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The development of water rights administration in Hungary**

Abstract

In this following study, I aim to explore the first steps in the emergence of water rights administration, which can serve as a sufficient basis for assessing the development of water rights administration. This may provide help in understanding the way we have gotten to the current status of regulatory legislations, as the key bases for changes taking place in public administration can always be found in former regulations. At present, water rights administration is considered among the top administrative priorities, not only in Hungary but all over the world. The reason for it can be found in the role of water in nature. Accordingly, the future role of water rights administration is of key importance. Researches on the emergence of water rights administration can serve a good basis for this future role, as such researches may provide assistance in pointing out where we are coming from and where we need to be headed. In the framework of this study, I elaborate on the basic principles of the water rights act defined by the legislatures and the application of the Act. Regarding the assessment of the basic principles, there are basically two sets of aspects that can be taken into focus. Emphasis can be placed either on economic interests or legal interests. It is true indeed that water rights are considered among the most difficult areas concerning the large extent of conflicts between legal and economic arguments. Another issue making the assessment even harder to complete is the fact that a conflict of interests can be found between the two key government interests, i.e. legal security and improving public well-being. In consideration of these issues, the material section of this study covers an assessment from a legal perspective, while I also aim to highlight such modern, civilian age elements of the legal regulations implemented in relation to water rights, which caused significant changes taking place with respect to practical execution.

The respective bill was prepared along these principles, in which areas related to water rights were treated as a single unit and the practical problems occurring were aimed to be solved by a regulatory framework. One single principle could break through the basic principle governing the fine legislators of dualist era Hungary, according to which everything must be subordinated to the most optimal economic development. This principle was the prohibition of waters by harmful substances. Accordingly, our forefathers did recognise that the protection of our environment is not only important for the sake of their generation but for the protection of the future generations as well. According to the thinking of that time, water was an inexhaustible supply; nevertheless, it is the absolute key to man's survival. Consequently, although this was not an intentional act, this was one of the first environment protection measures in Hungary.

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The formation of public administration from a modern perspective – i.e. when administrative goals were specifically and clearly determined, the given administrative areas were regulated in the form of legislations and the organisation for fulfilling the

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respective tasks and duties were formed – took shape in Hungary around the second half of the 19th century. The primary reason for it can be found in the fact that it was the time in Hungarian history when regarding the aspects of society, economy and politics, the environment had become an appropriate medium for the development of public administration.¹ A particular aspect is the practical implementation of material changes taking place in means of ownership, and the recording of such changes in legislations. From the aspect of fulfilling its functional tasks, public administration can be defined as the implementation of respective legislations in different administrative fields, practically separated from one another. Accordingly, the legal technical conditions for the emergence of an individual special administrative branch are the adoption of a law or laws the subject of which is the given administrative field. If you examine the emergence and development of a special administrative branch, you have to primarily investigate the respective legislative process and the circumstances of the legal norms regulating the given branch in addition to the examination of the changes in the social, economic, and political environment. In this study, I endeavour to find out about the ambience in which Act XXIII of 1885 was adopted, which had a particular significance in the Dualist Era with regard to the emergence of water rights administration² as well as about the state policy goals that were specified in relation to the subject. I also aim to find out about the necessary human and material resources for the implementation of such goals according to the perspectives of the legislature. Out of the different legal branches, public administration might be the most rapidly changing one, both in the past and in the present. In this following study, I aim to explore the first steps in the emergence of water rights administration, which can serve as a sufficient basis for assessing the development of water rights administration. This may provide help in understanding the way we have gotten to the current status of regulatory legislations, as the key bases for changes taking place in public administration can always be found in former regulations. At present, water rights administration is considered among the top administrative priorities, not only in Hungary but all over the world. The reason for it can be found in the role of water in nature. Accordingly, the future role of water rights administration is of key importance. Researches on the emergence of water rights administration can serve a good basis for this future role, as such researches may provide assistance in pointing out where we are coming from and where we need to be headed.³

¹ Turkovics 2015. In his work, the author presents the range of factors serving as the conditions for the emergence of modern public administration.

² Corpus Iuris Hungarici (hereunder: 'CIH') Act XXIII of 1885 – on Water Rights. The bill was submitted to the Parliament by Count Pál Széchenyi, the Hungarian Royal Minister of Agriculture, Industry and Trade. Képviselőházi irományok (Parliament Notes) 1884. Volume IV, 123; adopted on 14 July 1885, announced on 23 June 1885, and entering into effect as of 1 January 1886.

³ As István Ereky said, “we cannot understand the future without the knowledge of the past.” – Ereky 1910, Foreword. V.

