

WHY WATER AND SANITATION IS FUNDAMENTAL HUMAN RIGHT?

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Abstract

For the past decade, from the Millennium goals, until SDGs international organizations, the UN and other entities acknowledge the importance of water and sanitation for exercising fundamental human rights. Covid-19 questioned all these efforts and makes us started thinking that water and sanitation need adequate protection, both legal and institutional. In this paper, it will be discussed the connection between the right to water and sanitation with the other fundamental rights, and why this right should be treated as a separate right. How water should be treated in the legislation of N.Macedonia? It's a thick line between treating water as a public or private good, and that directly affects the human right to water and sanitation. Also, a necessity for implementing water and sanitation as a fundamental human right in the Constitutions of the countries will be mentioned. Analysis of the right to adequate living standards and a healthy environment will be made, as a direct connection to the human response to climate change and saving the environment and water protection.

Keywords: Water and sanitation, human rights, future of rights, protection, climate response.

I. INTRODUCTION

The World Health Organization Protocol on Water and Health from 1999 is one of the documents that protect the realization of the right to access to safe and clean drinking water to the citizens of the signatory states of this protocol. The Republic of North Macedonia until March 2021, has not yet ratified this protocol. However, this is not an obstacle for the country to make legislative changes to protect the right to water and sanitation as a fundamental human right in the Constitution of N.Macedonia. R.N. Macedonia ratified the International Covenant on Economic, Social and Cultural Rights in 1994.

The economic value of clean water is rising and thus strengthening the pressure to treat it as free-market goods and not as a public good, which could deny access to drinking water to a large group of people. Therefore, it is necessary to establish legal protection of an individual and to define the state's obligations in relation to this right. Access to clean drinking water is an inherent part of widely recognized human rights to life, dignity and health. (*Marlière An Le Nouail. "OPINION of the European Economic and Social Committee on the Communication from the Commission on*

* Evgenija Krstevska, PhD Candidate, Ss. Cyril and Methodius University in Skopje, Faculty of Philosophy, e-mail: evgenija.krstevska@yahoo.com

the European Citizens' Initiative Water and sanitation is a human right! Water is a public good, not a commodity! (COM (2014) 177 final) Brussels 15 October 2014. pg. 199)

This was confirmed by the Committee on Economic, Social and Cultural Rights in its General Comment No. 15, which played a key role in the development of the human right to clean drinking water. The widespread support of the right to clean drinking water was further demonstrated by the adoption of the UN General Assembly Resolution on the human right to water and sanitation in 2010. (Vasilka Sancin [et al.], *Jakob Ahačič et al. ODGOVORNOST države zagotavljati pravico do čiste pitne vode*, Ljubljana, Pravna fakulteta, 2015, pg. 9)

This paper reviews the current legislation from which conclusions are drawn about the current status of water, water governance system the competencies of the institutions. Statistical data collected from the institutions with a request for access to public information are taken into account, as well as the data from the conducted survey. Such an analysis using the comparative method gives initial findings on the justification for the implementation of the right to water as a basic human right in the Constitution and the centralization of the management of water resources in one body.

II. LEGAL ANALYSIS OF WATER AS A NATURAL RESOURCE IN NORTH MACEDONIA

The legal regime of the waters in N.Macedonia is regulated by the Water Act. Article 6 paragraph 1 states of this act that " *The waters, as goods of general interest, are owned by the Republic of Macedonia and enjoy special protection in a manner and under conditions determined by this Law*".

With this formulation, the waters receive the status of the public good. Water protection, in addition to this law, is also regulated by the following laws: Law on Environment, Law on Drinking Water Supply and Drainage of Urban Wastewater, Law on Pricing of Water Services, and Related Laws and bylaws.

The Water act also regulates the priorities for water use, so Article 15 of this law stipulates: *If there are several requests for water use from the same water body for which a water use permit has not been issued, the permit for water use is issued in accordance with the following priority for water supply of the population through public water supply system, for health institutions and legal entities in the field of veterinary medicine, for the needs of defence, for the industry of food production and processing and power supply of livestock; irrigation of agricultural land; water supply to industry and for commercial needs; hydropower and other propulsion needs; the needs of parks and other public areas; bottling water for commercial and other purposes.* (Official Gazette of RM [2008] no. 87/08)

From the analysis of the recorded water conflicts in the Republic of N.Macedonia that occurred in the period from 1987-2019, it is concluded that when it comes to increasing competition for water use, most often there is a violation of this article of the Law on Water.

