*, the establishment of charges and fees can be performed in a fairer way. The chances are that the *principle of solidarity* is going to play an important role during the integration of water utility services, in a way compensating the imbalances arising from the diverse conditions of the water managements (i.e. this principle is beneficial for users in a more disadvantageous situation, while a little less beneficial for users in a better position, who have to give up some of their advantages due to this principle). Through the appropriate application of the *principle of cost recovery*, it is possible to ensure that water utilities remain available in the long run for Hungarians and that none of the aspects of maintaining the service needs to be disregarded due to short-term interests.³⁵ The *principle of the lowest cost* might ensure that users are protected in a way, by decreasing the possibility of abusing the natural monopoly position of water companies. The *principle of the prohibition of cross-financing* may prevent that other fields (e.g. social insurance) benefit from the profit realised by water companies. (It is worth highlighting that another type of cross-financing, diverse from that defined in the

³³ § 1 (2) i) of Act LXXXVII of 1990.

³⁴ See § 1 (1) e), g), h), i), k) of ActWPUS.

³⁵ The HRBMPlan draws attention to the fact that the reconstruction rate of the Hungarian networks of water public utilities is extremely low (250-300 years) which is not unrealistic; HRBMPlan 2010, p. 258. In connection with the Hungarian public utility networks, the Water Strategy of the Hungarian Academy of Sciences announces that „the specific way of establishing fees is not sufficient to finance the thoroughly considered reconstruction. The present rate is 0.3%/year, as opposed to the recommended value of 1-2%”; Somlyódy 2011, p 37; „The percentage of the reconstruction expense in the Hungarian water price is less than 11% which percentage is low even in international comparison. This percentage is 69% in Switzerland and 45% in Germany.” Somlyódy 2011, p. 263.

ActWPUS, is also known; namely, when unsubstantiated differences are made between the different classes of users (industry, households, public institutes), thus financing the water service costs of one group by another (typically industrial users are forced to finance costs of households³⁶). Presumably, this last principle will provide serious change in a lot of areas. The industry of water utility supplies can finally become self-supporting and sustainable in case these principles are rigorously observed...

Before assessing the ActWPUS provisions affecting the price system of waters and water utility supplies, it is worth stressing that besides the provisions of the ActWPUS, other acts and regulations also stipulate financial solutions concerning water pricing. First, the present article deals with the provisions of the ActWPUS; e.g. fees of water utility services, water utility related service fee, water utility development contribution. Second, the fees and charges determined in other laws are analysed; *inter alia*, environmental pollution duties, water utilization contribution, penalties, administrative service fees, extra-tax of the public utilities.

The ActWPUS pays special attention³⁷ to the following fees, charges and contributions related to water utility supplies, the amount of which can have a remarkable affect the quantity of consumption and as such constitutes a significant instrument of water-saving.³⁸

The *fees of water utility services* must be calculated for each water company or water utility system and for each water utility industry (i.e. drinking water or sewage), applying the comparative economic analyses on expenses, prices, fees and charges, also considering the following aspects (§ 62 (1) of ActWPUS): (a) the fees shall encourage secure water services with the lowest costs, the improvement of the effectiveness of

³⁶ HRBMPlan 2010, p. 257.

³⁷ See HRBMPlan 2010, p. 39; and Somlyódy 2011, 58. p. As opposed to the findings of HRBMPlan, the plan of the Hungarian draught strategy emphasizes that a rise in prices does not necessarily cause a reduction in consumption (although it notes that agricultural water consumption vigorously reacts to changes made in the system of fees and subsidies); MRD 2012, p. 35.

³⁸ See also the *utilisation fee* regulated in § 18 of ActWPUS.

operation, the efficient use of capacities, the continuous development of water service quality and the observation of the principle of sparing natural resources; (b) the reasonable costs of continuous and secure water service must be considered together with the justified costs of performing environmental obligations, especially regarding the reasonable costs of water base protection. The price of water service must be established as a two-factor fee (§ 63 (1) of ActWPUS), consisting of the *basic fee* (§ 63 (2)-(3) of ActWPUS) and the *consumption-proportional fee* (§ 64 of ActWPUS). The ActWPUS makes it possible to apply different fees in case of certain types of users. Taking the EU documents into consideration, e.g. COM(2000) 477, the related HCA-study emphasizes that the differentiation between the various user classes (industrial sectors, public institutions, households) may further increase the effectiveness of pricing.³⁹ The fee of public utility drinking water supply, as well as that of public utility sewage draining and cleaning are *fees approved by the authorities*, which are determined by the minister responsible for water utilities (i.e. Ministry of National Development⁴⁰), taking into consideration the recommendation⁴¹ of the Hungarian Energy and Public Utility Regulatory Authority⁴² (hereinafter referred to as HEPURA) (§ 65 (1) of ActWPUS). Until the ministerial decree on the establishment of the approved fee comes into force, the ActWPUS determines provisions concerning a transitional period (§ 76 (1) of ActWPUS). In case the approved price changes after signing the water utility service contract, the *changed approved fee becomes part of the valid public utility contract*. Fees differing from the approved fees can only be stipulated in a valid manner in the water utility service contract with the prior approval of the Office (§ 66 of ActWPUS).

