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Cross border issues of the Hungarian water resources



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The hydrological cycle produces its effects on the whole ecosystem of the Earth, while mankind (at its present state of development) is unable to form a consistent and sustainable legislation covering the whole hydrological cycle. Instead, we may only talk about parallel existing regulations on a number of different water issues. However, such a coherent set of rules would be much needed in order to protect our waters both in quality and in quantity. The weak points of the present situation are highlighted by the following data: globally, there are 263 lakes and river basins shared by two or more nations, and approximately 40 percent of the whole mankind lives in such territories¹. It is interesting to remark that 13 of the river basins are shared by five to eight states, 5 of the basins (Congo, Niger, Nile, Rhine and Zambezi) are shared by nine to eleven states, and the record holder is the Danube watershed with eighteen states².

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¹ WORLD WATER ASSESSMENT PROGRAMME (WWAP): *Water for People. Water for Life*. The United Nations World Water Development Report, [–], 2003, UNESCO – Berghahn Books, p. 10.

² Source (12.12.2017): www.un.org/waterforlifedecade/transboundary_waters.shtml.

Citing numerous sources, WWAP 2012 notifies: «An estimated 148 states have international basins within their territory (OSU, n.d., 2008 data), and 21 countries lie entirely within them (OSU, n.d., 2002 data). In addition, about 2 billion people worldwide depend on groundwater supplies, which include to date 273 transboundary aquifer systems (ISARM, 2009; PURI - AURELI, 2009)... The Food and Agriculture Organization of the United Nations (FAO) has identified more than 3,600 treaties relating to international water resources (FAO, 1984). The earliest recorded water-related international treaty is usually considered to be the one which concluded the first and only water war (between Umma and Lagash city states). Nearly 450 agreements on international waters were

Hungary belongs to this watershed, therefore, its water management highly depends on other countries' water policies.

In case of Hungary, the challenge of water resources divided by borders is of primary importance, «since more than 90 percent of our watercourses arrive from abroad and a significant part of our ground water originates in the same countries. The basin character of the country is shown by the fact that water arrives into the country in 24 rivers and leaves in 3 rivers. In case of ground waters a decisive part of the infiltration area falls abroad, and the in- and outflow ratio is similar to that of the surface waters³. 95 out of Hungary's 185 aquifers border a neighbouring country and 40 of these water bodies are considered as cross-border ones, according to the agreements of the water border committees. According to an authoritative expert's opinion, further aquifers should be regarded as cross-border ones. The Danube Committee works with 7 groups of water bodies (important at Danube level or exceeding 4000 km²) containing 28 aquifers»⁴.

From the situation sketched above, i.e. due to the large number of cross-border water bodies Hungary had (has) several disputes with different neighbouring countries. It is sufficient to recall for example (a) the first really environmental case of the International Court of Justice (ICJ), i.e. the Gabčíkovo-Nagymaros Project⁵; (b) the severe foaming of the water in the River Rába, which flows across the Austro-Hungarian border, caused by Austrian firms (the case

signed between 1820 and 2007 (OSU, n.d., 2007 data)... The increasing pressures on transboundary waters require significant investment in political capital (STEER, 2010) so as to either renegotiate existing but inadequate transboundary arrangements where needed, or establish new ones that as yet do not exist. Despite the proliferation of agreements on transboundary water management, there remain numerous river basins and aquifers without adequate legal frameworks for cooperation. According to a recent study, 60% of the world's 276 international river basins lack any type of cooperative management framework (De STEFANO *et al.*, 2010)». WWAP: *Managing Water under Uncertainty and Risk* (Volume I); *Knowledge Base* (Volume II) and *Facing the Challenges* (Volume III). The United Nations World Water Development Report 4, Paris, 2012, UNESCO, pp. 31-33.

³ *Summary of the 2nd River Basin Management Plan of Hungary* (hereinafter referred to as *Summary of 2nd RBMP of HUN*), published in No 14/2016 of the Official Report of the Ministry of Interior, p. 1349.

⁴ *Summary of the 2nd RBMP of HUN*, p. 1356.

⁵ ICJ, Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment of 25th 1997, I.C.J. Reports 1997, p. 7.

had both international and EU law aspects)⁶; (c) the Baia Mare Gold Mine Cyanide Spill which severely influenced the Tisza river's ecosystem⁷.

These cases support as well that inasmuch as Hungary wishes to manage its water resources in the frame of an integrated sustainable water policy, it must aspire to closely cooperate with the neighbouring countries having effect on its water resources. The international legal environment and that of the European Union play a fundamental role in the development of these connections. The present study aims at analyzing this issue. First we present in brief the universal and regional rules of international law relevant for Hungary. After that we turn our attention to the related regulation of the European Union and the said regulation's effect on the use and protection of cross-border water resources relevant for Hungary. Finally, we draft the system of bilateral agreements concluded by Hungary with the neighbouring countries, and we point out the points where and why this system is worth to be developed. Considering Hungary's experience in shared water resources we hope that this study carries useful information for experts of other countries as well.

1. Universal and regional international conventions as well as further general rules of international law

Considering the quantitative and qualitative sides of water management and protection, we can underline that in addition to the international conventions and other international legal sources dedicated clearly to water⁸ (for example international custom), the general rules of international law and the rules of international environmental law play an important role as well⁹. Due to reasons of space, this study focuses on the "pure" international water conventions, and

⁶ See e.g.: No P-4838/2005 Written Question by Péter Olajos (PPE-DE) to the Commission, and the Answer given by Mr Dimas on behalf of the Commission on 13th February 2006; No H-0075/06 Oral Question for Question Time at the part-session in June 2006 pursuant to Rule 109 of the Rules of Procedure by Péter Olajos to the Council, and the Debate about it on 14th June 2006; No P-3007/2007 Written Question by Péter Olajos (PPE-DE) to the Commission, and the Answer given by Mr Dimas on behalf of the Commission on 24th July 2007.

⁷ See e.g. UNEP – OCHA: *Report on spill of liquid and suspended waste at the Aurul S.A. retreatment plant in Baia Mare*. Geneva, March 2000, UNEP.

⁸ WWAP: *Water in a changing World*. The United Nations World Water Development Report 3, Paris – London, 2009, UNESCO – Earthscan, p. 50.

⁹ See e.g. Espoo Convention on Environmental Impact Assessment in a Transboundary Context (officially published in Hungary in Government Decree 148/1999).

analyses in detail only those bilateral agreements which are important for the Hungarian water management and water protection (these are treated in a separate part of this study). Before discussing these bilateral agreements, we are going to have a look at those multilateral conventions relevant for Hungary and are in force at the time of closing this manuscript¹⁰.

In this context we consider it worth to differentiate two groups of subjects: on the one hand, regulations on the protection of water and water ecosystems, on the other hand, the regulatory subjects on the use of water. Hereinafter one can see that this sort of classification is relative and several international conventions contain regulatory subjects both in the field of water protection and the use of water.