Conflicts from this group occur when a new user needs to be connected to a public water supply system (the Vevcani case-1987; Studencica 1989/1990; the village of Velushna, Bitola 2008; 2008; Patishka Reka village, Sopishte 2010; Jelovjane village, Bogovinje municipality 2015; Makedonski Brod and Krushevo, current conflict.)

Analysis of data provided by the Centers for public health in the Republic for 2017 indicates that the situation with the water supply of the population is unchanged compared to the previous year. Two-thirds of the population (62.7%) is supplied with drinking water from central water supply

systems, operated by public utilities that fulfil the legal obligations regarding ensuring and controlling the health safety of drinking water. 9.1% are connected to city water supply systems; 9.9% of the rural settlements are supplied by local public water supply systems managed by a public enterprise while 14% of the rural settlements are supplied by local public water supply systems not managed by a public enterprise. Evgenija Krstevska “Systematic approach of the water conflict in the Republic of Macedonia and their impact of the right to water and other basic human rights”

<https://www.academia.edu/39188380/_SYSTEMATIC_APPROACH_OF_THE_WATER_CONFLICTS_IN_THE_REPUBLIC_OF_MACEDONIA_AND_THEIR_IMPACT_ON_THE_RIGHT_OF_WATER_AND_OTHER_BASIC_HUMAN_RIGHTS_> accessed on 10.03.2021

Of the total population, 4.4% are still supplied with drinking water from local water supply facilities (public fountains, wells, springs, pumps and other individual water supply facilities. (Institute for Public Health of the Republic of North Macedonia, *Memeti Shaban et. al. Report on the health of the population in the Republic of Macedonia for 2017*, Skopje, 2018 pg. 155)

This means that in the country, only 62.7% of the population is connected to a central water supply system, so taking into account the data resulting from the analysis of water conflicts, it is concluded that whenever a new user appears who should be connected to the water supply system, conflicts occur.

Why is that so?

The legal framework stipulates that the springs are owned by the state, as such, they are considered free to use, if the local community that is not supplied with water from the public water supply system and wants to manage the springs it uses for its own needs, should establish a public enterprise that will manage the system and ask the Ministry of Environment and Physical Planning to determine which sources will be used for water supply with drinking water for the population. However, statistics show that the rural population does not want to be connected to the public water supply system because it does not want to pay for the service provided. The springs that are allocated for water supply to the population are subject to protection in accordance with the Water act and protection zones should be determined on them. Because the local and neighbouring communities do not want to be connected to the water supply system, that is why whenever a new user appears who needs drinking water, conflicts of different magnitudes occur.

The Republic of Macedonia ratified the Aarhus Convention in 1999. Under this Convention and the Law on Environment and the Law on Water, the public should be involved in decision-making procedures on issues related to water resources management, especially when the right of access to safe drinking water is endangered in such proceedings.

The analysis shows that in the procedures for granting concessions for the exploitation of mineral resources-water and utilization of the hydro potential of water, there is a lack of public involvement and thus it led to the emergence of the following water conflicts in v. Tresonche, 2015; Boskov Most and Lukovo Pole 2015; c. Blatec, 2017; c. Poiravnica 2019; c. Zbazdi and Prisovjani as well as the village. Krapa ongoing conflict, v. Gary-ongoing conflict, Zirovnica 2015-ongoing, Ribnica 2017-ongoing, Tetovo and Shar mountains villages 2020-ongoing, Krapa 20160-ongoing, Propistip and Kocani 2020-ongoing etc.

III. WATER GOVERNANCE IN THE NATIONAL LEGISLATION

Water governance in N. Macedonia according to the existing legislation is divided between several bodies. The current regulation means a highly decentralized system that distributes water management responsibilities to a number of national and local governments. Other competencies are assigned to the MoEPP, National Water Council, Ministry of Health, Food and Veterinary Agency, PE Water Supply, Ministry of Transport and Communications, Energy Agency, Ministry of Agriculture, Forestry and Water Economy, HMA, ERC, State Inspectorate of Environment, Ministry of Economy, Hydrobiological Institute, Institute of Public Health and the competencies of the local self-government units.

