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Some elements of the financial law environment of water\*\*

*Abstract*

*The present article concentrates on the potential links between financial law, water management and water protection in a wider sense. The special focus of the paper is the ownership and property issues of waters. Taking these issues into consideration the author presents that the regulation of water ownership belongs to several aspects of financial law, such as the issue of the ownership of water into national assets - state and municipal property, water regulation, financial issues of water management, rules of water utilization, or it is precisely the regulation of water use charges, whether in the form of fines (groundwater fines, sewage penalties) or contributions (water supply charges). The author draws the attention to the need of regulation-simplification and more integrated solutions in connection with the topic.*

**Keywords:** water law, financial law, water management law, water ownership

### 1. Introductory thoughts – about sustainable water management

Water as a vital element is the most important and primary condition of human life; its preservation and protection is the primary interest of every country. It is, therefore, necessary to act with great care in the legal regulation of water and water management. Environmental aspects are a priority in the financial regulation of water and water management, and sustainable development requires water protection and the prevention of the loss of water management. The fresh water of our earth is in constant decline, and the water crisis poses a huge challenge to the whole world. Overconsumption, global warming increases the drainage of freshwater stocks, and the struggle for water has become vital today.

The decline in our freshwater stock is dramatic, with the global average of 13,000 cubic meters/ person/year over the past forty years dropping to 5,000. Demographic processes and climate change are also threatening a global water crisis, challenging water management. According to the Kvassay Jenő Plan<sup>1</sup> on the National

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Éva Erdős: Some elements of the financial law environment of water – A víz pénzügyi jogi környezetének egyes elemei. *Journal of Agricultural and Environmental Law* ISSN 1788-6171, 2019 Vol. XIV No. 27 pp. 39-73 doi: 10.21029/JAEL.2019.27.39

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\*\* *This study has been written as part of the Ministry of Justice programme aiming to raise the standard of law education.*

<sup>1</sup> The Hungarian National Water Strategy was established by Jenő Kvassay in 2017 on 7 March 2017, the Hungarian Government adopted the National Water Strategy and the Action Plan for its Implementation, and announced on 1110/2017. (III.7.) Gov.Dec., Jenő Kvassay Plan, National Waterstrategy – Kvassay Jenő Plan. See also: The full 140 page document is available at: [kormany.hu](http://kormany.hu) 2017 (hereinafter: KJT).

Water Strategy, water is given high priority among the Sustainable Development Goals.<sup>2</sup> Key objectives<sup>3</sup> include improving water quality, reducing and minimizing water pollution, increasing the proportion of recycled water, increasing water efficiency to address water scarcity, cross-border cooperation, and implementing integrated water management, protecting aquatic ecosystems, expanding international cooperation, and supporting developing countries in water-related programs and supporting and strengthening the participation of local communities in improving water management and sanitation.

Achieving all these goals are promoted by the Water Framework Directive<sup>4</sup> and the Flood Risk Management Directive<sup>5</sup> as the main elements of European Union regulation in the interest of joint action by the European Member States. The Water Framework Directive laid down that “*water is not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such.*”<sup>6</sup> The Water Framework Directive aims to maintain and improve the aquatic environment in the European Union and to act together to create an effective, transparent, and coordinated legal framework for EU water policy. As a means of doing this, common principles and a comprehensive framework for joint action must be laid down and ensured. Means of action: identification of problems identified by the Member States based on harmonizing, consistent monitoring, and impact analysis, and the preparation of comparable action plans.<sup>7</sup>

The elements of water management require interdisciplinary legal regulation, besides the elements of civil law, agricultural law, and administrative law, the rules of the field of financial law also appear.

In this study, I review some of the regulatory elements of water law: the status of water as a part of the priority national wealth, certain issues of water abstraction, and the major regulatory trends in water management, which are the subject of some public charges on water.

## 2. Water, a property element

Water is of strategic importance, as evidenced by the fact that, in terms of its legal regulation, it is very broadly embedded in legislation, and our Fundamental Law already states that water is part of our national heritage and is one of the most important elements of national wealth. The legal protection of the water and its maintenance in the community is guaranteed by the Fundamental Law and the law of

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<sup>2</sup> Sustainable Development Goals adopted by the UN in September 2015, see kormany.hu 2017, 2.

<sup>3</sup> kormany.hu 2017, 2.

<sup>4</sup> Directive 2000/60 / EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, establishing a framework for Community action in the field of water policy.

<sup>5</sup> Directive 2007/60/EC of the European Parliament and of the Council on the assessment and management of flood risks.

<sup>6</sup> Directive 2000/60/EC.