As for the regulations on the protection of water and water ecosystems at international level, we accept as a starting point the group of legal documents suggested by international lawyer Boisson de Chazournes in her regulatory concept the “ecologization of the law applicable to fresh water” dividing the international rules relevant for her concept into two groups¹¹. On the one hand, she takes one by one the regulations of different levels of the international water law analyzed by us¹² and others¹³. Here she puts among the universal regulations

¹⁰ About the different systematization of the international water law and the water-related rules of international law, see L. BOISSON DE CHAZOURNES: *Freshwater and International Law. The interplay between Universal, Regional and Basin Perspectives*. Paris, 2009, UNESCO; B. AYLWARD – J. BARTRAM – C. POPP – J. VAPNEK (edit.): *Law for water management: a guide to concepts and effective approaches*. FAO Legislative Study 101, Rome, 2009, FAO, pp. 91-125; J. W. DELLAPENNA: The customary international law of transboundary fresh water. *Int. J. Global Environmental Issues*, 3-4/2001, pp. 264-305. See furthermore as Hungarian references: T. FARAGÓ – Z. KOCSIS-KUPPER: Országhatárokon áttérjedő baleseti jellegű vízszennyezések [Cross-border accidental water pollutions]. *WWF Füzetek* 16, [Budapest], 2001, Hungarian Delegation of the WWF – Prime Minister Office; T. FARAGÓ – B. NAGY (edit.): *Nemzetközi környezetvédelmi és természetvédelmi egyezmények jóváhagyása és végrehajtása Magyarországon [The acceptance and the implementation of international conventions concerning environmental protection and nature conservation in Hungary]*. [Budapest], 2005, Ministry of Environmental Protection and Water Management – ELTE Faculty of Law.

¹¹ L. BOISSON DE CHAZOURNES: *Fresh Water in International Law*. Oxford, 2015, Oxford University Press, pp. 109-146.

¹² J. E. SZILÁGYI: *Vízjog [Water law]*. Miskolc, 2013, University of Miskolc, pp. 95-102.

¹³ See especially: AYLWARD *et al* (edit.) 2009, pp. 91-125; P. OWIST-HOFFMANN – O. MCINTYRE: *Transboundary Water Law and Policy*. Eschborn, 2015, Deutsche Gesellschaft für Internationale Zusammenarbeit, pp. 6-7; A. TANZI – O. MCINTYRE – A. KOLLIPOULOS – A. RIEU-CLARKE – R. KINNA (edit.): *The UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes*. Leiden–Boston, 2015, Brill Nijhoff; P. WOUTERS: *International Law – Facilitating Transboundary Water Cooperation*. TEC Background Papers No. 17, Stockholm, 2013, Global Water Partnership; J. BRUHÁCS: *The law of non-navigational uses of international*

the United Nations Watercourses Convention (hereinafter referred to as the UNWC)¹⁴, and the United Nations Draft of the Law of Transboundary Aquifers (hereinafter referred to as the UNdLTA)¹⁵. Among the regional regulations are the Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes (hereinafter referred to as the Helsinki Convention)¹⁶ of the United Nations Economic Commission for Europe (hereinafter referred to as the UNECE) and its Protocol on Water and Health, etc. The Sofia Convention on Cooperation for the Protection and Sustainable Use of the Danube River (hereinafter referred to as the Sofia Convention) contains rules for a given international watershed¹⁷. (As for the Helsinki Convention, it is important to note that the legal foundation of the change of this originally a regional agreement into a universal convention were Art. 25 and Art. 26 of Helsinki Convention)¹⁸. On the other hand, besides the rules of international water law *Boisson de Chazournes* considers those international environmental conventions to be important which – although basically aimed at wider or different regulatory issues than water – also have a significant effect on water. Among these there are both conventions of *universal* scope (Ramsar Convention on Wetlands¹⁹, Convention on Biological Diversity²⁰, United Nations Convention to Combat Desertification²¹, United Nations Framework Convention on Climate Change²², etc.), and of *regional* scope (UNECE Espoo Convention on Environmental Impact Assessment in a Transboundary Context²³, UNECE

watercourses. Budapest–Dordrecht, 1993, Akadémiai Kiadó–Martinus Nijhoff Publishers; UNECE 2013; J. BRUHÁCS: Nemzetközi vízjog a 21. század elején [International water law at the beginning of the 21st century]. *Magyar Tudomány*, 11/2013, pp. 1322-1332; Á. BUJDOS: The UN Watercourses Convention, with Special Regard to the Environmental Provisions. In: M. SZABÓ – R. VARGA – P. L. LÁNCOS (edit.): *Hungarian Yearbook of International Law and European Law 2015*, the Hague, 2016, Eleven International Publishing, pp. 151-165; Á. BUJDOS (2017): *Rules on Transboundary Water Pollution*. PhD Thesis, Debrecen, 2017, University of Debrecen.

¹⁴ A/RES/51/229, 8th July 1997. In Hungary, in connection with this, see Government Resolution 2114/1999 on the mandate to sign the UNWC.

¹⁵ A/RES/63/124, 15th January 2009

¹⁶ In Hungary, it is officially published in Government Decree 130/2000.

¹⁷ In Hungary, it is officially published in Government Decree 74/2000.

¹⁸ L. BOISSON DE CHAZOURNES 2015, p. 125.

¹⁹ In Hungary, it is officially published in Act XLII of 1993.

²⁰ In Hungary, it is officially published in Act LXXXI of 1995.

²¹ In Hungary, it is officially published in Act CVII of 2003.

²² In Hungary, it is officially published in Act LXXXII of 1995.

²³ In Hungary, it is officially published in Government Decree 148/1999.

Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters²⁴, etc.).

Above all – in our opinion – even international private law may play an important role in connection with water protection, e.g. in the reparation of a situation caused by water pollution²⁵ (see as an example the Baia Mare Gold Mine Cyanide Spill²⁶), which issue has been so far neglected.

As for the history of regulating the use of water in international law, (a) the first use of water to be regulated was navigation, followed by fishery and the other forms of the use of water²⁷. (a1) In connection with the navigation in Europe it is worth to highlight the followings: the Treaty of Versailles (signed in 1919), the Barcelona Convention and Statute on the Regime of Navigable Waterways of International Concern²⁸ (concluded in 1921), and the Belgrade Convention regarding the Regime of Navigation on the Danube²⁹ (signed in 1948). (a2) In the field of fishery an important starting point may be the Bucharest Convention concerning Fishing in the Waters of the Danube (adopted in 1958)³⁰. (a3) In case of the other uses of water, the UNWC and the UNDLTA (the latter only as a draft so far) constitute an important universal basis, supplemented by the regional systems (Helsinki Convention, Sofia Convention) and the bilateral agreements of the interested states (thus Hungary's bilateral border water agreements). (b) In addition to the different water-use norms of international law, an important source of legal regulation on the use of water is international economic law, especially the law connected to the World Trade Organization³¹. foreign investment

²⁴ In Hungary, it is officially published in Act LXXXI of 2001.

²⁵ In connection with the liability system of private international law and environmental protection, Csilla Csák presents a precious assessment; see: C. CSÁK: *A környezetjogi felelősség magánjogi dogmatikája* [The private law dogmatics of environmental liability]. Miskolc, 2013, University of Miskolc, pp. 237-246; C. CSÁK: A kártérítés szerepe a környezetjogi szabályozásban [The role of compensation in the environmental regulation]. *Miskolci Jogi Szemle*, special edition 2/2017, pp. 90-99.

