

Csilla CSÁK*
The protection of aquatic ecosystem**

Abstract

The article deals with the legal protection of aquatic ecosystem. This study concentrates on the legal aspects of water protection emphasizing that water law and water protection is a complex area according to interdisciplinary approach (hydrology, economic sciences, etc.). The author assesses international and European Union documents according to water protection only marginally and due to the limitation of the study extant the author rather focuses on the Hungarian legal situation of waters (which fully complies with the EU legislation and expectations). As for the Hungarian legislation, besides the water management law and water protection law of Hungary, the article presents the constitutional law aspects of water protection and nature conservation even analysing the case law of the Hungarian Constitutional Court.

Keywords: water protection law, nature conservation law, water law, aquatic ecosystem

1. Introduction

The case of water protection firstly, reminds us for environmental protection, including the quality and quantity protection system of waters. The regulation system of waters is quite diversified, which covers (a) the rules of different regulation levels of waters, (b) the protection of waters as protected legal interest and (c) the significant social and economic role of water. In this study we would like to deal with the legal aspects of water protection but we shall emphasize that water law and water protection is a complex area according to interdisciplinary approach (hydrology, economic sciences, etc.), which we do not deal within this study. We analyze international and European Union documents according to water protection only marginally and due to the limitation of the study extant we rather focus on the Hungarian legal situation of waters (which fully complies with the EU legislation and expectations). We examine the issues of national water law from the approach of environmental protection according the fact that researchers primarily focused on the environmental protection (framework) system and water management aspects.

According to the connection between environmental protection and natural conservation there are three concepts: (a) there is no connection between the two areas, the protected legal interest and the orientation of protection is completely different of them, (b) there are connecting factors (common set) of environmental protection and

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natural conservation but there are different protected legal interests of this two areas, (c) natural conservation constitutes the part of environmental protection (the relationship is part-whole) with a special regulation. Based on the latter concept it can be stated, considering the scope of environmental protection that it focuses on the protection of environmental components (land, air, water, the biosphere, built (artificial) environment created by humans and their constituents), and natural conservation focuses on the protection of organisms and the preservation of biotic communities, habitats, natural and semi-natural areas and naturaé landscape (biosphere). These two areas complement each other. It can be said that natural conservation protects the natural environment and biodiversity with special regulation compared to environmental protection. The scope of the Act LIII of 1995 on the General Rules of Environmental Protection includes the living organisms (biotic communities), the abiotic components of the environment and the natural and built environment and its objective is to create a harmonious relationship between man and the environment, to facilitate the coordinated protection of the environment, its components and processes and to provide for the conditions of sustainable development. The regulatory priorities of the Act LIII of 1996 on Natural Conservation are special compared to the general rules of the Act on Environmental Protection. Furthermore, international treaties also have importance both in environmental protection and natural conservation.

Considering the regulatory method of environmental protection and natural conservation it can be stated that in the field of environmental protection generally any use of the environment is allowed, in some cases the activity may be carried out on the basis of authorization. However, in the field of natural conservation all activities are prohibited, except the activities which are allowed, so these activities may carry out only on the basis of authorization, this authorization makes these activities lawful. In the case of natural conservation, if a person carries out an activity breaking the authorization which causes damage, this person shall be liable for the damage according to the rules of objective private law liability. Any person who causes damage by infringing the statutory laws or specific regulatory provisions on nature conservation shall be liable for any the damage caused thereby according to the provisions of the Civil Code on liability for highly dangerous activities.¹ However, according to the Act