<sup>7</sup> kormany.hu 2017, 6.

two-thirds of national property.<sup>8</sup> According to the Fundamental Law of Hungary: “*Natural resources, especially agricultural land, forests, and water resources, biodiversity, especially native plant, and animal species, and cultural values are the common heritage of the nation, the protection, preservation, and future of the generations.*”<sup>9</sup> Our Fundamental Law highlights *the responsibility of the state for the protection, maintenance, and preservation of water resources*, while at the same time it prescribes the preservation and protection of water resources for everyone in Hungary as a common burden and obligation.

## 2.1. The legal concept of water

The defining and interpreting of the legal concept of water is a decisive element in the legal regulation of water. There are several subcategories under the legal definition of water, such as surface waters or groundwater, inland waters, watercourse, lake, transitional waters, coastal sea water, artificial water body, but surface water is the most important in the regulation of water ownership and utilization, and the definition of groundwater, too. As defined in the EU Water Framework Directive, the terms are:

„Surface water´ means inland waters, except groundwater; transitional waters and coastal waters, except in respect of chemical status for which it shall also include territorial waters

´Groundwater´ means all water which is below the surface of the ground in the saturation zone and direct contact with the ground or subsoil.

´Inland water´ means all standing or flowing water on the surface of the land, and all groundwater on the landward side of the baseline from which the breadth of territorial waters is measured.

´Transitional waters´ are bodies of surface water in the vicinity of river mouths which are partly saline as a result of their proximity to coastal waters but which are substantially influenced by freshwater flows.

´Coastal water´ means surface water on the landward side of a line, every point of which is at a distance of one nautical mile on the seaward side from the nearest point of the baseline from which the breadth of territorial waters is measured, extending where appropriate up to the outer limit of transitional waters.”<sup>10</sup>

The National Water Strategy (2017) has already clarified the above concepts, according to which the relevant legal concepts are:<sup>11</sup>

„Lake: land water body.

´Surface water´ means all water on or above the surface of the earth, except for the case of transitional waters and coastal waters.

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<sup>8</sup> Act CXCVI of 2011 on National Property (hereinafter: Nvtv.)

<sup>9</sup> Fundamental Law, Article P (1).

<sup>10</sup> See in this respect the definitions of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (hereinafter referred to as the ‘Water Framework Directive’), Article 2 (1) and (2) 6.7.

<sup>11</sup> kormany.hu 2017, 134-138.

‘Groundwater’ means all water present in the saturated zone and underground aquifers below the surface of the earth.

‘Mineral water’ means water from a natural groundwater body or water body whose mineral content is typically different from regular drinking water intended for human consumption and its composition complies with the relevant statutory limit (e.g. biological, chemical).

‘Drinking water’: water suitable for physical, chemical, bacteriological, toxicological, and radiological limitations suitable for regular human consumption.

‘Medicinal water’ means mineral water that has proven therapeutic efficacy and is authorized to be used under separate legislation.

‘Water services’ means public tasks related to the public tasks of the state or local governments, in particular to meet water needs, to discharge waste water and to dispose of used water without harm, to protect, conserve, manage and distribute water resources; and collecting and treating wastewater, which is then discharged into surface waters.

‘Water protection’ means the quantitative and qualitative protection of water as an environmental element.”

From these concepts, it can be seen that the definitions are different in the Water Framework Directive and the National Water Strategy.

Fortunately, Hungary has abundant water resources, natural lakes, mines, thermal and medicinal water, drinking water and mineral waters, but that does not mean that it can remain so and that there is no need for proper water protection. That is why there is a great need for a precise definition of concepts, rules for ownership utilization, and regulation of efficient and cost-effective solutions for water management. The right to water is a fundamental constitutional principle, and clarification and unification of concepts help to navigate the maze of legislation.

From the above concepts it can be seen that *water*, as an *environmental element* in general, can be mentioned as a *natural resource*, but from a regulatory point of view, the more detailed definition of the distinction between surface water and groundwater is important. As regards the legal status of water, it is important to distinguish between the two concepts, on the one hand, in licensing procedures, and on the other hand, whether water is a state or municipal property, whether it is surface water or groundwater.

In terms of the legal definition of water law, “*in the broad sense, we mean the whole set of rules on the water as an indirect regulatory subject, which is also part of multiple jurisdictions.*”<sup>12</sup> Let us look at some water legislation.

## 2.2. Water as a property element – state property

In terms of the status of ownership of the water, it can be classified as one of three elements of property: *state property*, *municipal property*, or *private property*.<sup>13</sup>

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<sup>12</sup> Szilágyi 2011, 595. See also: Szilágyi 2013, 9.

<sup>13</sup> See: Szilágyi 2013; Szilágyi 2018; and Szilágyi 2014.

The classification of state property and state assets is included in the Act on National Assets,<sup>14</sup> property, water, water facilities belonging to local governments are included in the Local Government Act,<sup>15</sup> while the rules for private property assets and water are contained in the Civil Code.