It is difficult to distinguish possible levels of responsibility of different bodies for different water management problems. For example, the relationship between the Law on Environment and the Water Act, the Water Act and the Law on Water Supply, Collection and Wastewater Treatment - or the Law on Local Self-Government is unclear.

As legal issues related to water are distributed in several legal sectors, the basic attention related to the institutional organization can be summarized as follows: how to address mutual, multiple and competing water issues (water use, flood protection, quality protection water status) and how to achieve a coherent water policy and ensure sustainable water management (implementation)?

Responsibilities for various water management issues are shared between different institutions (government departments). Apart from the fact that "most of the responsibilities" are delegated through the MoEPP Water Law, no additional coordination power is assigned to one sector.

It can only be noted that, in general, the MoEP is given a coordinating role (authority) in the decentralized scheme, although it is not supported by appropriate instruments and mechanisms (existing regulations do not provide for applicable rules and procedures). In conclusion, It can be concluded that in the segment of water supply with health-safe drinking water, the gaps such as undefined protection zones around the sources of drinking water, lack of appropriate equipment for water purification and disinfection and inadequate professional maintenance are continuously penetrating.

Another important factor in comparing water supply with water use is water loss. Water losses of water companies in the country are generally in the range of 40-65 per cent of the water that was extracted in the system to the place of use. The water in N. Macedonia is asymmetrically distributed. Some of the estimated exploitation reserves are not balanced, and thus their exploitation is not economically justified. (Embassy of Switzerland, Swiss Cooperation Office *Barbalić Sanja Need Assessment Report-Draft*, April 2014. pg.4-9.)

IV. PROTECTION OF DRINKING WATER RESOURCES

Groundwater on the territory of R.N.Macedonia is a basic resource for water supply. In the organized water supply they participate with about 70%, and in the individual water supply, that percentage is even higher. Despite the high percentage of groundwater use, their potential is not sufficiently explored, exploited or protected. The reasons for such a situation are multiple, primarily: determination to build multipurpose surface reservoirs, due to which HG research on existing and potential groundwater deposits is neglected; inconsistency in the existing legislation with insufficiently clearly defined obligations and rights in the field of exploration, use and

protection of groundwater, inconsistency of competencies in the field of water supply, incomplete hydro-meteorological (hydrological) observation network, lack of hydrological for detailed research and design, etc. (*Enviro Resources DOO, Skopje Strategic Environmental Assessment Report for Strategic Environmental Assessment*, October 2011. pg. 50-59)

For the needs of the Ministry of Environment, the Construction Institute of Macedonia in December 2018 developed a Methodology for determining the minimum flow of surface watercourses and minimum groundwater level, which is the only latest source of information on the situation with water sources in the state. The last report on a strategic environmental assessment for the water strategy of the Republic of Macedonia is from 2011.

According to data from the cadastre of sources from the seventies on the entire territory of R. 4400 springs are registered in Macedonia with a total flow of 992×10^6 m³ per year, ie 31.49 m³ / sec. Data on the number of sources is quite underestimated, but the estimate of the total capacity is quite good.

Newly updated, detailed and precise information on the hydrogeological characteristics should be provided by making basic hydrogeological maps. So far, only 30% of the total area of N. Macedonia is covered with that type of map.

Organized and planned research on groundwater deposits is carried out within the research for the preparation of OHG of R.N Macedonia 1: 100,000. Such surveys are fully completed on an area of 7763 km², which represents coverage of 30% of the territory of N. Macedonia. Such research is carried out with very slow dynamics - they started in 1985, and should have been completed by 2010. thus feeling a negative impact of the factor of discontinuity in the production. As general groundwater information, there is a hydrogeological map from 1977, but without proper definition. It needs to be restored. (*Civil Engineering Institute Macedonia AD Skopje Methodology for determining the minimum flow of surface watercourses and the minimum level of groundwater* December 2018. pg. 3-46.)