Regulations were adopted on certain water rights areas in the earlier centuries already⁴, typically regulating the draining of waters and flood prevention and control.⁵ However, the professionals of the given era saw the need for the preparation of a law providing a unified regulatory framework for the legal nature of waters, the boundaries of water utilisation, as well as the administrative procedural rules related to water rights. Until the completion of the unified law, only palliative corrections could be made by administrative means. As *Ignác Darányi*⁶ also stated, these legislative acts “supplement each other in many ways, yet they often include such contradicting provisions that they are most desired to be cancelled.”⁷ An economic policy of larger magnitude could only have been implemented if any of the water rights bills had been adopted and had become effective.

In the motivation attached to the bill for the water rights act (the ‘Bill’), the government highly emphasized the following: “Merely based on their special functions, our existing laws – although they did include timely and practical actions – could not be capable of meeting the requirement that the rich resource of water and the related productive forces could be exploited in all possible aspects and that protection against the potential damaging effects of water could be systematically implemented... This requirement could only be met by means of a law (a water rights act) comprehensively including all aspects of this legal subject.”⁸

*Sándor Károlyi*⁹ already stated in 1879 that the ‘temporary organisation’ applied in Hungary “could not be eliminated until the laws effectively regulating the organisational issues have been adopted”.¹⁰

⁴ CIH Act XIV of 1751; Act X of 1840 – on Waters and Canals; Act XXXIX of 1871 – On water regulating companies; Act XL of 1871 – on Dam Keeper Services; Act XI of 1874 – On the procedure of draining inland waters; Act XXXIV of 1879 – On water regulating companies; Act XXXV of 1879 – On the state loan provided to the water regulating and flood controlling companies over the tributary streams of the River Tisza and to the Royal Town of Szeged; Act LII of 1881 – On the acts to be done by the state for the flood control of the Tisza valley; and Act XIV of 1884 – On regulating the River Tisza and its tributaries.

⁵ This was also pointed out during the Parliament session by Sándor Dárdai, the rapporteur of the Committee: “So far in our legislation, we almost exclusively limited ourselves to the subject of protection against the adverse effects of waters, and the only possible additional subject was the arrangement of waterways from the aspect of sailing and shipping.” Parliament Records (hereunder: ‘PR’) 1884. Volume VI, 118th National Parliamentary Session, 7 May 1885, 207. Adolf Zay shared the same view in his parliamentary speech: “Until now, Hungary only had laws on water rights in certain small-scale subjects regulating certain relations, but so far we have still been unable to settle the issue in a perfect manner.” PR 1884. Volume VI, 118th National Parliamentary Session, 7 May 1885, 220; Herrich 1871.

⁶ He was an agricultural politician, a landowner and worked hard to improve Hungarian agriculture.

⁷ PR 1884. Volume VI, 118th National Parliamentary Session, 7 May 1885, 204

⁸ As cited by Gusztáv Lindner: Lindner 1894, 185.

⁹ He was one of the founders and pioneers of the agricultural movement. The goal of the movement was to modernise agriculture, an essential condition for which was the adoption of a unified and codified water rights law.

As “The realisation of the drawbacks of unsystematic legislations can be well demonstrated by the existing water rights regulating legislations”¹¹, the members of the Hungarian Parliament were quite content that the government did not add any further legislations to the specific laws in the form of another water utilisation act out of many, but it rather submitted a bill containing a comprehensive code for this legal matter, in line with the current needs.

According to Member of Parliament Sándory Almássy, “there can be hardly anything more important... than this bill. It is very significant in terms of private interests. Through this bill, we give to one, and take from the other.”¹² Member of Parliament Adolf Zay had a similar point of view, when he pointed out “... the regulation of water rights is among the most important subjects of the state and of legislation.”¹³

In order that a modern code for water rights could be adopted in Hungary, legislatures primarily had to prepare the basic principles. The bill could subsequently be made up in line with and along such principles. Consequently, as Dezső Szilágyi stated, “... this is a kind of work which contains very important terms and definitions in its first and second chapters, i.e. principles that have to be assessed and considered in fine details.”¹⁴ As Sándor Károlyi said, “There is ... a completely new provision in the law, which refers to the utilisation of water.”¹⁵

In the framework of this study, I elaborate on the basic principles of the water rights act defined by the legislatures and the application of the Act. Regarding the assessment of the basic principles, there are basically two sets of aspects that can be taken into focus. Emphasis can be placed either on economic interests or legal interests. It is true indeed that water rights are considered among the most difficult areas concerning the large extent of conflicts between legal and economic arguments. Another issue making the assessment even harder to complete is the fact that a conflict of interests can be found between the two key government interests, i.e. legal security and improving public well-being. In consideration of these issues, the material section of this study covers an assessment from a legal perspective, while I also aim to highlight such modern, civilian age elements of the legal regulations implemented in relation to water rights, which caused significant changes taking place with respect to practical execution. It was already mentioned during the parliamentary session discussions that apart from the first two chapters, they “are taken from other effective laws”¹⁶ Sándor Károlyi also pointed out that “...those parts of it that refer to the water authorities and flood prevention are nothing but taking over the legal provisions according to which

¹⁰ Károlyi 1879, 276.