Similarly to the water utility service fee, the *water utility related service fee* (also known as the transfer price) is also determined by the minister in a decree, taking the recommendation of the HEPURA into

³⁹ HCA 2008, pp. 7-8.

⁴⁰ See § 84 o) of governmental decree 212/2010 (VII.1.) on the tasks and competences of ministers.

⁴¹ The HEPURA is to send his first recommendation until 15th October 2014; § 76 (7) of ActWPUS.

⁴² See Act XXII of 2013 on HERUPA.

consideration. Water utility related services⁴³ may be provided on the basis of a commutative contract (a so-called transfer contract), through transfer points of connected water utility systems, operated by water companies.⁴⁴

The HEPURA will determine the size of the *water utility development contribution* for the first time until 30th November 2015.⁴⁵ This contribution shall be paid by non-household users to the water company according to the provisions of the contract signed with the water company. By paying the water utility development contribution, the non-household user becomes entitled to use a certain extra service up to the purchased utility development quota. (§ 71 (1)-(2) of ActWPUS). The water utility development contribution can only be expended on the water utility development demands of the municipality, where the place of consumption related to the payment of the contribution is situated. (§ 72 of ActWPUS).

As for the settlement of the problems related to the price of water and water services, in addition to the ActWPUS, other acts also play an important role in the regulation. (a-b) Two significant elements of the environmental aspects in the water price are the environmental pollution duties and the water utilization contribution.⁴⁶ (a) The objectives of Act LXXXIX of 2003 on the environmental pollution duties are to facilitate the reduction of emissions of substances into the environment and to encourage the fair distribution of burdens between the government and polluters of the environment. From the different classes of the environmental pollution duties, the water and soil pollution duties have

⁴³ „Water public utility related service: services related to the sale of drinking water or the drainage and cleaning of sewage water provided by the water company to another water company, based on a contract”; § 2 Point 27 of ActWPUS.

⁴⁴ § 67-68 of ActWPUS. In connection with the regulation of a transitional period see: § 77 (1)-(2) of ActWPUS.

⁴⁵ § 87 of ActWPUS. See the provisions of § 70, which will enter into force on 1st January 2015.

⁴⁶ Regarding these duties and the water utilization contribution, the HRBMPlan of 2010 highlighted that „they define the right direction in order to ensure the sustainability of the environment and the water supplies. However, the present size of the duties and contribution only partly covers the real environmental and resource-related costs”; HRBMPlan 2010, p. 266.

great importance in connection with the price of water and water services. (a1) As regards the *water pollution duty*, according to Act LXXXIX of 2003, any polluter engaged in activities which are subject to water license shall be liable for the water pollution duty payable as charged.⁴⁷ The water utility company operating a public sewage system or water treatment plant shall charge the duty payable on water polluting substances discharged into surface waters through the public conduit system to the persons receiving the service, consistent with the volume of service. (§ 10 of Act LXXXIX of 2003]. (a2) As far as the *soil pollution duty* is concerned, under Act LXXXIX of 2003, any polluter who disposes waste water by means other than through the local public sewage system and who is in possession of the authorization of the local water management authority or a valid water license, including the use of individual closed sewage ponds, shall be liable for the water pollution duty payable as charged. (§ 11 (1) of Act LXXXIX of 2003]. The lawmaker significantly (tenfold!) increased the size of the soil pollution duty,⁴⁸ which charge presents a serious motivation⁴⁹ regarding connections to the public sewage system. However, the question may rise what other steps should be made to supplement this kind of motivation (i.e. the high level of soil pollution duty) in case of low-income polluters, to provide them with financial assistance to connect. (b) From the aspect of validating environmental aspects in the water price, the *water utilization contribution*, stipulated in the Water Management Act (hereinafter referred as to WMAct),⁵⁰ is just as relevant. Under the WMAct, this contribution is payable by water users after the water quantity they use in accordance with the amounts reserved in the licence or used without permission, and by industrial water user after the water

⁴⁷ Water pollution duty is charged for the emission into surface waters of the water polluting substance specified in Schedule 2 of Act. § 7 of Act LXXXIX of 2003 (e.g. phosphor, inorganic nitrogen, mercury, cadmium, chromium, nickel, lead, copper).