“In Hungary, all surface and subsurface water, their bed and water formations are owned by the community – state or municipal. In addition to exclusive state ownership, the local authorities' inalienable capital assets include water courses, defense works and water utilities for local purposes. The so-called limited marketable waters and water facilities are state-owned.

Findings formulated during the preparation of the Kassay Jenő Plan: (a) Mixed ownership of water facilities in general leads to disorderly conditions, so unified management of the watercourse is not ensured. (b) In the case of groundwater and aquifers, the legal conditions for enforcing trustee rights are missing. In particular, there is a lack of definition of 'water' as an asset to be treated.

Private ownership – owned by the owner of the property – can only be surface water generated within and beyond the boundaries of the property.”<sup>16</sup>

However, the extent to which our waters are owned, owned and used, and how to protect them from damage has not been so clearly defined in the legislation, although in 2011 the National Property Act introduced some unification, there are still many laws and government decrees governing ownership and management of waters.<sup>17</sup>

The law on national wealth is used to utilize national wealth for the public interest and community needs, to protect natural resources, to preserve and protect national values, and to secure the needs of future generations for transparent and responsible management of national assets. The law “regulates the requirements of the state and local government property, the preservation, protection of national property and the responsible management of national assets, the exclusive ownership of the state and local governments, the fundamental limitations and conditions of the right to dispose of the national assets and the exclusive economic activities of the state and the local government.”<sup>18</sup>

Our Fundamental Law states that *state and local government property is national property*. The Fundamental Law emphasizes that the protection of national wealth, the protection of natural resources is a service of public interest and at the same time meeting common needs. The requirements for the preservation, protection, and responsible management of national assets are ensured by a law of a fundamental nature.<sup>19</sup> The protection of national property, and therefore of the state and local authorities, is also protected by the constitutional rule that the transfer of national

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<sup>14</sup> Act CXCVI of 2011 law on national wealth.

<sup>15</sup> Act CLXXXIX of 2011 on Local Governments.

<sup>16</sup> kormany.hu 2017, 53.

<sup>17</sup> Eg. Water Management Act LVII of 1995 (hereinafter: Vgtv.), Act CCIX of 2011. About Water Utility Services (Vksztv.), Act CXLIV of 2009 on Water Companies, Government Decree 72/1996 (V.22) on Exercise of Authority of Water Management Authority, 201/2011 (X.25.) Korm. The quality requirements of drinking water and the order of control.

<sup>18</sup> Nvtv. § 1 (1).

<sup>19</sup> Article 38 (1) and (2) of the Fundamental Law.

assets may be undertaken only for the purposes specified by law, subject to certain exceptions and the requirements of value for money. There is also a guarantee for *the protection* of the ownership of *waters belonging to national assets* that the contract for the transfer or use of national assets can only be concluded with an organization that is transparent, i.e. its ownership structure, structure and the management of the national assets transferred or divested for recovery transparent.<sup>20</sup>

The National Property Act<sup>21</sup> classifies into national assets, on the one hand, the exclusive property of the state and the local government, and on the other hand, those which are owned by the state and local governments but are not owned by them. Thus, *national assets* include exclusive state and local government property (water, water facilities) and non-exclusive state and local government property assets.

The type of assets included in the definition of *national assets* can be state property, state property, or local government property, property owned by local governments. *State property* may be an exclusive property asset, or it may be a national asset of outstanding economic importance.

*It is the sole property of the State*<sup>22</sup> and accordingly forms part of the *national assets*, including: (a) The treasures of the Earth's bee in their natural habitat, (b) groundwater, natural groundwater bodies of groundwater, abandoned river of the river and natural lakes and newly created islands in river water, natural lakes, and the waters determined in Annex 1 of Act Nvtv., watercourses, backwaters, side branches, natural lakes, and their bed. (c) Channels, reservoirs, flood protection lines and other water facilities as defined in Annex 1 of Act Nvtv. and state-owned water utilities.<sup>23</sup>

The state-owned property, as defined in Annex 2 to this Act, or state-owned property as defined by law or government decree, is considered to be of paramount importance from the *national economy perspective*.

The National Property Act (Nvtv.)<sup>24</sup> lists our strategically important waters, such as our rivers, our natural lakes – Lake Balaton, Lake Balaton, Lake Velence, Lake Fertő and Lake Hévíz – as assets belonging to the *exclusive state property*. The state has exclusive ownership of rivers, streams, backwaters, side branches and their beds, as well

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<sup>20</sup> See also paragraphs 3 and 4 above.

<sup>21</sup> Nvtv. § 1 (2) a) and b).

<sup>22</sup> Nvtv. § 4 (1) c) d) e).

<sup>23</sup> Nvtv. II. Chapter 1: Certain Types of Assets Included in the Definition of National Assets Section 1: State Assets Section 4 (c), (d), (e).