¹¹ As cited by Gusztáv Lindner: Lindner, 186.

¹² PR 1884. Volume VI, 118th National Parliamentary Session, 7 May 1885, 205.

¹³ *Ibid.*, 220.

¹⁴ *Ibid.*, 204.

¹⁵ *Ibid.*, 219.

¹⁶ *Ibid.*, 204.

such matters have been managed so far. The difference is that while such provisions could be found in 5 or 6 different acts, now they will be included in one single law.”¹⁷

In the Ministerial Motivation of the 1885 Water Rights Bill, the following main principles were determined. The first and perhaps most important principle is that waters and the economic force that can be exploited from them should be utilised in the most optimal way. The second one is the principle of serving the public interest. In fact, if you read through the Bill, it will become rather apparent, that this one should be considered as the primary principle, as the legislature declared that “permission can be granted for draining and water management activities even if the limitation or stoppage of water utilisation may be required for the performance of such activities.”¹⁸ These activities primarily serve public interests and comply with public health and sanitary requirements. Accordingly, the disregarding of private interests becomes acceptable, or, moreover, favourable, provided that water draining must be carried out with the damages being fully compensated. This was recognised by the legislatures of that time and was included in the text of the Bill.¹⁹

The third principle discusses the issue of authorities; according to this principle, authority proceedings on water-related measures must be properly regulated²⁰, and the range of methodologies to be used for water utilisation and for the so-called water-related works must be provided. According to the fourth principle, it must be taken into consideration that water is one of the most important economic resources, therefore it cannot be jeopardised by any arbitrary measures. The supervision of these principles was made to be the responsibility of the government authorities. According to the fifth principle, the formerly acquired water utilisation rights must be maintained, even if it is contradictory to some provisions included in the new law. The legislature aimed to ensure legal continuity through this provision.

According to the sixth main principle, equality, if possible, must be established with respect to water utilisation. The legislature was aware of the fact that due to different water utilisation priorities, this principle is partly in conflict with the first one, i.e. putting economic aspects first, yet is still aimed to ensure equality. It can also be considered a special issue that there are natural type water uses, such as drinking, washing clothes, giving water to animals and water taken for household use; these are for free, therefore ensured for everyone, and in this respect, such uses can be done freely even if the given water was planned to be utilised for other purposes.

¹⁷ Ibid., 219.

¹⁸ Bill of Water Rights Act, Section 30. §. - Képviselőházi Irományok (Parliamentary Notes, hereunder: PN) 1884. Vol. IV, No. 86, 96.

¹⁹ “However, in this case, the party the water use of which is limited can claim full compensation for such damages.” – Bill of Water Rights Act, Section 30 - Képviselőházi Irományok (Parliamentary Notes, hereunder: PN) 1884. Vol. IV, No. 86, 96.

²⁰ It is important to note that this aim was particularly significant because no general administrative procedural rules existed in that era. The codification works for regulating general authority proceedings only began at the end of the century, as a result of which the relevant Act XX of 1901 was eventually adopted. For more details, please refer to: Kmetty 1902, 296; Turkovics 2014.

The legislature also points out the custom of Hungary according to which shipping and boating cannot be limited by means of other water uses. Nevertheless, the legislature also pointed out that in the given cases, if the given water-covered area is suitable for the purpose, free water access must be ensured for everyone.

In case the principle of equality should be curbed due to its nature, the prioritised party in terms of such inequalities will be the one whose activity is more dominant in terms of economy.

The last principle set forth by the legislature was the obligation of undergoing the right of way regarding the owners of real properties affected by water pipelines and water utilisation. The right of way set out by the legislature stirred up civil law and property law relation in such an extent that landowners could be subject to damages, therefore, logically, such damages had to be compensated. In case the private property was used to a material extent, expropriation had to take place.²¹

The legislature also specified it as a basic principle that infecting waters with harmful substances is forbidden.²²

The bill begins with general orders, as issues usually settled in civil private law had to be regulated in this section, according to the view of the legislature. At the time of presenting the bill, the codified Civil Code of Hungary did not exist yet, and, accordingly, the respective private law matters of any acts adopted at that time, which were relevant to private law, had to be set out among the first provisions of the given act.