²⁶ C. SÁNDOR – L. SÜTŐ (edit.): *Környezetvédelmi és régiófejlesztési problémák a cianid-szennyezés kapcsán a Tisza-tó térségében* [Problems of environmental protection and regional development in connection with cyanide pollution in the region of the Tisza lake]. EMLA Foundation, Környezeti Oktatás Támogatására Felsőoktatási kutatóprogram 2000-2001. C.f. Á. BUJDOS: Cyanide in Gold Mining and the European Union. *Profectus in Litteris*, 6/2015, pp. 41-49.

²⁷ L. BOISSON DE CHAZOURNES 2015, pp. 13-33 and pp. 54-77.

²⁸ In Hungary, it is officially published in Act XXXIX of 1928.

²⁹ In Hungary, it is officially published in Act XIII of 1949.

³⁰ In Hungary, it is officially published in Legislative Decree 9 of 1962.

³¹ L. BOISSON DE CHAZOURNES 2015, pp. 13-33 and pp. 78-108.

agreements, as well as free trade agreements initiated also by the EU in force (e.g. Canada) or under negotiation (USA, China, etc).

Out of the above listed conventions the Helsinki Convention and the Sofia Convention bear special importance for Hungary. However, we do not go into the details in their regard, because none of them carries in its system of guarantee the assurance of a successful peaceful settlement of eventual disputes. This means that the dispute settlement highly depends on the willingness of the two parties. Therefore, both regional agreements leave a wide space to bilateral agreements of the parties³².

Water pollution related dispute settlement may have an alternative way as well. Here – again, without going into the details – it is worth mentioning the human rights aspects and the international human rights fora where – due to the so-called evolutive interpretation used by many of these tribunals – international fora may deal with human rights aspects of environmental cases. For instance, the European Court of Human Rights (hereinafter referred to as ECtHR) has already referred to certain definitive points of contact between water pollution and the enjoyment of human rights in the Tatar case³³ with regard to the Baia Mare cyanide pollution catastrophe mentioned above. But as the applicants were

³² About these conventions, see the following Hungarian references: J. BRUHÁCS: A 2003. évi kijevi jegyzőkönyv: redivivus vagy innováció [Kiev Protocol 2003: redivivus and innovation]. *Jogtudományi Közlöny*, 3/2005, pp. 83-93; J. BRUHÁCS: A határon túli környezeti károk orvoslásának problémája: nemzetközi magánjogi egyezmények [The remedy of cross border environmental damage: private international law conventions]. *Jura*, 1/2005, pp. 48-60; Z. HORVÁTH: A Duna vízgyűjtő területe fenntartható fejlődésének és környezetvédelmének nemzetközi jogi és európai jogi vonatkozásai [The international and European law aspects of sustainable development and environmental protection of the Danube river basin]. In: T. DRINÓCZI – T. TAKÁCS (edit.): *Határon átnyúló és uniós jogi témák: Magyarország-Horvátország [Cross border and European Union issues: Hungary-Croatia]*. Pécs – Osijek, 2011, PTE Faculty of Law, pp. 195-230; G. KECSKÉS: *A környezeti károkért való felelősség a nemzetközi jogban [Liability for environmental damage in international law]*. PhD Thesis, Győr, 2012, Széchenyi István University, pp. 90-91, pp. 190-191; P. KOVÁCS: *Nemzetközi közjog [Public international law]*. Budapest, 2006, Osiris Kiadó, pp. 591-605; A. RAISZ: A felszín alatti vizek határon átnyúló szennyezésére vonatkozó nemzetközi szabályozás [International rules concerning the cross border pollution of aquifers]. *Publicationes Universitatis Miskolcensis Sectio Juridica et Politica*, Miskolc, 2012a, Tomus XXX/2, pp. 374-382; RAISZ: Magyarország felszín alatti vizei a nemzetközi jog újabb megközelítésében? [Hungary's aquifers and the new approaches of international law] In: RAISZ (edit.): *A nemzetközi környezetjog aktuális kihívásai [Topical challenges of international environmental law]*, Miskolc, 2012b, University of Miskolc, pp. 149-160; SZILÁGYI 2013, pp. 96-101.; P. SZÜCS: Hidrogeológia a Kárpát-medencében? [Hydrogeology in the Carpathian basin] *Magyar Tudomány*, 5/2012, pp. 554-565.

³³ ECtHR, Tatar v. Romania, Judgment of 21st January 2009, No. 67021/01

Romanian citizens, despite the cross-border aspect of the mentioned pollution in general, the cited concrete ECtHR case lacked the transboundary feature.

2. Legal regulation of shared water resources in the European Union

Several studies³⁴ presented and analyzed the EU law regulations on the protection of water and the use of water. The detailed analysis or the presentation is therefore not the task of this study. Shortly – keeping our eyes on the Hungarian point of view – we underline the followings as important.

2.1. EU institutions in a certain sense may play a role in the enforcement of international conventions otherwise difficult to enforce³⁵. The practice of the Court of Justice of the European Union (hereinafter referred to as CJEU), or the

³⁴ See e.g. the concerning Hungarian references: G. BÁNDI: *Környezetjog [Environmental law]*. Budapest, 2011, Szent István Társulat, pp. 451-464; C. CSÁK: *Környezetjog [Environmental law]*. Miskolc, 2008, Novotni Kiadó, pp. 100-115; C. CSÁK: Gondolatok a 'szennyező fizet' elvének alkalmazási problémáiról [Thoughts about the problems in connection with the application of the 'polluter pays' principle]. *Miskolci Jogi Szemle*, special edition/2011, pp. 31-45; E. FARKAS CSAMANGÓ: A föld- és vízvédelem hatályos jogi szabályozása [Topical rules of soil protection and water protection]. *Acta Universitatis Szegediensis Acta Juridica Et Politica, Publicationes Doctorandorum Juridicorum*, 2/2003; L. FODOR: *Környezetjog [Environmental law]*. Debrecen, 2014, University of Debrecen Publisher, pp. 210-233; Z. HORVÁTH: Az Európai Unió környezeti politikája [Environmental policy of the European Union]. In: Á. KENGyel (edit.): *Az Európai Unió közös politikái [Common policies of the European Union]*, Budapest, 2010, Akadémiai Kiadó, pp. 305-347; G. KECSKÉS: Water Protection via the Implementation of EU Directives. In: M. SZABÓ – V. GREKSA (edit.): *Right to Water and the Protection of Fundamental Right in Hungary*, Pécs, 2013, University of Pécs, pp. 212-224; M. KURUCZ: *Föld- és vízvédelmi jog [Soil protection law and water protection law]*. Budapest, 2002, ELTE JTI, pp. 253-381 and pp. 423-425; L. MIKLÓS: A vízvédelem szabályozása [The legislation concerning water protection]. In: L. MIKLÓS (edit.): *A környezetjog alapjai [The bases of environmental law]*, Szeged, 2011, SZTE ÁJK – JATEPress, pp. 75-81; SZILÁGYI 2013, pp. 110-140; SZILÁGYI: A vizek védelmének jogi alapjai az EU vízvédelmi jogában [The bases of water protection in the water protection law of the EU]. *Publicationes Universitatis Miskolcensis Sectio Juridica et Politica*, 30/2012, pp. 577-599; P. SZÜCS – F. SALLAI – B. ZÁKÁNYI – T. MADARÁSZ (edit.): *Vízkezelésvédelem. A vízminőség-védelem aktuális kérdései [Protection of water resources. Topical issues of water-quality protection]*. Miskolc, 2009, Bibo Kiadó, pp. 20-36 and pp. 395-418; A. TÖNKÖ: A vízgazdálkodásra vonatkozó európai uniós politikák [EU policies concerning water management]. In: T. HORVÁTH M.: – I. BARTHA (edit.): *Közfoglaltatások megszervezése és politikái. [Creation and policies of public utilities]* Budapest-Pécs, 2016, Dialóg Campus, pp. 53-62; J. WÁGNER: Gondolatok a 2000/60/EK direktíva (Víz Keretirányelv) közigazgatási vonatkozásairól [Thoughts about the administration aspects of the Water Framework Directive (Directive 2000/60/EU)]. *Magyar Közigazgatás*, 2/2004, pp. 109-115.