<sup>24</sup> Nvtv. Annex 1 contains the following items: Exclusive property of the state, A.) List of rivers, streams, backwaters, sub-basins and their bed, and water facilities, I. Indication of rivers, streams, backwaters, side-branches and their median and their length are indicated. The Nvtv. Annex II, Part II. of the state, the water facilities of the state (eg the Danube-Tisza Canal, the Kiskunság Main Channel), the canals, the inland reservoirs, the first and second-order flood protection works, the embankments, the water facilities of the flood reservoirs, the regulated works of rivers and canals, locks, expanded spaces, public utilities of the regional water utilities, inland waterways, watercourses, flood reservoirs, complex facilities, waters, and Annex III, section III of the Act. It lists the natural lakes listed above, which are the exclusive property of the state.

as various water facilities and natural lakes.<sup>25</sup> The rivers, streams, backwaters, side-branches and their bears are listed in Annex 1 of the National Property Act.

Annex 2 to the Act (Nvtv.) contains property belonging to national assets of high importance from the national economy, as state-owned shares held by the state in the national assets of outstanding economic importance.<sup>26</sup>

Nationally owned, non-nationally-owned public assets not listed in Annex 2, Section I, of the Act on National Assets, which are of national importance, are considered to be of *limited marketable value*. Act XIV. A state-owned corporation in a company performing a public service activity as defined in Chapter II of this Act.<sup>27</sup> Such property can only be disposed of to local governments or their associations, and the limited marketability only exists until the company carries out public service activities.

Exclusive state-owned assets are *non-marketable*.

*Non-marketable national assets* „may not be disposed of, trusts, statutory rights, and rights of use established on behalf of bodies authorized by law to separate property from the public interest may not be charged, except for the same reason, and may not be secured for the benefit of the local government, no shared property can be created.”<sup>28</sup>

Assets belonging to the exclusive state property, as well as state assets of national importance, as well as state assets of limited marketability, are also part of the treasury assets.

“*The limited marketable assets*: the national economic asset which does not fall under the Article 1 (2) (a) of Nvtv which may be provided for by law or under the conditions laid down by law or, in the case of property owned by the local government, by a local government regulation.”<sup>29</sup> The assets that can be freely traded in a civil law transaction – sale, exchange, use, utilization – are marketable.

### 2.3. Water as municipal property

*Municipal property* is the property of the local government, which has two parts: *property and business assets*.

The *municipal property* of the local government serves the direct fulfillment of the duties of the local government or the exercise of authority, that is, the public authority, and includes the assets which: (a) the Nvtv. qualifies as exclusive municipal property, (b) the law or the local government decree classifies as national assets of high economic importance (points (a) and (b) below, together with non-marketable fixed assets); (c) the law or the local government decree establishes a limited marketable asset.

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<sup>25</sup> See also: Nvtv. Annex 1, points I-II-III.

<sup>26</sup> Nvtv. No. 2 The names of the state-owned companies are listed in Annex II of the Act, and their share in the state, the Tiszavíz Water Power Plant Energetics Kft. votes. These assets belong to the national wealth of national importance.

<sup>27</sup> Nvtv. § 4 (4).

<sup>28</sup> Nvtv. § 3 (1), point 3.

<sup>29</sup> Nvtv. § 3 (1), point 6.

In other words, *the municipal property stock consists of non-marketable and limited marketable assets*. Ownership of elements of non-marketable non-current assets may not be transferred, debited, covered or secured or enforced.

Municipal treasury assets include non-marketable assets owned by the local government, as well as limited marketable assets and assets of national economic importance, that is, also considered unfit for sale. Municipalities should determine the scope of these latter assets by decree.

They belong to *the national property of the local government, which is the exclusive property of*: (a) waters owned by the local government, which have been transferred to a part of a separate law, public water facilities, excluding water utilities.<sup>30</sup> (b) As a national economic asset, the property of the local government as defined in Annex 2, as defined by law or by local government decree, is considered to be a national asset.

Drawing on the practice, let us look at the property order of the municipality of Mályi, a municipality with several lakes, in which the following regulations can be read.<sup>31</sup>

The Municipality's fixed assets include non-marketable assets and limited marketable assets. Non-marketable assets include those assets that are referred to at Nvtv., Section 5 (4) of the Act and the national assets of high importance from the national economy, which are classified as such by law or local government regulation. In its decree of the Municipality of Mályi, Mályi Lake and the Middle Lake, which are non-marketable assets, are classified as national assets of outstanding economic importance. The resolution of the Mályi Municipality Council of Representatives of the Municipality of Mályi is required for the elimination of the inability to trade by the property decree.

Thus, it can be seen that the lakes named in the local government decree within the jurisdiction of the municipality belong to the municipality, but at the same time, other lakes listed in the local government decree are located in the municipality, which is not mentioned in the decree, they are privately owned as anglers. The Mályi Lake and the Middle Lake, owned by the municipality, are originally mined lakes that are surrounded by a resort area. The example shows that there may be several owners of water, a natural lake, a mine, and a lake that has been extracted from mining, which is subject to several regulations as appropriate.