According to the intentions of the legislature, the Water Rights Act had to be considered as the primary water rights legislation, and provisions on general private law matters and rules could only be implemented on a subsidiary to that Act.²³ The declaration of this issue is particularly important for the proceeding authorities to be able to apprehend the sequential order of applying the different laws and regulations. This way, legislatures aimed to ensure legal security in the era.

Nevertheless, in the general provisions section and among the defined basic principles, the legislature clearly stated that property law issues are not dealt with. The presenter of the committee delegated to the discussion of the Bill also emphasized the same matter during the given parliamentary session. “The property law concerns of waters are not included in this Bill. ... The actual question is whether the issue of water utilisation can be resolved at all without resolving the issues of water ownership rights. I believe that the solution for water use concerns not only may but will be much easier this way.”²⁴ According to a Member of the House of Commons of the Parliament, Imre Hódossy, this aspect must be carefully examined, as “Although it is stated in the

²¹ For more details, please refer to: Barth 1878.

²² About this subject, please find more details in: Dobos: 1985.

²³ “The provisions of general private law legislations and regulations can only be applied with respect to the private law matters regulated herein as long as the provisions of this Act or the nature of the given issue do not excluded such application.” - Bi II of Water Rights Act, Section 1 in: PN 1884. Vol. IV, No. 86, 93.

²⁴ The opinion of the Committee was presented before the Parliament by Sándor Dárdai. PR 1884. Volume VI, 118th National Parliamentary Session, 7 May 1885, 208.

Motivation that this Bill has been prepared fully disregarding water rights ownership issues, If waters are not specified to be in the ownership of this party or that one, but according to the views, which ordain who will be the temporary owners of waters will from now on be decided by administrative authorities, it will result in totally different directions than the tendencies that have existed so far.”²⁵

Nevertheless, regarding issues related to water utilisation, property law concerns were also dealt with, because in the lack of a Civil Code, such legal matters had to be settled. The nature of waters (springs, lakes and rivers) was defined as real properties in the Bill.²⁶ Member of Parliament Adolf Zay was rather concerned about this definition, and he pointed out that it would be advisable to state that “springs and rivers have the legal nature of real properties” rather than what was included in the Bill.²⁷ In the final text of the Act, this definition was not included either in the form contained in the Bill or in the form proposed by MP Adolf Zay. However, at the same time, water channels - canals, ditches, pipelines - serving water use were defined as accessories to the given real property.²⁸ The provision also regulates the legal classification of building structures on water, placing them into two different groups. The first group contains the structures which, on one hand, float on water, yet they are tied to the land, and according to their functions, they are closely related to the building on the land. Such building structures were classified as real properties. On the other hand, water mills, which, despite being floating structures, are not closely connected to the bank structure, were still classified as personal property. In cases where a given building structure’s classification could not be clearly determined based on the Bill, the rules of civil private law and court best practices applied.²⁹ Regarding the settlement of water rights, the legislature considered these concerns irrelevant with regard to detailed regulations.

The primary principle regarding water utilisation is that the most optimal utilisation must be ensured from an economic perspective. Accordingly, waters were divided into two major groups; one was the group of waters at free disposal and the other one was the group of waters the use of which had to be regulated by the competent authority. The legislature intentionally left out the terms of private waters and public waters in the wording of the Bill, and, consequently, the issue of regulating water ownership rights. The main goal was the complex regulation of water utilisation. Accordingly, it was stated that waters sprung in the area owned by a person are at the free disposal of the owner, but only as long as such waters do not flow out from the given area. If so, such waters shall be at the disposal of the competent authority. The unlimitedness of free disposal could be restricted in two cases. On case is if the water “is used at the owner’s area based on an effective entitlement or in an undisturbed manner for a period of 20 years”; the other case is when water “is used

²⁵ PR 1884. Volume VI, 118th National Parliamentary Session, 7 May 1885, 202.

²⁶ Bill of Water Rights Act, Section 2 - PN. 1884. Vol. IV, No. 86, 93.

²⁷ PR 1884. Volume VI, 118th National Parliamentary Session, 7 May 1885, 221.

²⁸ Bill of Water Rights Act, Section 3 - PN. 1884. Vol. IV, No. 86, 93.