³⁵ P. THIEFFRY: *General Framework of EU Water Law – The institutional nature of water legislation*. Source (13.12.2017): https://www.era-comm.eu/EU_water_law/stand_alone/part_2/part_2_1_institutional_nature.html.

practice of its predecessors considered those international water law conventions whose partners are both the EU and one or more Member States as an integral part of the European law³⁶. On this basis it seems that CJEU is ready to evaluate whether the Member States met the prescriptions of such an international environmental convention, which may have a direct effect, for example in a situation when there is no relevant European law at all³⁷.

2.2. However, the contribution of EU institutions has not always been a success, when talking about dispute settlements in cross-border water issues. A striking – negative – example is the MOX case proving that institutional aspects may explicitly hinder the realization of environmental goals. The MOX case was essentially about a plant in the United Kingdom the nuclear waste of which was allegedly released in the Irish Sea, understandably irritating Ireland who (apart from originally contesting the building of the plant) unsuccessfully tried to obtain information on its operation and who then turned to two international fora, the Permanent Court of Arbitration in the Hague and the International Tribunal of the Law of the Sea (hereinafter referred to as ITLOS) in Hamburg in order to solve the international dispute between the two countries. But an astonishing turn of the events at the EU level stopped the proceedings at international level to evolve to their full extent³⁸. Namely that the European Commission started proceedings against Ireland on the basis of the so-called loyalty clause and made Ireland be condemned by the Court of Justice for having started a procedure concerning two EU countries *outside* the European Union (a.k.a. in front of international fora). It would not be regarded as a problematic issue had the Commission started proceedings against the United Kingdom for the possible nuclear waste pollution or contributed to the cessation of the pollution (and realization of other environmental interests, e.g. the right to information) in other ways. But environmental aspects have gone lost in this case...

³⁶ Case 181/73, R. & V. Haegeman v. Belgian State, Judgment of the Court of 30th April 1974 (European Court Reports 1974 -00449), para. 5.

³⁷ Case C-213/03, Syndicat professionnel coordination des pêcheurs de l'étang de Berre et de la région v. Électricité de France (EDF) Judgment of the Court of 15th July 2004 (European Court Reports 2004 I-07357); furthermore Case C-239/03, Commission of the European Communities v. French Republic, Judgment of the Court of 7th October 2004 (European Court Reports 2004 I-09325).

³⁸ Case C-459/03, Commission v. Ireland, Judgment of 30th May 2006 (Grand Chamber) (European Court Reports 2006 I-04635)

2.3. As for the concrete European law regulations on water, it is worth to divide them into more groups of regulations. On the one hand, the so-called 'water law' – with the Water Framework Directive³⁹ in its centre – is strongly formed by the concept considering water as an environmental component, as the Directive was elaborated in the frame of the Environmental Policy of the EU. We deem it important to emphasize that beside the typical norms listed as belonging to the EU water law, from the point of view of the *protection of water as an environmental component* the EU Seveso III directive⁴⁰ and other environmental regulations pointing far beyond water law have a great significance. But when regarding the 'use of water', other EU law regulations equally are or may be of utmost relevance, such as the rules of the EU's internal market (especially the free movement of goods, services and capital).

2.4. As for the "water law" of the EU, the Fitness Check document⁴¹, which laid the foundations of the EU 2012 Water Strategy⁴² and surveyed the legal foundations of that, named the following main (!) EU rulings connected to the EU water law. The two most important columns of the EU water law are the Water Framework Directive and the Floods Directive⁴³. From the time before the Water Framework Directive, Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources and Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment were highlighted. After having passed the Water Framework Directive, as supplementary or enforcement rules Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration and Directive 2008/105/EC of the European Parliament and of the Council of 16 December 2008 on environmental quality standards in the field of water policy

³⁹ Directive 2000/60/EC of the European Parliament and of the Council of 23rd October 2000 establishing a framework for Community action in the field of water policy.

⁴⁰ Directive 2012/18/EU of the European Parliament and of the Council of 4th July 2012 on the control of major-accident hazards involving dangerous substances; about the previous legislation, see SZILÁGYI 2013, pp. 97-99.

⁴¹ EUROPEAN COMMISSION: *The Fitness Check of EU Freshwater Policy*. SWD(2012) 393, pp. 4-6 and p. 32; About the assessment of this legislation, see SZILÁGYI 2012. About the development of water law, see furthermore: R. MACRORY: *European Community Water Law. Ecology Law Quarterly*, 1/1993, pp. 119-139.

⁴² EUROPEAN COMMISSION: *A Blueprint to Safeguard Europe's Water Resources*. COM(2012) 673.

⁴³ Directive 2007/60/EC of the European Parliament and of the Council of 23rd October 2007 on the assessment and management of flood risks.

were mentioned. Above all this and to a certain extent outside the framework of the Water Framework Directive, the directives classified to the EU water quality (emission) regulatory model, Directive 2006/7/EC of the European Parliament and of the Council of 15 February 2006 concerning the management of bathing water quality and Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption are parts of the EU water law as well.

As one can see, the EU water law basically consists of directives⁴⁴. In the EU law, quality and quantity issues are treated in a different way. What is common in them is that in both cases the law passed by the EU institutions finds its authorization in an EU treaty regulation on environmental policy (namely: Treaty on the Functioning of the European Union; TFEU). But the regulations on the qualitative and quantitative aspects of water the concerning norms are passed in different procedures. Namely, those EU rules which either directly or indirectly influence the quantitative water management or the availability of these resources, the Council of the European Union acts unanimously in accordance with a special legislative procedure, while only consultation is necessary with the European Parliament⁴⁵ (so far no EU law has been adopted with this procedure⁴⁶), while in case of the qualitative aspects of water another procedure is sufficient, namely the ordinary legislative procedure of the European Parliament and the Council of the European Union (which means a majority in case of the European Parliament, and a qualified majority in case of the Council of the European Union)⁴⁷. In view of this it is not difficult to imagine why the EU water law concentrates on the quality of water.

2.5. The importance of the Water Framework Directive and the Floods Directive in connection with shared water resources can be best set out by both directives having river basins as the conceptional basis, i.e. the regulation basically starts off the natural borders of the river basin, not from the Member States' classic administrative units⁴⁸. For the Water Framework Directive this means that the *planning units* to reach the objectives of the directive are the *river*

⁴⁴ However, there are exceptions to this; see e.g. Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31st March 2004 on detergents.

⁴⁵ Article 192 (2) of the TFEU.

⁴⁶ THIEFFRY [-].

⁴⁷ Article 192 (1) of the TFEU.

⁴⁸ According to the World Water Development Report, the Water Framework Directive is the only supranational water management system all around the World; see WWAP 2012, p. 9.