¹ Act LIII of 1996 on Nature Conservation, Article 81 Paragraph 1. The first comprehensive regulation of nature conservation took place in 1982. Decree-Act No. 4 of 1982 on Nature Conservation, its implementing Decree No. 8/1982/III/18 of MT and Act on the protection of protected plant and animal species, individual values, the range of increasedly protected caves, and the exemptions related to restrictions and prohibitions on certain protected species of animals were more up-to-date and more comprehensive legal sources, than the previous ones. In the environment of legal regulation, the Constitutional Court's Resolution 28/1994 is noteworthy because it gave legal interpretation about the transformation of cooperatives concerning the privatisation of nature conservation areas. In 1997 National Assembly brought out Decision No. 83/1997 /IX. 26./ about National Program of Environment Protection. In its introduction it is emphasized that the protection of environment and the conservation of natural values became a crucial part of social and economical life nowadays. Its fundamental reason is, on the one hand, the faster and faster utilisation of natural resources as a consequence of long-

on Environmental Protection² damaging conducts not adequate in relation to liability from civil law aspect. The differences of regulatory methods appear in environmental law as well which may lead to anomalies in relation to administrative and civil law legality and which differences shall be recognized in the authorization procedure in regard to private interest.

It is necessary to determine the place of water law in the field of environmental protection and natural conservation. According to the Act on Environmental Protection – in accordance with the Act on Natural Conservation –, specific legislation is applied for water management and natural conservation. The natural heritage and environmental values are national assets, their preservation, conservation and improvement are fundamental aspects of the biosphere and the health and quality of life of humans and, furthermore, as there can be no harmony between the activities of man and nature without these, neglecting them would endanger the health of present generations, the existence of future generations and the survival of a number of species. Natural values and areas may only be exploited to such extent that their biodiversity, the proper functioning of their essential natural systems and the processes of these systems be maintained.

The Act on Water Management³ and the Act on Environment Protection regulates the rules of water protection (statutory level) and within this framework decrees define the specific rules of certain areas related to water protection (decree level).⁴ Regarding the protection of water as an environmental component and natural resource by the Act on Water Management and the Act on Environment Protection we

range unsustainable management, and on the other hand the increasing quantity of polluting materials. It settles down the deterioration of nearly all the environmental elements which would be indispensable to ensuring the well-being and health of future generations. The National Program of Environment Protection also prescribed the creation of Nature Conservation Plan.

² Act LIII of 1995 on the General Rules of Environmental Protection.

³ Act LVII of 1995 on Water Management.

⁴ The regulations related to water conservation at decree level are:

Government Decree No 72/1996. (V.22.) on the rules of exercising the authority's competence
Government Decree No 220/2004. (VII.21.) on the rules of quality protection of surface waters
Environment and Water Management Minister Decree No 31/2004. (XII.30.) on the rules of monitoring surface waters and their condition

Government Decree No 219/2004. (VII.21.) on the conservation of subsurface waters

Government Decree No 240/2000. (XII.23.) on the designation of surface waters and river basins identified as sensitive from the perspective of urban waste-water treatment

Government Decree No 123/1997. (VII.18.) on the protection of underground zones of water, long-term water resources developed for water withdrawal, and hydraulic facilities used for the supply of drinking water

Government Decree No 232/1996. (XII.26.) on the rules of protection against damages caused by water

Transport, Communication and Water Management Minister Decree No 10/1997. (VII.17.) on the protection against flood and inland waters

Government Decree No 27/2006. (II.7.) on the protection of waters against pollution caused by nitrates from agricultural sources.

are on the view that both act dealing with the quality and quantity issues and the protection of waters. The Act on Environment Protection⁵ regulates both areas in general but the Act on Water Management focuses on the quantity protection of waters and damage control.

The Act on Water Management defines the fundamental rights and responsibilities related to water utilization, the preservation of alternatives for water utilization, and the prevention of damage caused by water, taking into consideration the integrative approach and the requirements of the Act on Environmental Protection and the Act on Nature Conservation.