²⁹ PN 1884. Vol. IV, No. 86, 127.

outside the owned land based on authority permit or an effective entitlement”.³⁰ However, the first option is not included in the accepted wording of the Bill, and the legislatures only kept the second authority restriction.³¹

In the following, the Bill made regulations on the rights of landowners with respect to the elimination of damages caused by water and on the rules on wells to be established on a given land. Special licensing processes were set out for mineral and medicinal waters as well as waters with high salt or mineral content.³²

Regarding waters under authority control, the Bill declared that waters not belonging to the former group must be classified in the other group. The text of the Act specified that it meant the use of “waters not falling under the effect of Section 10 of this Act”.³³

The members of the legislature committee acted in the right way when they classified Sections 14 to 19 as parts of the Chapter of General Clauses.³⁴ The reason for it was that those Sections set out the regulations on the legal standing of water banks, riverbeds, desilting, newly created islands, and new riverbeds created as a result of water flow diversions. Accordingly, in that Chapter, other legislative backgrounds applicable with respect to shipping, rafting, fishing and water used for mines were determined.

According to the Hungarian legal practices of that time, the determination of property ownership regarding water banks and waterbeds were carried out in different ways. In parts of the country where the provisions of the Austrian Civil Law were applied, the water banks and waterbeds were in state ownership concerning navigable waters, and in all other cases, waters were in private ownership. In other parts of Hungary, there were diverse provisions even with respect to navigable rivers. There was even a region where waterbeds were considered as real properties registered in the official land register. In order to eliminate these rather chaotic practices and to establish a unified standing point, the Bill proposed that water banks and waterbeds should be the integral parts of the real property on the given water bank. An exception from this rule was that “this provision does not refer to the status in the national land register and the other acquired rights.”³⁵ The legislature emphasized that the ownership rights of water banks and waterbeds cannot be classified as classic ownership rights, as they have significant restrictions.³⁶

The pollution of waters by harmful substances is against one of the basic principles worded by the legislature.³⁷ In the Bill, the legislature willingly used the term

³⁰ Bill of Water Rights Act, Section 6 - PN. 1884. Vol. IV, No. 86, 94.

³¹ CIH, Act XXIII of 1885, Section 11.

³² Bill for Water Rights Act, Sections 9-12 - PN. 1884. Vol. IV, No. 86, 94-95.

³³ CIH, Act XXIII of 1885, Section 18.

³⁴ CIH Act XXIII of 1885, Sections 4 to 9.

³⁵ Bill of Water Rights Act, Section 14. §. - PN. 1884. Vol. IV, No. 86, 95.

³⁶ Among the limitations is the freedom of water utilisation, to which the restriction of the right of way should also be classified, as well as limitations caused by police measures, obligations on maintaining the banks and beds, and obligations on protection and cleaning works.

³⁷ In the history of Hungarian law, there had already been regulations on this subject; for example, Section 14 of Act X of 1840 stated the following: “Waste, soil or manure is prohibited to be placed in waters or channel beds, and so is retting in them ... with the penalty of 100

‘harmful substances’.³⁸ This term was wished to be interpreted in the broadest scope possible, i.e. for not only substances harmful to health, but it also included forbidding the pollution of waters used for fish farming, industrial use, or other purposes. It was emphasized that water used for industrial purposes and thus becoming polluted cannot be directly discharged back to waters; such waters must be purified (neutralised) first. The legislature found it unfeasible and impractical to set forth specific regulations on this matter in the framework of the Bill, therefore this issue was left unregulated. Accordingly, the term remained to be an ‘*expressis verbis*’ term, allowing no exceptions. In the text of the Act, the prohibition of polluting waters was put in without any changes. This means that the Members of Parliament felt the importance and weight of the fact that the country’s waters must be protected from pollution in the most definite way, not only for the sake of the current generation, but also for the sake of the future ones as well.

Water utilisation was set out as an activity requiring an authority permit, which fact was stated as a basic principle by the legislature. This way, water utilisation was aimed to be taken under full state control, as planned by the legislature. From this principle, only natural water use activities were excluded.³⁹ Another principle of the legislature was that water utilisation can only be done without prejudice to shipping, boating and floating activities.⁴⁰ This principle pointed out that all the water utilisation activities, as the use of primary economic resources, must be carried out in the most optimal way. Also, it was stated that shipping, boating and floating could only be allowed in case such activities could be carried out in the whole length of the given river. All other kinds of water use were of local nature, limited to smaller river sections, i.e. local interests would restrict shipping activities.