*basin districts*⁴⁹, and in a Member State there may be smaller units (river basin, sub-basin). As a matter of curiosity: Hungary in contrast with most of the Member States⁵⁰ belongs to a single water basin district (Danube). Furthermore, if the area of the river basin is larger than the area of the country, then this forms an international river basin district⁵¹. Therefore, since the Hungarian river basin is part of the Danube international river basin district, thus the Hungarian water basin management plans (hereinafter referred to as RBMP of HUN) both *1st RBMP of HUN*⁵² between 2010 and 2015 and *2nd RBMP of HUN*⁵³ between 2016 and 2021 had been worked out in cooperation with the concerned Member States and the work was supervised by the International Commission for the Protection of the Danube River (ICPDR). It is important to note that in the framework of ICPDR non-Member States joined in the construction of the plan for the international district Danube, and thus in the more successful implementation of the Water Framework Directive as well, but for them the implementation of the Water Framework Directive is not compulsory⁵⁴. (E.g. in connection with Hungary, the cooperation with Ukraine is quite important in order that Hungary can properly implement the Water Framework Directive; Péter Szűcs and his colleagues⁵⁵ drew the attention to the situation, that – beside the Tisza river – the shared aquifers' optimum and safe use is also a topical issue.) The district level river basin management plans of the Danube river basin district (the first⁵⁶ and the second⁵⁷) were constructed based on the Member States' national plans and, therefore, their data were based on the concerned states' national databases. The individual Member States had to construct and publish their river basin management plans based on these international planning units and their management plans first till 2009, then until 2015 (which plans shall be reviewed

⁴⁹ Article 2 of the Water Framework Directive

⁵⁰ *1st River Basin Management Plan of Hungary*, adopted by Government Resolution 1042/2012, p. 3.

⁵¹ Article 3 (3) of the Water Framework Directive

⁵² *1st River Basin Management Plan of Hungary* (hereinafter referred to as *1st RBMP of HUN*), adopted by Government Resolution 1042/2012.

⁵³ *2nd River Basin Management Plan of Hungary*, adopted by Government Resolution 1155/2016

⁵⁴ ICPDR: *Danube River Basin District Management Plan*. IC/151, 14th December 2009, p. 1.

⁵⁵ P. SZÜCS – M. VIRÁG – B. ZÁKÁNYI – KOMPÁR, László – J. SZÁNTÓ: Investigation and Water Management Aspects of a Hungarian – Ukrainian Transboundary Aquifer. *Water Resources*, 4/2013, pp. 463-464.

⁵⁶ ICPDR 2009.

⁵⁷ ICPDR: *Danube River Basin District Management Plan*. EU Grant Agreement 07.0203/2014/691950/SUB/ENV.C1, 16th December 2015.

and updated in six years)⁵⁸. The collectively made river basin management plan and the connected consultations themselves alone brought a giant leap in the water relations of Hungary and the neighbouring countries⁵⁹. Besides the common cooperation in the making of the Danube River Basin District Management Plans, the Water Framework Directive offers a special (even if not highly effective) dispute settlement mechanism for the involved countries. This is the dispute settlement mechanism for issues which cannot be dealt with at Member State level. On the basis of the corresponding prescriptions⁶⁰ if a Member State identifies an issue which has an impact on water management but cannot be resolved by that Member State may report the issue to the Commission and any other Member State concerned and may make recommendations as to how the issue should be resolved. The Commission responds to any report or recommendation from Member States within six months. According to the available information⁶¹ – perhaps due to the fulfilment deficit in the mechanism – so far this sort of dispute settlement mechanism has not been frequently used.

In case of the Floods Directive there is a very similar situation to that of the Water Framework Directive in transboundary issues. Namely, if an international river basin district extends beyond the boundaries of the EU, «Member States shall endeavour to produce one single international flood risk management plan or a set of flood risk management plans coordinated at the level of the international river basin district»⁶². With regard to this disposition, similarly to the case of the Water Framework Directive, the ICPDR equally has

⁵⁸ See Article 3 (1), Article 13 and Annex VII of the Water Framework Directive.

⁵⁹ In comparison with the previous situation, as a result of the cooperation-system established by the Water Framework Directive, there is a positive development in the bilateral international relationships concerning water management and protection; however, a guarantee-system is not provided by the Water Framework Directive, therefore, there are many uncertainties concerning legal dispute henceforward; L. SOMLYÓDY (edit.): *Magyarország vízgazdálkodása: helyzetkép és stratégiai feladatok [Water management of Hungary: the present situation and the strategic tasks]*. Strategic Programmes of Academy, Budapest, 2011, Hungarian Academy of Sciences, pp. 113-114. C.f. EUROPEAN COMMISSION: *Towards sustainable water management in the European Union*. COM(2007) 128, p. 13.

⁶⁰ Article 12 of the Water Framework Directive.

⁶¹ A case of this kind (namely, a dispute concerning an aquifer between Romania and Bulgaria) was mentioned by *Gábor Baranyai*, in which the parties referred their dispute to the dispute settlement mechanism established by the Water Framework Directive; G. BARANYAI: 'Water disputes in the EU' presentation. In: *Határon átnyúló vízügyi konfliktusok megelőzése és kezelése Európában [Prevention and handling of cross border water conflicts in Europe]* c. konferencia, Budapest, National University of Public Service, 1st December 2016.

⁶² Article 8 (3) of the Floods Directive.

a role, having taken up an important role in the making of the first Flood Risk Management Plan for the Danube River Basin District⁶³. Furthermore, if a Member State identifies an issue which has an impact on the management of flood risks of its waters and that issue cannot be resolved by that Member State, it may report the issue to the Commission and any other Member State concerned and may make recommendations as to how the issue should be resolved⁶⁴.

3. Hungary's bilateral international agreements with the neighbouring countries in the field of water management and water protection

In this part, two types of agreements concluded between Hungary and the neighbouring countries on water management and water protection are discussed. First, the comprehensive agreements, i.e. those regulating water management and water protection in general or as framework agreements, are discussed. Then some project-specific agreements are analyzed.

3.1. Hungary's comprehensive bilateral international agreements

The comparison and joint evaluation of bilateral agreements⁶⁵ between Hungary and the neighbouring countries raises some difficulties. Thus, for

⁶³ ICPDR: *Flood Risk Management Plan for the Danube River Basin District*. EU Grant Agreement 07.0203/2014/691950/SUB/ENV.C1, 16th December 2015.

⁶⁴ Article 8 (5) of the Floods Directive.