According to the decree of the Municipality of Mályi Municipality,<sup>32</sup> the concept of waters is: "river water, (rivers, permanent and intermittent watercourses), public channels, and natural lakes, or their bed." Mályi Lake was formerly a mining site that has already been removed from mining. Consequently, a lake that cannot be classified as a natural lake does not qualify as water? Where is the classification and classification of lakes other than natural lakes (ponds and mines extracted from mining

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<sup>30</sup> Section 5 (3) (d) of the Nvtv, on the older rules, see also: Szilágyi 2011.

<sup>31</sup> Municipal Decree 9/2015 (IV.30.) Of the Municipality of Mályi on the Property of the Municipality, the Order of Property Recovery and the Rules of Exercising the Rights of Ownership of Assets.

<sup>32</sup> Municipal Decree of the Municipality of Mályi Municipality 9/2015 (IV.30.) 19. Interpretative Provisions Section 30 (23).



operations) in the determination of water? Consequently, non-natural lakes are not the sole property of the local government, are non-marketable and do not form part of their core assets, except for Mályi Lake and the Middle Lake, which are considered to be national assets of outstanding economic importance. Therefore, other lakes/lakes in the municipality of Mályi are not owned by the municipality. The example confirms the problem that water and water are not uniformly defined, and that water is not properly treated as an asset.

According to the Municipal Property Ordinance, it is still owned by the local government and is part of the fixed assets: the non-marketable assets of the municipality include water and non-public utility water facilities.<sup>33</sup>

We can deduce from the regulation that the provisions on waters are very diverse, the concepts are heterogeneous in each legislation, and the distinction between certain types of waters, such as natural lakes, mining quarries, abandoned lakes, fishing ponds, is very diverse. The property rules are hidden in several places and are not uniform. The uniform regulation of water protection would certainly be more appropriate for my position.

What can be inferred from the rules laid down in different laws: (a) Natural lakes, rivers, groundwater are state-owned, non-marketable, part of national wealth. (b) Local governments own the lakes and waters that the local government lists in its decree or qualifies as an asset of national importance from the national economy and do not belong to the state, i.e. they are not listed as exclusive state-owned assets of the National Property Act; elements. (c) Our strategically important waters are part of national wealth. National assets include assets owned by the state and the municipality. (d) Municipalities are still in possession of water utilities with limited marketable assets.

Thus, water utilities are already part of the limited marketable assets of local governments, similarly to the shareholding in the local government owned by the public service company. The most important feature of a limited marketable asset is that it can only be diverted to a dream, another local government or a municipal association and that it cannot be used to cover borrowing and bond issues.<sup>34</sup>

The Local Government Act<sup>35</sup> does not deal in detail with the property laws and other regulations on waters but considers it to be the responsibility of local governments, i.e. public tasks, to list water utilities in the context of local public affairs, as provided by the Water Services Act. The local government is responsible for the supply. According to Möt<sup>36</sup>, drinking water supply and sewerage services are the responsibility of the Municipality of Budapest. Water supply service<sup>37</sup> includes the supply of drinking water, which is thus a public service, a public service, and the Möt.

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<sup>33</sup> Article 3 (3) of the Mályi estate regulation. Public water facility not classified as water utility pursuant to Section 30: an installation serving the joint needs of settlements or stakeholders in a water management related area for the purpose of water management as defined in the Water Act.

<sup>34</sup> Szilágyi 2013, 89.

<sup>35</sup> Act CLXXXIX of 2011, § 13 (21) (hereinafter referred to as Möt).

<sup>36</sup> Möt, § 23, point 12.

<sup>37</sup> Act CCIX of 2011 on water utility services, Section 2, point 20.

It lists local government tasks in the field of local public affairs and local public tasks. The water utility is a public water facility that supplies the municipal public water supply, including drinking water production, related drinking water protection, drinking water treatment, storage, transport and distribution, and delivery to sites of use. It also provides public utility sewage.

Provisions relating to water owned by municipalities are therefore contained in the National Property Act and the municipal regulations of the representative bodies of each municipality.