Due to the lack of a national network for access to information on drinking water resources in the country, requests for access to public information for the needs of this paper have obtained the following data that confirm the above allegations. Pursuant to the Water act, fortunately, no concession has been granted for the use of bottled water for commercial purposes.

All concessions granted for the use of bottled water in the past period have been granted through the Ministry of Economy, where a Register of Concession Agreements for the exploitation of mineral resources is kept, so 43 concessions for the exploitation of mineral raw material-water have been granted until 09.08.2019. . The Rulebook for preparation of reports for Protection Zones of springs is still in use. since 1983, and currently in the final phase is a new rulebook that indicates the inactivity of the institutions for the protection of water sources. (*Public information obtained upon request for access to public information through electronic communication with the MoEPP* from 25.10.2019)

N. Macedonia is divided into 4 river basins with 16 water management areas and 69 Public Enterprises. The presented data indicate the fact that the PEs themselves have a great responsibility for the protection of the sources.

Thus, until June 1, 2018, the Government of the Republic of N. Macedonia has made decisions for determining protection zones at the source Studencica, and for the interventions of Zletovska river, Kuceshka river and Knezevo accumulation of JPHS "Zletovica" -Probitip.

The City of Skopje has decided on the well-known area Nerezi-Lepenec according to the old regulations. A new Elaborate was made with which the existing one has been revised and after this, it is necessary to make a new decision in accordance with the Law on Waters. The Assembly

of the Republic of Macedonia has decided on protection zones for source Rasce according to the old regulations. The City of Skopje intends to revise the existing elaborations after this it is necessary to make a new decision in accordance with the Law on Waters. The Municipality of Caska has made a decision for protection zones for accumulation Lisice after the old one's regulations. A new decision is being made for the accumulation Lisice - Veles which is in accordance with the Water Act. The decision for protection zones for spring is in the process of adoption. Vrutok at the request of PCE Gostivar in accordance with the new Law on Waters. The Municipality of Berovo has decided to accept the Elaborate for protection zones for Berovo Lake but has not submitted a request for the decision to the Ministry of Health and Ministry of Environment and Physical Planning. After submitted reports for determination of protection zones in accordance with the new Water Act, which is in the procedure are submitted by: PCE "Vodovod" Bitola, PCE Ilinden, Municipality of Veles, PE "Plavaja" Radovish PCE Mavrovo, PCE "Bregalnica" - Delchevo and JPKD Komunalec Gevgelija, KJP "VODOVOD" Kocani. (*Public information obtained upon request for access to public information through electronic communication with the MoEPP from June 1, 2018*)

Not only are springs and waters not protected, but they are further polluted by anthropocentric factors. Until 2019. There are 24 treatment plants in operation with a capacity for wastewater treatment for a population of 525,000 people. In Skopje, where it is estimated that about 700,000 people live, no treatment plant has been built by 2019, so all wastewater is disposed of in the Vardar River. According to the information from this report, the construction of a treatment plant for the city of Skopje is planned.

For the needs of this paper, a survey was conducted, which surveyed the knowledge of citizens about the protection of springs and their behaviour towards water consumption. This survey was answered by 298 respondents living in different parts of the country. To the question "Do you buy bottled water?" 69.5% of the respondents answered in the affirmative, while 32.2% did not answer in the affirmative. To the question "When do you buy bottled water most often" 25.8% of the respondents answered that they buy water when there is a shortage of drinking water, 24.8% daily for household needs, as well as 11.4% on the way to work. 36.2% do not check who the producer is and from which source the water they buy comes from, while 15.4% buy only a bottle of cold water, no matter which manufacturer. 23.8% of the respondents to the question "Do you fill yourself with drinking water from springs for household needs" answered yes. To the question "Are they familiar with the procedure for granting concessions for the exploitation of drinking water sources in the country" 39.6% answered that they are not sufficiently informed, while 39.3% do not know. 88.6% of the respondents think that the sources should be more protected and more attention should be paid to their regime. The results of the survey show an indifferent attitude of the citizens towards the exploitation of water in the country, but they also showed an even more frightening fact that 24.8% of people buy water daily for household needs, while 23.8% of people fill drinking water from springs for household needs. These figures indicate obvious problems with the water supply and water quality delivered to consumers. (UNECE *3rd Environmental Performance Review of North Macedonia*, November 2019, pg. 207)