⁴⁸ § 12 (3) of Act LXXXIX of 2003. HRBMPlan preferred previously the increase of the measure of the original price; HRBMPlan 2010, p. 266.

⁴⁹ HRBMPlan draws the same conclusion, according to which, „*the soil pollution duty introduced a few years ago stimulates consumers to connect to the network...*“; HRBMPlan 2010, p. 41. However, it also draws the attention to interesting changes as it continues: „*The burden caused by the sewage water drained through public sewage systems dynamically increases if it expressed per inhabitant; however, its volume has stagnated or only slightly increased since 2000.*“ HRBMPlan 2010, p. 41.

⁵⁰ Act LVII of 1995 on water management.

quantity applied in reality.⁵¹ Analysing the price of water and water services, it is also worth mentioning (c) *penalties* related to water (from the other aspect of the polluter pays principle, related to unlawful activities)⁵² and (d) referring to the *administrative service fees*⁵³ connected with the topic. (e) Finally, the price of water and water services is also influenced by the national tax regime. It is worth emphasizing one of the special taxes related to the public utilities (not only to the water sector); the new law concerning extra-tax of the various public utilities (inter alia water utilities) may significantly increase the costs of water companies and therefore the price of water services as well.⁵⁴

In 2011, before the ActWPUS was adopted, a study published by the Economics Institute of the Hungarian Academy of Science concentrated on the fees⁵⁵ related to water utility supplies based on three criteria levels, in connection with the principle of cost recovery. The *financial*

⁵¹ According to the WMAct, *industrial water user* is an entity that uses more than 10,000 cubic metres of water per settlement a year for its own water consumption of business purposes from the public utility providing drinking water; § 15/A of WMAct. See also the Ministry of Environment and Water Decree 43/1999. (XII.26.) on the calculation of the water supply contribution. The 2011 report of SAOH on the water supply contribution refers to the opinion of the Water Management Department, according to which – „... *the water management administration has made several attempts to be able to spend at least part of the water supply contribution received as a tax type revenue for water management (e.g. the maintenance of flood protection objects, water sources protection, planning of water catchment management) but these attempts have failed*”; SAOH 2011, p. 83.

⁵² See governmental decree 220/2004 (VII.21.) on the rules of the protection of the quality of water under surface and the governmental decree 219/2004 (VII.21.) on the protection of groundwater. The 2011 report of the State Audit Office emphasized that the number of the polluters and fine payers did not change in the past few years. SAOH 2011, pp. 81-82.

⁵³ For more about the administrative service fees of environmental protection, nature conservation and water management, see: KvVm decree 33/2005 (XII.27.).

⁵⁴ Act CLXVIII of 2012 on the taxes of utilities' passage and cable. About the antecedent of the introduction see Z. Nagy, 'Az adó- és díjpolitika szabályozási eszközei az energiaszektorra vonatkozóan szolgáltatási szempontból', forthcoming. See furthermore Z. Nagy, *Környezeti adózás szabályozása a környezetpolitika rendszerében*, Miskolci Egyetem, Miskolc, 2013, pp. 88-251.

⁵⁵ Koskovic & Ungvári 2011, pp. 306-307. See furthermore in detail Koskovic & Ungvári 2011, pp. 320-325; see furthermore HRBMPlan 2010, p. 253.

recovery of water services is referred to as the first criterion of cost recovery, where the goal is to make users finance the operational and maintenance costs needed to provide water utility services. According to this study, regarding the situation in 2011 (that is before the ActWPUS came into force), this criterion has only been realised partly. The second criterion of cost recovery is connected to the *environmental costs*, which arise as water utility services are used. According to the study, this should primarily be achieved through environmental pollution duties (or e.g. the sewage penalty). The third criterion means the *recovery of water resource costs*; this criterion, related to excessive water extraction, covers the costs of so-called missed opportunities, which must be borne by other water utilisations because water resources are depleted at a greater extent than their natural recovery. According to the study, the current regulation does not know the water resource cost; in the opinion of study's authors, the *water utilization contribution* applied by the WMAct does not reflect the actual limitedness of the used supplies.⁵⁶

C. Conclusions

Besides ensuring the minimum social standards of the HRTW, the new Hungarian law concerning water public utility supply creates the opportunity of the sustainable operation of water utilities. At the same time the lawmaker shall pay more attention to the more efficient fulfilment of environmental aspects.

⁵⁶ HRBMPlan 2010, p. 267; „*drinking water supply in the Great Plain region is based on such groundwater that are already utilised in nearly 100%. Owing to the climate change, the utilisable water supplies in certain parts of the Great Plain may decrease by up to 50% by 2050..., therefore, it will hardly be enough to ensure the supply of drinking water*”; Somlyódy 2011, p. 58.