#### 2.4. Water management activities, utilization of waters

According to the Act on National Property, the exclusive economic activity<sup>38</sup> of the state is the establishment and operation of channels, state-owned water utilities, and regional public utilities, and the exclusive economic activity of local governments is the water transferred to the local government based on a separate law. The operation of public water facilities and the establishment and operation of local utilities forming part of the core assets.<sup>39</sup>

The State may only transfer the right to use state-owned water using a concession contract, but as the owner of the waters, canals, and reservoirs owned by the State or by the local government, the right to fish is not considered to be an exclusive activity.<sup>40</sup>

The rules for the exploitation and registration of state-owned waters are laid down in the Water Management Act.<sup>41</sup> The Water Management Act, i.e. 1995 LVII., On the utilization and utilization of surface and groundwater and the management of water resources. Provided by law. The Vgtv. It is a state task to develop a water management concept, a program of measures to achieve good water status, a financing and cost management policy for the conservation and sustainable use of water resources, a pricing policy, and to design, approve and coordinate national programs in line with the National Environmental Program. performing water management tasks, declaring water supply areas as drinking water bases, regulating water management and authority functions, operating state-owned public water facilities, regulating water damage prevention activities. In the field of public tasks related to water and water facilities, administrative activities (from now on referred to as 'water management') are carried out by the water management bodies.

The task of the municipality is to manage the rainwater in the inner part of the settlement, to manage the water, to ensure the water supply in the public water supply, to provide non-utility drinking water, to waste water and to protect the water facilities providing drinking water supply. It is also the task of the local government: to carry out municipal authority tasks related to water management tasks; the designation of the waters of the waters suitable for bathing in the natural waters and the associated water

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<sup>38</sup> Nvtv. § 12 (1) d).

<sup>39</sup> Nvtv. § 12 (2) f).

<sup>40</sup> Nvtv. § 12 (7).

<sup>41</sup> Nvtv. § 16 (1) o). Water Management Act: Act LVII of 1995.

surface, the local water management, and the prevention of water damage, flooding, and inland drainage.<sup>42</sup>

## 2.5. Water is the property of the landowner

Let's look at the third potential owner of the water, what can the owner of the property own?

The Act V of 2013 (Civil Code: Civil Code) does not mention the rules on the ownership of waters but only stipulates that the ownership of the property over the air space above ground and the underground ground of the property is limited to the possibilities of utilization of the property.<sup>43</sup> This could even include drilled wells, the use of which, however, in the case of a well-drilled well of 220 meters, already affects groundwater, which is the exclusive property of the state. The Ptk. however, there is a limit to the former rule, namely that the property on the property does not cover the treasure of the earth's womb and natural resources.<sup>44</sup> Since groundwater is part of the state's wealth and water is a natural resource, water from a well-drilled well and then commercially available, mineral water cannot be owned by the individual or the owner of the land, but the question is whether it can be utilized the owner of the land or how can it be used by an individual or a business association owned by individuals?

According to the Kvassay Jenő Plan (National Water Strategy), “privately owned by the owner of the property – can only be surface waters created within and beyond the boundaries of the property.”<sup>45</sup> How can these waters be utilized?

According to the provisions of the Water Management Act:<sup>46</sup>

The owner of the property is owned b watercourses created within the boundaries of the property and entering into the building; natural standing waters within the boundaries of the property (the lake, the backwater), rainwater falling on the property and remaining on the property; and, unless otherwise specified by law, water facilities within the boundaries of the property and for own use.

Waters in state-owned, nature-protected, highly protected or conservation areas are not commercially available.

According to Section 6 of the Water Management Act, waters and water facilities not designated by the National Property Act and owned by the owner of the real estate are state-owned but marketable. In the event of alienation, the local government or municipal association concerned has the right of pre-emption in the case of several municipalities. In terms of pre-emptive right, the local government is involved, which has water or water facilities in its administrative territory or on its borders.

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<sup>42</sup> See: Nagy 2016, 287-292. The author analyzes the financial regulation issues related to water supply with an international perspective.

<sup>43</sup> Ptk. § 5:17 (1) the extent of the ownership of the property.

<sup>44</sup> Ptk. § 5:17 (2).

<sup>45</sup> kormany.hu 2017, 53.

<sup>46</sup> Vgtv. § 6 (4)-(5).

Only naturally owned landowners can acquire property through natural sedimentation (shore growth) that no longer forms part of the river bed.

According to the current Civil Code, the concept of state property has not been legally defined, so by comparing the provisions of several legal acts, rules on the ownership of waters can be established, which make it difficult to apply the law and interpret the law. However, the Civil Code specifies that property rights on real estate do not cover natural resources. This is somewhat contradicted by the said provision of the Water Management Act, which states that the owner of the property owns the natural waters within the boundaries of the property, except for the state property law. In all cases, these are, among other things, groundwater, which can only be brought to the surface with permission and can be utilized under license. For the exploitation of groundwater, the Directive 2019/2004 on the protection of groundwater shall apply. (VII.21) Government Decree. The concept does not fully define the concept; it complements the concept of groundwater,<sup>47</sup> i.e., groundwater: water located in the saturated zone of the geological medium (especially in the pores and crevices of geological formations) below the surface.