The legislature did not wish to categorise the different water utilisation practices, as no unified system could be applied in the area of the country. The basic process was that any activity resulting in higher economic gains were prioritised in terms of water utilisation. Regarding the thus formed water utilisation means, further to the acquisition of certain rights for carrying out activities, certain obligations also arose. One such obligation preferred by the legislature was included in Section 27 of the Bill, stipulating that any party which creates a full-width barrier on the river, must create a ‘fish ladder’, which is absolutely necessary and essential from the aspect of fishing activities.⁴¹

Forints or the punishment of one month of prison.” According to CIH Act X of 1840 – On waters and channels, and the to the Act on Public Health provisions adopted in 1876, “the authority ... is entitled to remove everything that makes the atmosphere, the soil and the waters unclean (such as retting or dam retting) as well as to ensure everything facilitating public health and sanitation, even if that includes the use of force.” CIH Act XIV of 1876, Section 10.

³⁸ Bill of Water Rights Act, Section 25. §. - PN. 1884. Vol. IV, No. 86, 96.

³⁹ Bill of Water Rights Act, Section 26 - PN. 1884. Vol. IV, No. 86, 96.

⁴⁰ Bill of Water Rights Act, Section 28. §. - PN. 1884. Vol. IV, No. 86, 96.

⁴¹ Bill of Water Rights Act, Section 27 - Parliamentary Notes (hereunder: PN) 1884. Vol. IV, No. 86, 96. The original, very elaborate term ‘*hallajtorja*’ for fish ladder was eventually changed: “in case fishing interests require so, a fish pass or a fish ladder must be applied” CIH Act XXIII of 1885, Section 26.

Another significant problem regarding water utilisation was the use of water for irrigation. This problem became significantly grave during summer periods. In Hungary, there are a large number of rivers and lakes, yet in that era, only a relatively small part of such waters had the capacity of ensuring regular, industrial level irrigation without larger investments (irrigation systems); also, a large proportion of Hungarian waters are located in hills or valleys where large scale agriculture could not be implemented. The legislature intended to provide opportunities for large-scale water use and irrigation, when it stipulated that waters only used by the industry could only be used also for irrigation upon meeting three conditions. The first condition set a time limit, according to which irrigation could only take place only from Saturday evening, 9 p.m. until Monday morning, 3 a.m. The second was a material condition, namely that water intake could only be done by proper waterworks, whereas the third condition was about personnel, i.e. that a special supervisor had to control the lock gates.⁴² It was possible that weather conditions did not allow irrigation at weekends; accordingly, the legislature provided opportunities for doing irrigation activities in different times, upon very strict provisions,⁴³ in case full compensation was paid for the halting of industrial activities.

Another provision aiming to serve the principle of the most optimal economic utilisation stated that water rights establishment permits were effective as stipulated in the Act, i.e. for fifty years or according to local practices, until revoking.⁴⁴ This time period ensured that water use could not be expropriated permanently. It also allowed the given water rights establishment permit holder to be able to plan investments, capitals and their returns according to the time period set out in the permit, it being an economic element.

For investors and permit holders, it was also practical to have a legislative stipulation for cases of water shortage, as in such cases, not everyone can have access to the water yield specified in the permit, and permits were not ranked according to economic functions. According to the Bill, if a party acquired a permit sooner, it had an advance position in accordance with the principle of earlier acquired permits. Consequently, whichever party acquired its permit later had to take the adverse

⁴² Bill of Water Rights Act, Section 31 – PN 1884. Vol. IV, No. 86, 97; The text remained unchanged in the Act, therefore this regulation was found appropriate and quite significant. CIH, Act XXIII of 1885, Section 30.

⁴³ It could only be used for the irrigation of land larger than a hundred yokes, provided that a minimum 30-year permit was granted. Bill of Water Rights Act, Section 32 – PN 1884. Vol. IV, No. 86, 97; Legislators also found it particularly important to ensure full compensation, as this provision was also included in the Act in an unchanged manner. CIH Act XXIII of 1885, Section 30.

⁴⁴ Bill of Water Rights Act, Section 34 – PN 1884. Vol. IV, No. 86, 97; Among the clauses of the adopted Act, a provision was included according to which “In case of the renewal of expired permits, the already existing works have priorities, unless more important economic interests require the issuance of licences of water utilisation for other purposes.” CIH Act XXIII of 1885, Section 33.

consequences. In case of equal conditions, the party suffering the adverse position was the one using the water for the last time in normal circumstances.⁴⁵

A water rights establishment permit was a real right, i.e. not a right attributed to a person. It was usually made out usually covered the area or water structure where the water flowed, or which structure was made for water utilisation.⁴⁶ Regarding the expiration of water rights establishment permits, the principle of the most optimal economic utilisation was applied as well. In all cases, expiration could always be attributed to the faults of the permit holder.⁴⁷ If the permit holder did not use the water properly, other parties had to be provided a chance for better use in order to be able to apply the economic principle.