Relating to water management, different utilization and usage cases can be distinguished and categorized according to various criteria. Utilization and usage can be categorized into three categories: a) usage with consumption (household, industrial, irrigation), b) usage without consumption (navigation, recreation, fishery, hydropower), c) maintenance of ecosystem. It can be categorized according to social, economic and ecological (water ecosystem) aspects.⁶ The regulatory subject of water ecosystem – beyond integrativeness – is basically considered to be a nature conservation issue regarding the rights and obligations of the use of the environment. The purposes of nature conservation are: (a) the general conservation of natural values and areas, their natural systems and biodiversity as well as for the promotion of their scientific cognition and sustainable use, (b) to meet the society's need for a healthy and aesthetic natural environment, (c) to foster the traditions of nature conservation and improve its achievements, (d) to protect, conserve, maintain and enhance Hungary's natural values and areas.

Before examining the detailed rules for the implementation of these purposes, it is necessary to determine the principles of nature conservation. The principles of nature conservation are:

It is the obligation of every natural or legal person as well as other organisations to protect natural values and area. In order to do so, they are obliged to cooperate to a reasonable extent in preventing dangerous situations and damage, alleviating any such damage, eliminating the consequences of any such damage, and restoring the conditions that existed prior to the damage.

Natural values and areas may only be exploited to such extent that their biodiversity, the proper functioning of their essential natural systems and the processes of these systems be maintained. (Sustainable development, protection of natural resources)

⁵ Act on Environment Protection Article 18 (1): “Water conservation shall cover surface and subsurface waters, the reserves, the bed and banks or shores of surface waters, water-bearing formations and their superstratum, and to areas designated for protection (reserves) by legal regulation or statutory provision as relating to water.

(2) The natural discharge, flow pattern, flow conditions, beds and banks or shores of waters may be altered only by preserving the appropriate proportions of waterside habitats and species and ensuring their ability to function, and without impeding long-term environmental objectives.”

⁶ See more about it: Szilágyi 2013, 20–25.

The interests of nature conservation shall be taken into consideration during national economy planning and regulation, in the case of any economic, territorial and urban development as well as land-use planning and also while taking authoritative measures. (Integration)

In the interest of nature conservation, Hungary shall cooperate with other governments and international organisations and participate in international nature conservation conventions. Hungary shall take into account the nature conservation interests of other governments even where such conventions do not apply. (Cooperation)

2. International and European Union regulation

The legislation of water management is very diverse and complex, which can be derived not only from the integrated regulatory system but because the diversity and complexity water protection due to its sectoral nature. In addition, the priority regulatory subject of it appears in the level of international, European Union and Member States' legislation as well. Among international conventions and agreements the followings relate to water management: Ramsar Convention⁷ (Ramsar, Iran, 1971), Convention Concerning the Protection of the World Cultural and National Heritage⁸ (Paris, UNESCO, 1972), Convention on the International Trade in Endangered Species

⁷ The Ramsari Convention on Wetlands of International Importance especially as Waterfowl Habitat was promulgated in Hungary by the Decree-Act No 28 in 1979. Currently the Act XLII of 1993 on Convention on Wetlands of Internation Importance, especially as Waterfowl Habitat, signed on February 2nd 1971 in Ramsar and amended on December 3rd 1982 and between May 28 and June 3rd 1987, promulgates the Convention in a consolidated structure with prior amendments. For the purpose of the Convention wetlands are areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres. For the purpose of the Convention waterfowl are birds ecologically dependent on wetlands. Each Contracting Party shall designate suitable wetlands within its territory for inclusion in a List of Wetlands of International Importance. Wetlands should be selected for the List on account of their internation significance in terms of ecology, botany, zoology, limnology or hydrology. In the first instance wetlands of international importance to waterfowl at any season should be included. Hungary after its accession in 1979 designated a significant number of wetlands for the List of Wetlands of International Importance. On the basis of the previous conditions of international significance, certain areas were included in the list by meeting different criteria simultaneously. It includes Hortobágy, Fehértó of Kardoskút, Lake Fertő and Gemenc. Other Ramsar areas in Hungary also meet at least 2 criteria. In Hungary, due to the extension of the Convention, underground waters could also be covered by the Convention's scope, like the water areas of Baradla Cave System. For the first time, Szaporca Ó-Dráva Watercourse was designated as a Ramsar area.