⁶⁵ Hungary's international bilateral conventions with the neighbouring countries are the following: Serbia: Convention between the Hungarian People's Republic and the Federal People's Republic of Yugoslavia on water management (08.08.1955). Austria: Legislative Decree 32 of 1959 concerning the Convention between the Hungarian People's Republic and Republic of Austria on the water management of border-land; furthermore Austrian-Hungarian International Agreement No 17/1985 on the environmental protection cooperation. Slovakia: MT Decree 55/1978 concerning the Convention between the Government of the Hungarian People's Republic and the Government of the Czechoslovak Socialist Republic on the management of transboundary waters; furthermore International Agreement between the Slovakian and Hungarian Governments No 17/1999 on the environmental protection and nature conservation cooperation. Croatia: Government Decree 127/1996 concerning Convention between the Government of the Hungarian Republic and the Government of the Republic of Croatia on the water management cooperation. Slovenia: Government Decree 41/2001 concerning the Convention between the Government of the Hungarian Republic and the Government of the Republic of Slovenia on the water management. Ukraine: Government Decree 117/1999 concerning the Convention between the Government of the Hungarian Republic and the Government of the Republic of Ukraine on the management of transboundary waters; furthermore, International Agreement between the Ukrainian and Hungarian Governments No 1993/11 on the environmental protection cooperation. Romania: Government

example: (a) the agreements were concluded in absolutely different social-economic situations, about half of a century passed between the conclusion of our agreements with Yugoslavia and that of Romania. (b) Even the international legal environment was different. Therefore, the Helsinki Convention and, respectively, the Sofia Convention could not always serve as an example, hence (only) four bilateral agreements allude *expressis verbis* to the Helsinki Convention and three to the Sofia Convention; thus it is understandable that the concerned bilateral agreements contain modern legal instruments in a similar ratio. This does not mean, of course, that later the two countries could not apply the Helsinki Convention or the Sofia Convention, provided that after the conclusion of the agreements they signed the Helsinki and, respectively, the Sofia Conventions (Hungary and its neighbours signed and ratified both conventions.) (c) Among the seven countries there are Member States and states which are not Member States (yet). Among the Member States, the dispute settlement procedure of an eventual dispute is naturally a different procedure than between a Member State and a non-Member State. (d) Furthermore, there may be a significant difference among the bilateral agreements concluded between two Member States depending on whether they contain EU related norms or not. Among the bilateral agreements concluded between Hungary and a Member State there is only one agreement – with Romania⁶⁶ – in which referring to the Water Framework

Decree 196/2004 concerning the Convention between the Government of the Hungarian Republic and the Government of the Republic of Romania on the protection and the sustainable use of transboundary waters; furthermore, International Agreement between the Romanian and Hungarian Governments No 2001/9 on the environmental protection cooperation. About the international convention system before the 2nd World War, see N. HORVÁTH: Politikai vizeken. Határvízi diplomáciai esetek [Political waves: diplomatic cases of transboundary waters]. In: V. GLIED (edit.): *Vízkonfliktusok [Water conflicts]*, Pécs, 2009, Publikon Publisher, p. 240.

⁶⁶ Before the present agreement between Hungary and Romania, Szűcs Péter and his colleagues also dealt with the Hungarian-Romanian transboundary aquifers' issue and the previous international convention system in detail, and they noted that the «significant differences between transboundary aquifers and rivers have not been pointed out in the existing treaties, resulting generally in a poor appreciation by decision makers of the value of the groundwater resources»; L. LÉNÁRT – T. MADARÁSZ – L. MIKÓ – A. SZABÓ – P. SZÜCS – M. JUHÁSZNÉ VIRÁG – M. KARSAI – M. BREATOTÉAN – R. DROBOT – A. FILIP – M. JIANU – M. MINCIUNA – S. BROUYERE – A. DASSARGUES – C. POPESCU: Complex Hydrogeological Study of the Alluvial Transboundary Aquifer of Szamos/Somes (Romania-Hungary). In: *XI. World Water Congress, Water resources management in the 21st century, Subtheme 4, Relevance and sustainability of the intensive groundwater developments*, Madrid (Spain), 5-9th October 2003, pp. 1-9.

Directive and other EU directives the two parties settle European water law issues.

As to the bilateral agreements we deem it important to mention that the Hungarian party guarantees the realization of the objective of the bilateral cooperation embodied in the Hungarian legislation. According to § 4(3) of Government Decree 221/2004: «It is to be ensured that the state of water shall not be changed adversely in the border section, furthermore, as a result of the mutual measures, such endowments are to be evolved which are characteristic to the good state of water».

Based on the comparisons of the seven agreements, we draw the following main conclusions – eventually based on an extended interpretation:

(a) From the indirect subject of the agreements it can be seen that their primary scope is the *border waters*. The agreements define the name and the definition of border waters similarly (waters marking the border out, crossing it or can be found there; according to this definition, the Tisza is not a border water in the Romania-Hungary relation!). The Austrian agreement interestingly – and unlike the other agreements – extends the scope of the agreement to the waters in the 6 km stripe from the border.

(b) The scope of the agreements essentially extends to the *surface and ground waters* as well. In our opinion, in case of one agreement (the Austro-Hungarian) only indirectly may it be deduced that the scope of the agreement extends to ground waters as well – and this may cause severe uncertainty. In the other agreements – expressis verbis or less precisely but – there are references to ground waters. In the Yugoslavian agreement the “water system” concept is rather progressive especially compared with its age (1955). In this “water system” concept a comprehensive, ground water involving notion is used (essentially, it is based on the hydrological cycle).

(c) The exact regulation of the spin off over the border (henceforward spin off) concept can only be found in a few agreements. In our view, it can only be found essentially in the Romanian agreement, but apparently there are hints and circumscriptions in some others as well (e.g. in the Ukrainian). To eliminate the adverse spin off effects, some of the agreements order prior consultation, others prior concurrence.

(d) The agreements include both the quantitative and qualitative sides of water management and water protection. At the same time, there is a high discrepancy in the concrete. When settling the quantitative issues, there are

agreements which define a concrete ratio between the parties for the use of water resources: the Ukrainian (both countries are entitled to use “at most the half of the tallied resources of border waters”, Article 3)⁶⁷, the Czechoslovakian (both countries are entitled to «the half of with technical intervention non-increased natural water quantity flowing in the border waters», Article 3), the Austrian (differentiates; in case of certain border waters the countries dispose of the «with technical intervention non-increased natural runoff water – without violating the rights previously acquired», but there are waters where the upper country along the water cannot decrease the natural small-water by more than one-third; Article 3). While, on the contrary, there is an agreement which – compared with the above agreements – composes more comprehensively and flexibly. According to the Hungarian-Romanian agreement – partly copying the prescriptions of the Sofia Convention – for example «the measures ensuring the fair and sustainable use of the water resources of the border waters are determined by the experts of signatories of the agreement based on the water balance of the border water and the respective water basin management plans», Article 7).

(e) The majority of the agreements contain obligations for *keeping the border water clean and preventing adverse cross-border effects*. Essentially all the agreements include in one way or another the obligation to inform in case of exceptional pollution or danger connected to border waters⁶⁸.

(f) Just a few agreements speak directly of the *liability in cases of exceptional pollutions*. The Hungarian-Ukrainian agreement says: «The costs connected to the aversion of the pollution shall be beared by the producer of the pollution» (Article 4). The Hungarian-Romanian agreement settles the issue of liability in a much wider circle: «The parties to the agreement enforce the polluter pays principle and to the application of it they introduce the methodology worked out at EU-level. The parties to the agreement fix in a separate Regulation the detailed principles and the procedures to be applied in case of damage caused by exceptional cross-border pollution» (Article 8).

⁶⁷ About the Unkrainian water management situation, see UNITED NATIONS ECONOMIC AND SOCIAL COUNCIL: *Progress report on national policy on national policy dialogues in countries Eastern Europe, Caucasus and Central Asia*. ECE/MP.WAT/2009/6, 19th August 2009.