Regarding the Water Rights Act adopted by the Parliament, professional experts almost immediately started expressing their criticism upon its publication. According to the viewpoint of Lindner, one of the basic faults of the Act was that “it sacrificed the regulation of water-related matters to the unharmed maintenance of the existing legal status.”⁴⁸ This means that the already established property ownership statuses were not revised and now new independent regulations were introduced. This can be contrasted by the Committee proposal presented before the Parliament by Sándor Dárday, stating that “diversion is not when we do not stipulate an empty legal title, diversion would be if we stipulated a legal title which we would then derive it by means of other provisions of the Bill.”⁴⁹

Another significant critical view expressed by Imre Hódossy, a Member of Parliament, according to which it is rather of a concern that the matter of property rights was not dealt with and that water utilisation was bound to the issuance of the administrative authority. As also pointed out by Adolf Zay, ‘sine lege chaos’ (~chaos without law) would be present in practice.⁵⁰ This means that without the use of the terms of property law and real property law, the Act established rights of disposal, which were given to be held by the authorities.⁵¹ This is because the newly accepted system “presumes a strong feeling, proper organisation and responsibility of the administrative authorities, because only this way can we be certain that the large responsibility they are given will indeed be used for the public good, and not for other

⁴⁵ Bill of Water Rights Act, Section 35 – PN 1884. Vol. IV, No. 86, 97; The principle set up in the Bill was approved by the Members of Parliament, as it was included in the wording of the Act without any change. CIH Act XXIII of 1885, Section 34.

⁴⁶ Both the Bill and the Act acknowledged special cases where personal permits were allowed to be issued. It had no specific provision, the legislature only noted its existence. Bill of Water Rights Act, Section 36.§. – PN 1884. Vol. IV, No. 86, 97; CIH Act XXIII of 1885, Section 35.

⁴⁷ In case the party does not complete the water utility or does not operate its company for three years. Bill of Water Rights Act, Section 37 – PN 1884. Vol. IV, No. 86, 97; The legislators found the cancellation of permits for this reason to be reasonable. CIH Act XXIII of 1885, Section 36.

⁴⁸ Lindner 1894, 186.

⁴⁹ PR 1884. Volume VI, 118th National Parliamentary Session, 7 May 1885, 208.

⁵⁰ PR 1884. Volume VI, 118th National Parliamentary Session, 7 May 1885, 221.

⁵¹ in details: The Parliament speech of Adolf Zay in PR 1884. Volume VI, 118th National Parliamentary Session, 7 May 1885, 221.

purposes.⁵² Member of Parliament Adolf Zay was more specific about his concerns when he stated that “I would not want to give control to the current public administration all the water rights without such rights being regulated by a proper and by all aspects, perfect law.”⁵³ Sándor Dárday also made a remark on that problem, when he pointed out that “...the provision ... ordering the registration of such water use permits to be entered in the national water register, does absolutely not aim to limit, but rather to ensure them.”⁵⁴

The third concern about the Bill was that “...the Bill made the state treasury bear the damages made for the sake of public traffic and trade. Regarding the agricultural damages, it states that the affected parties shall compensate them” said Dezső Gulácsy, an MP from the opposition.⁵⁵ Accordingly, it is rather apparent that the legislature did not apply a unified method for the compensation of occurred damages. And this led to complications in practical execution with respect to an Act regulating such a special administrative area.

Nevertheless, it must be stated that the renowned legislators of the era made the most comprehensive water rights act possible in the given circumstances of the era, including solutions with compromises. Just as I pointed out in the introductory section of my study, I sought an answer for the question whether the legislature determined its new state policy goals on the newly codified administrative area. According to my assessment, it can be stated that not only state policy goals were specified, but the basic principles were also presented, in consideration of the views of legislature. Among these basic principles, the most optimal economic use and utilisation of the waters had high importance as such waters served the industrial and agricultural development taking place after the Austro-Hungarian Compromise of 1867. Basically, this principle was prioritised over all other principles, which had to be subordinated to this main principle, namely the principle of the requirement of an authority procedure, the principles of legal continuity and equality, the principle of ensuring right of way and the regulation of water utilisation. The respective bill was prepared along these principles, in which areas related to water rights were treated as a single unit and the practical problems occurring were aimed to be solved by a regulatory framework. One single principle could break through the basic principle governing the fine legislators of dualist era Hungary, according to which everything must be subordinated to the most optimal economic development. This principle was the prohibition of waters by harmful substances. Accordingly, our forefathers did recognise that the protection of our environment is not only important for the sake of their generation but for the protection of the future generations as well. According to the thinking of that time, water was an inexhaustible supply; nevertheless, it is the absolute key to man’s survival. Consequently, although this was not an intentional act, this was one of the first environment protection measures in Hungary.