On the protection of the quality of surface waters, It is a government order (VII.21), which further specifies the definition of surface water: standing water on the surface of the earth (in particular: lake, mine, swamp, reservoir), watercourse (eg. stream, river, stream, stream, canals), periodic watercourse, water wash).<sup>48</sup>

### 3. Utilization of groundwater

There are several ways in which groundwater can be used, including drilled wells<sup>49</sup> and agricultural irrigation.<sup>50</sup> In the present case, however, I am dealing with how groundwater is used, which relates to the abstraction of water, primarily in the case of the exploitation of mineral water or, in the case of drinking water, as an activity affecting the status of groundwater.

Under groundwater protection legislation, groundwater activities can only be carried out with environmental preventive measures, under controlled conditions, and only in the long term without jeopardizing good groundwater status and environmental objectives.<sup>51</sup> Also, good groundwater status should be protected. This means that groundwater activity should not lead to a deterioration of the chemical and physical state of the groundwater body, including an increase in harmful water (pressure), i.e. water levels. Groundwater abstraction is therefore subject to a separate permit. In the case of direct water abstraction, a water license is required and, in the case of indirect water abstraction, a groundwater protection directive 219/2004. (VII.21.) Government Decree.

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<sup>47</sup> 219/2004. Government Article § 3 (9).

<sup>48</sup> Government Decree 220/2004 (VII.21) Article 3 (1) paragraph.

<sup>49</sup> For the regulation of drilled wells see Szilágyi, Baranyai & Szűcs 2017; Szűcs & Illyés 2019.

<sup>50</sup> For more information on the regulation of agricultural irrigation, see Szilágyi 2015; Szilágyi 2017a; Szilágyi 2017b.

<sup>51</sup> 219/2004. Government Dec. § 8.

Authorization for indirect water abstraction activities may be granted if the water abstraction determined in m<sup>3</sup> / day and m<sup>3</sup> / year is not endangered temporarily when tested with other existing water abstractions (a) the achievement of environmental objectives; (b) the implementation of the measures laid down by law or by special river basin management plans for the water body concerned.

In order to meet non-drinking water quality requirements, good quality groundwater abstraction is only permissible if the demand for water from surface water cannot be met due to the disproportionately high cost/benefit analysis resulting from the cost-benefit analysis or natural conditions.<sup>52</sup>

The permitted amount of water abstraction, taking into account other direct and indirect water abstractions, may not exceed the statutory occupational exposure limit.

Water abstraction is not only subject to permission but also involves reporting (detailed notification form, simplified notification form, and annual report) and reporting obligations.

#### **4. Contribution to the protection of groundwater and water resources to be paid for its use**

The legislation on the exploitation of waters is strict and controlled, and therefore, a significant legal consequence from financial law is the groundwater protection fine.

The private person or company that violates the strict rules for the use of groundwater will be required to pay a groundwater penalty under Government Decree 219/2004 (VII.21) on the protection of groundwater. The fine may be imposed in case of several facts on the one hand in case of violation of legal prohibitions and obligations,<sup>53</sup> or on the basis of the polluter pays principle in the event of non-implementation of the final remediation decision; or may be imposed in the event of failure to comply with the reporting or reporting obligation prescribed by the authority.<sup>54</sup>

The amount of the fine depends on the infringement factor – using<sup>55</sup> a specific calculation according to the formula set out in the annex to the legislation: depends on the pollution and damage of each pollutant and groundwater and geological medium, the amount of which gives the fine to be paid. On the other hand, the fine is equal to the pollution, the extent of the damage, or, thirdly, the fine ranges from 50,000 to 300,000 HUF depending on the extent of the failure to comply with the reporting and

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<sup>52</sup> 219/2004. Government Dec. § 12.

<sup>53</sup> 219/2004. Government The prohibitions laid down in § 10-11.

<sup>54</sup> 219/2004. Government Decree § 36.

<sup>55</sup> The 2019/2004. (VII.21) Governmental Order No 11 according to the formula set out in point 1 (B) of Annex IV: depends on the pollution and damage of each pollutant and groundwater and geological medium, the amount of which gives the fine to be paid. Section 36 (5).

reporting obligations. The fine imposed may be repeated if no restoration obligation or failure to act has been remedied within the re-issued time limit.

In the case of groundwater utilization, a water resource contribution has to be paid by the user.<sup>56</sup> So if you want to utilize groundwater in your own real estate, either as mineral water or as drinking water, you have to fulfill not only your reporting and reporting obligations, but you can only do this in possession of licenses, but you also have to pay a water supply fee for the amount of water you bring.