⁶⁸ The latter principle was identified by the ICJ, see ICJ, Corfu Channel case, Judgment of April 9th, 1949: I.C.J. Reports 1949, p. 4. See RAISZ: A környezetvédelem helye a nemzetközi jog rendszerében [The place of environmental protection in international law]. *Miskolci Jogi Szemle*, 1/2011, p. 94. and p. 99.

(g) In addition to these, we may also find numerous *individual rules* in the agreements. Thus for example: the Czechoslovakian (that is Slovakian today) agreement regulates the assurance of waterways in detail; the Austrian agreement touches upon the assurance of the water supply of the cities *Sopron* and *Kőszeg*, or the use of water of Kis-Lajta for irrigation. In the scope of the Yugoslavian (that is Serbian at present) agreement even issues of energy are retractable. In the Ukrainian agreement the highlighted field is the water management connected to the river Tisza.

(h) For the fulfilment of what is laid down in the agreement, for the control of the execution, and to ensure the continuous consultation, the bilateral agreements create *common water committees*. The only exception is the Ukrainian agreement, where a *government plenipotentiary* is mentioned instead of the committee.

(i) In our opinion, the corner stone of the similar agreements is the way of the *dispute settlement*, its output, and the *guarantees of the implementation*. It is understandable that an agreement may contain detailed rules of any sort on the water affairs if the implementation has no frame and no guarantees. The agreements in the first round wish to settle the occurring disputes typically in the framework of the common water committees or at government level. When it leads to nowhere, then three bilateral agreements (Ukrainian, Slovenian, Croatian) in the framework of the Helsinki Convention's dispute settlement mechanism refer the issue to an arbitration tribunal (typically referring to Article 22 second par. and App. IV). The Hungarian-Romanian agreement acts differently, and after an unsuccessful first round prescribes the dispute settlement mechanism of the Sofia Convention. But referring to our previously written remarks on the Helsinki Convention and Sofia Convention, we see no guarantee for the settlement of the disputes at an international court.

Furthermore, an interesting question may be raised as to the possible way of dispute settlement for eventual debates between EU Member States, as in their regard the above – as to the MOX case – mentioned *loyalty principle* comes in the picture⁶⁹, putting all alternative dispute settlement methods at international level in the background.

3.2. Hungary's program-specific bilateral international agreements

⁶⁹ RAISZ 2012b.

Besides the comprehensive bilateral international agreements, Hungary concluded international agreements with the neighbouring countries in connection with special uses of water as well. Out of these the Gabčíkovo-Nagymaros Project and the *Arad-Békés* Water Service Agreement are outstandingly important.

3.2.1 *The Gabčíkovo-Nagymaros Project*

The bilateral agreement⁷⁰ forming the basis of the Gabčíkovo-Nagymaros Project came into being in 1977 between Hungary and Czechoslovakia (who was replaced by Slovakia in 1993 as the successor state) in which the parties agreed to build and operate a hydroelectric power plant system together. In the 1977 treaty the environmental aspects have not been taken appropriately into consideration. Furthermore, the other relevant (previously cited, along with the water management agreements with the other six neighbouring countries assessed) agreement on water management between Hungary and Czechoslovakia⁷¹ entered into force in the same period.

As upon environmental concerns and the evolving civil reluctance Hungary ceased the building projects in 1989 at Nagymaros, Czechoslovakia (Slovakia) decided to finish the hydroelectric power plant unilaterally and to divert most of the waters of the Danube river to its own territory; the fact that Hungary – unilaterally – denounced the 1977 treaty did not change the situation⁷².

The situation that has evolved has seriously damaged and is still damaging the flora and fauna of the Szigetköz. The dispute between the two countries came in front of the International Court of Justice in the Hague. In

⁷⁰ See Legislative Decree 17 of 1978 concerning the Convention between the Government of the Hungarian People's Republic and the Government of the Czechoslovak Socialist Republic on the implementation and management of the Gabčíkovo-Nagymaros Project (signed in Budapest, 16th September 1977).

⁷¹ See the previously mentioned MT Decree 55/1978.

⁷² In this regard, the Hungarian Parliament adopted Parliament Resolution 26/1991 on the Government's tasks connected to the Gabčíkovo-Nagymaros Project; furthermore, Parliament Resolution 12/1992 concerning the Convention between the Government of the Hungarian People's Republic and the Government of the Czechoslovak Socialist Republic on the implementation and management of Gabčíkovo-Nagymaros Project (signed in 1977).

sum⁷³, the parties relied on the principles *pacta sunt servanda* (Slovakia; the “promises must be kept”) and *clausula rebus sic stantibus* (Hungary; ‘things thus standing’). The Hungarian party tried to substantiate its point – apart from relying on the protection of the environment – also with the dispositions contained in the Hungarian-Czechoslovakian water management agreement (namely that both countries are entitled to «the half of with technical intervention non-increased natural water quantity flowing in the border waters», Article 3). This argumentation and, therefore, the applicability of the water management agreement was nevertheless not taken into consideration by the International Court of Justice. In its 1997 judgment⁷⁴ the International Court of Justice declared that Hungary illegally denounced the 1977 international treaty and stopped the building operations, as there was no ecological state of emergency. However, it did not oblige Hungary to build the Nagymaros part of the project. It also declared that Slovakia illegally built the so-called C variant and diverted the Danube. The judgment refers several – important – questions to the further cooperation of the parties, *inter alia* the concrete water quantity in the original Danube basin. What seemed to be a Salamonian decision proved soon to be a failure when it comes to the execution of the judgment. Although the two countries started negotiations after the judgment (i.e. two decades ago), no final solution has been reached so far. (An interesting “experiment” was when a Member of the Parliament⁷⁵ tried to make the Constitutional Court oblige the Parliament and the Government to successfully close the Gabčíkovo-Nagymaros case.) In 2011, the Parliamentary Commissioner for Future Generations (PCFG) equally opted for the continuation of the negotiations and in case these prove to be unfruitful, for the initiation of another procedure in front of the International Court of Justice. Meanwhile, the PCFG urged the Hungarian decision-maker to give up its share in the electricity production in Gabčíkovo and continue to refuse to build a hydroelectric power

⁷³ For a more detailed assessment of the case, a huge foreign and Hungarian literature available. See for example G. HERCZEGH: Bős-Nagymaros [Gabčíkovo-Nagymaros]. *Valóság*, 2/2004, pp. 1-20; B. NAGY: Bős-breviárium. *Beszélő*, 10/2010; M. SZABÓ: The Implementation of the Judgment of the ICJ in the Gabčíkovo-Nagymaros dispute. *Iustum, Aequum, Salutare*, 1/2009, pp. 15-25; RAISZ 2011, pp. 99-100; G. SZÉNÁSI: Magyarország első pere a hágai Nemzetközi Bíróság előtt [The first Hungarian case at the ICJ]. *Állam és jogtudomány*, 1-2/1999, pp. 161-178; etc.

⁷⁴ ICJ, Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment of 25th 1997, I.C.J. Reports 1997, p. 7.