The Ombudsman's report for 2017 indicates that the situation is not improving from year to year. Namely, the Ombudsman in his report ascertains many problems of the citizens due to the inappropriate action of the service providers - public enterprises and other companies. In 2017, citizens filed about 300 complaints seeking intervention to protect their rights as consumers. (*Center for Environmental Democracy Florozon Skopje Analysis of the situation with water*

management in the Republic of Macedonia and protection of consumer rights, Skopje, March 2017. pg.4)

Seen from the prism of the judicial system, the Supreme Court acted in 62 cases in the period from 2013 to August 2019 and made decisions in accordance with the CC, where the object of protection is water and water infrastructure. (*Response to the request for access to public information of the Supreme Court of RNM*, no. STI 20/19 from 30.09.2019)

The Ministry of Interior in the period from 2010 to August 2019 has registered 12,845 crimes and perpetrators in accordance with the Criminal Code where the object of protection is water and water infrastructure. Most registered crimes and perpetrators are due to theft of water, according to Article 235-a of the Criminal Code, and in the period from 2013 when this crime was incriminated in the Criminal Code until August 2019, 4,201 crimes were recorded. (*Response to the request for access to public information of the Ministry of Interior of RNM* reg. No. 16.1.2-3173 / 1 dated 15.10.2019)

From these data, it can be concluded that only from 2013 to August 2019 about 4,201 family members were reported for illegal connection to the water supply system. No data are available on how many convictions have been handed down following these charges. When it comes to misdemeanour proceedings and the attitude of legal entities towards the water as a resource, in accordance with the Law on Waters, 5 inspectors were working within the State Inspectorate for Environment. In the period from 2015-2019, 240 cases were handled on the territory of the country, of which 51 were pronounced with a decision as well as 78 mediation/settlement procedures given before the Basic Courts. (*Response to the request for access to public information of the State Inspectorate of RNM* no. 12-1022 / 2 dated 04.11.2019)

From the above data, it can be concluded that citizens are not aware of the rational use of water resources, as well as environmental illiteracy. Citizens do not have enough access to clean drinking water, while other citizens steal water and use the water to irrigate agricultural land. Due to this human behaviour, it must be subject to regulation by legal norms with appropriate rights and penalties, because while some citizens suffer for drinking water, others at the same time behave irresponsibly.

Institutions are incapable of acting due to limited financial and human resources, insufficient capacity and knowledge of matter and an indifferent relationship that persists over the years. The lack of professional staff and proper supervision leads to an enormous loss of water capacity, which is felt daily.

V. CONCLUSION

Decentralized management of water resources and the lack of mutual coordination of the competent institutions have led to significant losses of healthy and safe drinking water in the water supply system. The fact that the monitoring and protection of the sources used for water supply are constantly and inadequately performed, indicates the urgency for the change of the way of functioning of the water resources management. Farmers and industry contribute uncontrollably to water pollution, and in such cases, action is taken only after the damage has been done. There is no application of the "polluter pays" principle and no less social responsibility of polluters and bottled water factories. N.Macedonia is far from an integrated system for water resources management in accordance with the current legal framework, and this can be seen from the analyzed data that indicate conflicts and violation of the right to access safe drinking water for citizens due to non-compliance with water use priorities. for drinking. Institutions have inadequate

financial resources and human resources to be able to successfully manage this complex water supply system. The lack of clear connection and correlation of the laws and legal regulations that protect the waters in the country indicates the need for a complete change of legal acts. By prescribing the right to water as a basic human right in the Constitution of N.Macedonia, the primary use of water supply sources for citizens with healthy and safe drinking water is guaranteed. In recent years, concessions for the construction of hydropower plants and factories for exploitation have been passed through institutions. of mineral raw material-water in situations when no detailed study and register of sources of drinking water at the national level. Less when part of the population is not connected to the water supply system. Such a solution will require greater protection of drinking water sources and greater responsibility of the institution that will manage water resources. The centralization of water resources management in one body will provide a legal framework and a clear distinction and determination of measures, competencies, monitoring and an intensified system of punishment of individuals who violate the law.