The Water Management Act (Act LVII of 1995) provides enhanced protection and safety rules for the protection of drinking water supplies. Who has the right to use water resources for the reasonable, efficient, and safe use of the water base? Waters used for or intended for the use of mineral and medicinal water should be protected and protected (water protection) by the designated designation and maintenance of the waterproofing protection areas and the designated area. Groundwater shall be used only to such an extent that the balance between water abstraction and water supply is maintained without loss of quality and that the requirements for achieving good water status objectives are met.<sup>57</sup>

You have to pay the water supply to the water user and the consumer. The water user is obliged to pay a water supply charge for the amount of water contracted or used without permission in the water installation and operating license, and for the quantity of water used by the consumer.<sup>58</sup>

Under the law above, a water user is a water user who uses water for water abstraction or a water resource in a water license. An industrial consumer who uses water from a public water supply utility for his economic use of water at a population of more than 10,000 m<sup>3</sup> per year is used.<sup>59</sup>

The water user has the water supply allowance (a) Calculate the actual amount of water used, taking into account a base rate of HUF 4.50 / m<sup>3</sup>. (b) If the water quantity specified in the water permit is exceeded by more than 10%, taking into account the total surplus quantity of 9,00 HUF / m<sup>3</sup>, the amount of the water used and the water resources provided for in the separate legislation determining the amount of the payment; and the use of multiplication factors depending on the water resource management situation of the area concerned, it must calculate the quantity of water actually used.<sup>60</sup> (c.) in the case of unauthorized use of water, calculated based on the actual amount of water used, taking into account a base fee of HUF 28.90 / m<sup>3</sup>.

The consumer must calculate the water supply charge based on the actual amount of water used based on a base fee of HUF 14.10 / m<sup>3</sup>.

The water user does not have to pay the water supply fee: for the amount of water not exceeding 500 m<sup>3</sup> per year per water license, if the water authority has limited

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<sup>56</sup> See more in detail: Nagy 2013, 198–213. Water supply is included in the contribution rate, which is determined by environmental regulation.

<sup>57</sup> Vgtv. § 15. (1).

<sup>58</sup> Refer to LVII of 1995 on Water Management for water resource contribution rules. Act § 15/A–15/F. See also Nagy 2017.

<sup>59</sup> Vgtv. § 15/A.

<sup>60</sup> Vgtv. § 15/B (1).

the amount of water abstraction or if the amount of the water supply charge in the current year did not exceed 1000 HUF. There is no need to pay a water supply charge for groundwater abstraction, even if the groundwater is not endangered, or if the water supply is not available for natural reasons. However, this should be reported to the authority within sixty days. In the case of thermal water, this amount can be reduced. The water resource contribution obligation is generated by the use of water over 10,000 m<sup>3</sup> for the water user.<sup>61</sup>

It is considered as a small consumer whose daily water volume does not exceed 25 m<sup>3</sup> per day.

The consumer does not have to pay a water supply charge if the public health standards set drinking water quality for more than 50% of the water used.

The water user shall pay the water supply charge calculated after the water demand of the first three quarters of the calendar year and the water supply fee to the account specified by the competent water authority by the 15th day of the month following the reference quarter.

After the first three quarters of the current year, the water user shall provide the water authority with data on actual water demand and the calculation and basic data of his payment obligations by the 15th day of the month following the reference quarter.

The water supply tax payment rules are governed by the Taxation Act and the Tax Administration Act, with the exception that where the law refers to a tax authority, it is to be understood as a water authority.<sup>62</sup>

## 5. Conclusions

The legal framework for water is an interdisciplinary, enormous piece of legislation, including law, financial law, civil law, administrative law, and constitutional law. Its regulation is diverse, so the uniform interpretation of the law is cumbersome, but cohesion has already begun to regulate, and the National Water Strategy is a great help. In my study, I have shown that the regulation of water ownership belongs to several aspects of financial law, such as the issue of the ownership of water into national assets - state and municipal property, water regulation, financial issues of water management, rules of water utilization, or it is precisely the regulation of water use charges, whether in the form of fines (groundwater fines, sewage penalties) or contributions (water supply charges).

Water, as our most precious treasure, must be vigorously protected, and a key element of this, is the safeguarding of water by state ownership, halting water wastage, ensuring state control, and taking the common needs of society into account. The ownership of water is also heterogeneous and needs to be standardized at several points.

The concepts of water law are heterogeneous, deserve to be unified, and the rules of where the water belongs is not easy to establish.

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<sup>61</sup> Vgtv. § 15/C.

<sup>62</sup> Vgtv. § 15/E (2)-(3).

The use of water is an increasingly common and increasingly fashionable topic, as water is our lifeblood, which requires special attention. In my opinion, regulation is multifaceted and would require simplification and more integrated solutions. Fines are not dissuasive and do not constitute a barrier to undeclared use.

The National Water Strategy, which has identified the way, is the forward-looking regulation and strategy of the problems, but water protection is a common interest, so everyone as a user can do a lot. The National Water Strategy has identified the problems and includes an action plan in which the strategic goal is defined. In the legal regulation, the road is ahead of us, it is long, but it is worth running through it to protect the public interest.



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