⁵² PR 1884. Volume VI, 118th National Parliamentary Session, 7 May 1885, 203.

⁵³ *Ibid.*, 222.

⁵⁴ *Ibid.*, 209.

⁵⁵ *Ibid.*, 210.

Another aim of my study was to reveal what personnel and material means the legislature intended to use for the practical implementation of the defined basic principles throughout the process of water rights codification.

In the motivation of the Bill, and later during its Parliament discussion, it was emphasized that the currently existing water rights property relations in Hungary was not intended to be changed, and the already acquired rights would continue to be ensured for the given water right holders. Nevertheless, if you examine the wording of the Bill and then of the adopted Act, it can be stated that property rights were not directly regulated in them; however, through the provision that an authority permit is required for the exercising of all rights, such rights were indeed taken under state control. During the Parliamentary discussion of the Bill, the governing party obviously emphasized the advantages of the issuance of authority permits, pointing out that the holder of a water utilisation right would subsequently have rights protected by the state as well. Members of the Opposition pointed out all kinds of issues indicating the negative characteristics of the permitting procedure. In contrast to the concentrated centralism of neo-absolutism, the people of the dualist era found it hard that the state wished to intervene and take control in certain areas. In dualist Hungary, a new concept appeared, that in this new era everyone has to be given an opportunity for progress; enterprises have to be encouraged and not limited by regulations. Some people mixed up state control with the limitation of the freedom to conduct business. In my view, the authority permitting obligation set forth by the Act rather supported than limited decent business enterprises in the middle of the 19th century. This is because the new Act was expected by everyone that the rights of use they had already acquired or wished to acquire in the future should be ensured in all circumstances. One of the measures to ensure this aspect was the introduction of water registers, which built up a system in the field of utilisation rights similar to that of the national land register in terms of real property. Through the thus established system, water rights administration, became a new special administrative area in the state administrative system, with its special, unique, one-of-a-kind characteristics.

I would like to point out the words of Member of Parliament Gyula Horváth. He summarised his opinion as follows: “Myself, I believe that the dispositions of this Bill conform to the current conditions in Hungary, maintain the acquired rights, if possible, and will guide the pathway of development. Consequently, I hereby accept the Bill, and I kindly request the Parliament to adopt it.”⁵⁶ On that note, I wish to close my study with the opinion of Károly Herrich,⁵⁷ according to whom “this water rights bill reflects the qualities of the current age, taking the relations of our nation into account, and it is prepared in a refined, but, with all interests considered, just manner.”⁵⁸

⁵⁶ *Ibid.*, 216.

⁵⁷ He was a water engineer and the chief supervisor of the river regulating works of the Tisza. He also reorganised Tiszavölgyi Társulat (Tisza Valley Association) in 1877-78. He retired from public work in 1880; nevertheless, he was a prolific writer in the fields of technical literature. His studies and works may not have been known in Hungary, but they were well-known and cited by British and American special magazines.

⁵⁸ Herrich 1871, 16.

The Water Rights Act lived up to the high expectations and consolidated the water-related matters in Hungary. Quite obviously, economic development brought with itself the necessary amendments to it, but this is to be discussed in a following chapter.

Bibliography

1. Barth L (1878) A víz-jog, *Jogtudományi Közöny* 13(42), pp. 340–342.
2. Dobos I (1985) A 100 éves vízjogi törvény, *Hidrológiai Tájékoztató* 25(1), p. 8.
3. Ereky I (1910) *A magyar helyhatósági önkormányzat, A vármegyék I. kötet*, Grill Károly Könyvkiadó Vállalata, Budapest
4. Herrich K (1871) Elmélkedés a vízjogi törvények felett, *Magyar Mérnök* 5(1-12), pp. 3–16.
5. Károlyi S (1879) A Tiszaszabályozásról. Gróf Károlyi Sándor emlékirata, *Gazdasági Mérnök* 3(3), pp. 273–276.
6. Kmetty K (1902) *A magyar közigazgatási jog kézikönyve*, Politzer, Budapest
7. Lindner G (1894) Az új vízjogi törvényjavaslat, *Jogtudományi Közöny* 29(24) pp. 185–187.
8. Turkovics I (2014) Efforts to Simplify Authority Procedures in Hungary in the Period between 1901 and 1944, *Journal on European History of Law* 5(1), pp. 136–142.
9. Turkovics I (2015) A közigazgatási felelősség megjelenése a gazdasági viszonyokban, *Miskolci Jogi Szemle* 10(2), pp. 85–93.