⁸ The World Heritage Committee and each country prepares the List of World Heritage of cultural and natural values.

of Wild Fauna and Flora⁹ (CITES Washington, 1973), Convention on the Conservation of Migratory Species of Wild Animals¹⁰ (Bonn, 1979), Convention on the Conservation of European Wildlife and Natural Habitats¹¹ (Council of Europe, Bern, 1979), Convention on Biological Diversity¹² (Rio de Janeiro, 1992), Cartagena Protocol on Biosafety,¹³ etc¹⁴.

The Framework Convention on the Protection and Sustainable Development of the Carpathians (Carpathian Convention) was adopted in order to protect and maintain the natural values and the sustainable use of natural habitats unique in the Carpathian eco-region. In Hungary, the Carpathian Convention directly affects the area of Danube-Ipoly, Bükk and Aggtelek National Park. The priority task of the

⁹ The convention may reach its purposes indirectly. Hungary promulgated this convention in 1985 with the Decree Law No 15. A new regulation of the convention came into force, which was promulgated in Hungary in 2003.

¹⁰ The objective of the convention is to create an international legal frame for the protection of migratory terrestrial and marine animals for their entire migration route as these species are irreplaceable part of the Earth's natural system. Regarding the convention, those wild animals shall be considered to be migratory species that regularly and predictably cross one or more borders.

¹¹ The Council of Europe adopted the European regional convention in Bern on 19 September 1979. Hungary is member of this convention since 1990.

The purposes of the convention are to conserve wild flora and fauna and their natural habitats, to give particular attention to endangered and vulnerable species including endangered and vulnerable migratory species and to enforcement nature conservation interest in sectoral planning systems and policies.

¹² This global, international agreement with the subject of nature conservation adopted in Rio de Janeiro between 5-14 June, 1992 was accepted and promulgated in Hungary by the Act LXXXI of 1995.

The objectives of this convention are the conservation of living organisms – including the fauna, flora, microorganism – and preservation of biological diversity and genetic diversity.

The countries ratified the convention undertake that they develop the necessary legislation and regulatory provisions for the protection of natural habitats and the preservation of the populations of species which provide the protection of species and populations. They prepare a national biological diversity strategy for the protection and sustainable use of biodiversity. They integrate the various forms of protection into sectoral policies and plans. They examine and evaluate the components of biological diversity and the activities, processes which directly impact on it. They launch research-educational programs for preserving the biological diversity and promote the dissemination of the gained knowledge and the information exchange.

¹³ The Protocol is about the biosafety. The Protocol on Biosafety was adopted on 24 May, 2000 in Nairobi, which was promulgated in Hungary by the Act CIX of 2004.

The purpose of the protocol is „to ensuring an adequate level of protection in the field of the safe transfer, handling and use of 'living modified organisms resulting from modern biotechnology' that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health, and specifically focusing on transboundary movements”.

¹⁴ Krämer szerk. 2012, Kubasek & Silverman 2008, Raisz 2011a, Raisz 2012, Raisz 2011b, Szilágyi 2009, Szűcs 2012.

Convention is the improvement of the quality of life, the conservation of natural values and cultural heritage and the strengthening of local economies and communities.

The Hungarian-Slovak Joint Commission on Environment and Nature Conservation was established according to the Convention on the Cooperation in Environment Protection and Nature Conservation between Hungary and Slovakia signed in 1999. In the frame of the Joint Commission the Nature and Landscape Protection Working Group meets annually. The Hungarian National Parks at the Hungarian-Slovakian border without exception maintain an active relationship with a Slovakian partner (common projects, events). The continuation of the many years cooperation is expected in the following topics set down in common working programs: issues of Natura 2000, cross-borders projects, the protection of Aggtelek and Slovakian karst caves which were included in UNESCO's World Heritage List, the protection of large carnivores and the maintenance of Ramsar sites.