⁷⁵ See Constitutional Court resolution 988/E/2000 refusing the application. See furthermore L. FODOR: *Környezetvédelem az Alkotmányban*. Budapest, 2006, Gondolat Kiadó – Debreceni Egyetem ÁJK, pp. 121-122.

plant on the national part of the Danube. Nevertheless, we do not entirely share the positive opinion of the PCFG, according to which «Regarding the changes in the environmental interests, we may assume that a new judgment of the International Court of Justice would lead the attempts to reach an agreement in a more advantageous direction...»⁷⁶. It may happen (and there are certain positive signs⁷⁷), but the current composition of the International Court of Justice causes some scholars to doubt a clearly positive outcome for future generations⁷⁸. Upon our current knowledge, it would be difficult to assume the final outcome of the case. However, a few years ago, the Hungarian and the Slovakian governments decided to continue the negotiations, which are still ongoing. In July 2017, the Slovakian government asked for the withdrawal of its application at the International Court of Justice, to which the Hungarian government agreed. That is the current state of play.

3.2.2. The Arad-Békés Water Service Agreement

The subject of the Arad-Békés Water Service Agreement is cooperation between Hungary and Romania to provide proper drinking water for Hungarian consumers from Romanian water fountains. «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 Austria⁷⁹. However, the topical case of this international relationship is undisputedly the so-called Arad-Békés water service agreement. In the background of this agreement, ... 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

⁷⁶ Opinion No. 30-81/2011 of the PCFG

⁷⁷ See e.g. certain – but not all – elements of the Whaling in the Antarctic (ICJ, Australia v. Japan, Judgment of 31st March 2014, I.C.J. Reports 2014, p. 226) or the San Juan River cases (ICJ, Joint cases Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica), Judgment of 16th December 2015, I.C.J. Reports 2015, p. 665).

⁷⁸ RAISZ 2012b.

⁷⁹ SZILÁGYI 2013, p. 105.

Békés County Water Company (today: Alföldvíz Water Company) established a Romania-based joint venture (Aqua Trans Mureş S.A.; ATM) to transfer water from Romania to Hungary⁸⁰. 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 concerns⁸¹: (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 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 parties⁸². Expectedly, the Romanian water will soon be provided for Hungarian consumers.

4. Conclusions

⁸⁰ SZILÁGYI 2013, pp. 126-128.

⁸¹ E. JANCsó – K. FARKAS: Declaration of Alföldvíz “on the water supply utility consortium for Arad-Békés water-transfer” to author. Békéscsaba, 6th July 2015, pp. 3-5.

⁸² SZILÁGYI: Current challenges concerning the law of water services in Hungary. *Lex et Scientia*, 1/2016, pp. 78-79.

In our view, it is of vital importance for Hungary to set up a cooperation with the concerned states in the field of shared water basins which is more effective and contains more guarantees than beforehand. As we see it, there are several possibilities to defend our waters through ensuring more effective and diversified international liability formations. Thus⁸³ (a) among the Member States to increase the effectiveness of the system of the Water Framework Directive (and the related European law material), (e.g. to draw up more precise requirements that are thus easier to fulfil, a more characteristic regulation of water quantity issues); (b) to further improve the European Union Strategy for Danube Region⁸⁴ in the direction of the operation of a more effective water protection institution system; (c) to develop the system of the Sofia Convention in the direction of a so-called Danube Union, which ensures guarantees of implementation (if necessary by setting up a special tribunal); (d) to stimulate the *cross-border cooperation of civil organisations* to increase the effectiveness of their activity and social pressure in water protection; (e) to improve Hungary's *comprehensive bilateral international agreement system* to eliminate the deficiencies discussed in the corresponding part of this study.

We consider the Hungarian-Romanian agreement as a starting minimum for the negotiations necessary to improve the *comprehensive bilateral international agreements*, which relies in several aspects on the notional and subject-matter system of the Sofia Convention. It disposes of a more exact, to the present international and EU legal environment more suitable notion system. The Hungarian-Romanian agreement has concrete EU relations. Thus the signatories appraise as an objective of the agreement to reach the good state of water that is the fulfilment of the most important objective of the Water Framework Directive. Several EU directives deal with the issues of the border waters and the cross-border spin off effects⁸⁵, where the directive denotes cooperation between the

⁸³ About the possibilities in detail, see SZILÁGYI 2013, pp. 102-109. and pp. 234-238.

⁸⁴ EUROPEAN COMMISSION: *European Union Strategy for Danube Region*. COM(2010) 715. See furthermore the The Council adopted conclusions on the EU's strategy for the Danube region; COUNCIL OF THE EUROPEAN UNION: *Press release 3083rd Council meeting – General Affairs*. Luxembourg, 13rd April 2011, 8743/1/11 REV. About the assessment of this, see A. PÁNOVICS: *Az EU Duna-régió stratégiájának környezetvédelmi aspektusai* [The environmental protection aspects of the European Union Strategy for the Danube Region]. *Európai Tükör*, 1/2011, pp. 74-81.

⁸⁵ See e.g. Articles 3 and 12 of the Water Framework Directive; Article 3 of Directive 2006/118/EC; Article 10 of Directive 2006/7/EC; Article 9 of Directive 91/271/EEC; Article 3 of Directive 91/676/EEC.

concerning Member States as the solution. The Hungarian-Romanian agreement deals with several such cases, referring several times to the EU directives⁸⁶. We think that in the process of improvement it is essential to settle the quantity questions more exactly and to widen the circle of the implementation guarantees (even by setting up a system of assurances if necessary). Naturally, the system of assurances is part of several (draft) multilateral agreements and the EU law, but the realization of a more effective system of guarantees is still missing, thus there is a chance that we can reach concrete results earlier through bilateral agreements. The development of a system of assurances for cross-border spin off effects is a great challenge, but without this we have to calculate with more frequent and tauter conflicts in the coming period.

At the same time it is important – and the Arad-Békés Water Service Agreement may set a good example – that the settlement of the common utilization of cross-border water resources, for example with further *program-specific bilateral agreements*, may be constructive in the long-run relations of the given countries.

Finally, we deem it important to emphasize that it is not utopistic to renegotiate our bilateral systems with Slovakia concerning water management issues as the negotiations are ongoing, but these issues are still unpredictable and politically heavily influenced – probably like all cross-border water resources issues around the world as well.

⁸⁶ See especially the following provisions of the Hungarian-Romanian agreement: Article 2 (2), Article 3 (1), Article 4, Article 6 (2), Article 7 (2), Article 7 (4), Article 7 (6), Article 7 (8), Article 11 (17), etc.

ABSTRACT

Anikó Raisz – János Ede Szilágyi - *Cross border issues of the Hungarian water resources*

Hungary belongs to the “most international watercourse” of the World, namely to the Danube watershed. This situation forces Hungary to a quite active cooperation with its neighbouring countries and other affected states in connection with water management and environmental protection. These intentions and efforts have been well demonstrated by the Hungarian Presidency of the Council of the European Union (EU) in 2011 and its emphasized water topic, the Hungarian contribution to the European Union Strategy for the Danube Region, and, furthermore, the successful Budapest Water Summits (in 2013 and in 2016) organised by the Hungarian Government in cooperation with the United Nations (UN), etc. Taking these events into consideration, we can speak about a prosperous Hungarian hydro-diplomacy;

nevertheless, the relevant international and European legal background henceforward needs the development of the rules concerning the joint utilisation of shared watercourses and aquifers, including the questions of implementation. The paper presents the legal background focusing on the Hungarian aspects, and, moreover, it also deals with the practice of the concerned countries in the Central European region.

KEYWORDS: *Management Water Resources; Danube Region; Active Cooperation between Countries; Environmental Protection; International and European legal background.*