There was a similarly close nature conservation relationship between Croatia and Hungary, with an organizational structure similar to the Slovak one. The Subcommittee on Nature Conservation operates under the auspices of the Joint Committee, which considers the issue of Natura 2000 sites and the issue of the cross-border biosphere reserve of Mura-Drava-Danube as its main task. The exemplary cooperation of the Danube-Drava National Park Directorate and the Kopacki Meadow Natural Area is embodied in many successful projects.

On the basis of the Environmental Cooperation Agreement signed in 1997 between Romania and Hungary, the Group of Experts on Nature Conservation of the Hungarian-Romanian Environment Protection Committee was established in 2004. The main objectives of the cooperation are the implementation of the tasks related to the operation of the Natura 2000 network and the coordinated implementation of the common species protection and monitoring activities. The Körös-Maros National Park Directorate has excellent cooperation on cross-border projects.

In the framework of bilateral relations with Austria, the tight and professional cooperation is outstanding between the Fertő-Hanság National Park Directorate and the national parks operated by the Nationalpark Neusiedler See-Seewinkel. In the framework of the joint professional work, the two national park directorates jointly implement nature conservation projects, ensure the proper management, conservation and presentation of cross-border nature conservation areas.

Considering bilateral relations between Thuringia and Hungary, in 1997 the Hungarian-Thuringia Intergovernmental Joint Committee was established with an emphasis on the field of nature protection. The exchange of experience between nature conservation experts began in June 2003 and has been in contact since then. Hungarian and German experts have gained lots of useful experience during their mutual visits. The Thuringia-Hungarian cooperation covers topics such as the operation of the Natura 2000 network, the management of invasive species, ecotourism and access to EU financial resources, as agreed in the work programme by the two parties.

In point of bilateral relations between Saxony and Hungary, in December 2011 a cooperation aiming at mutual exchange of experience was renewed, and we also maintain an active nature conservation relationship with Serbia and Slovenia.

Among EU legal sources, apart from many EU directives related to water management,¹⁵ the Birds and Habitats Directives are concerned with nature conservation.¹⁶ The Birds and Habitats Directives are the two main legal instruments by which the EU ensures the conservation and sustainable use of nature in its territory, primarily through the Natura 2000 network of protected natural areas. These two directives are at the heart of the EU's biodiversity strategy, whose mission is to achieve the EU's key objective of “*halting the loss of biodiversity and the degradation of ecosystem services by 2020 and restoring them as far as possible.*” The directives also play a decisive role in meeting the EU's commitments under the Convention on Biological Diversity concluded in October 2010 in Nagoya.¹⁷ In the case of terrestrial ecosystems, *the human alteration of agriculture and natural circumstances* are the main problems for all three groups (birds, other species, habitats).¹⁸ *In agriculture* the most problems derive from changing cultivation practices, overgrazing or the lack of grazing, the use of fertilizers and pesticides. *In connection with the alteration of natural circumstances* the most frequently reported problems are the change of hydrology and status of water bodies, the

¹⁵ 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, Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration, Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption, Commission Directive (EU) 2015/1787 of 6 October 2015 amending Annexes II and III to Council Directive 98/83/EC on the quality of water intended for human consumption, Directive 2006/7/EC of the European Parliament and of the Council of 15 February 2006 concerning the management of bathing water quality and repealing Directive 76/160/EEC, Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment, Directive 2008/105/EC of the European Parliament and of the Council of 16 December 2008 on environmental quality standards in the field of water policy, amending and subsequently repealing Council Directives 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC, 86/280/EEC and amending Directive 2000/60/EC of the European Parliament and of the Council, Directive 2013/39/EU of the European Parliament and of the Council of 12 August 2013 amending Directives 2000/60/EC and 2008/105/EC as regards priority substances in the field of water policy, Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources, Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents, Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks. On the assessment of the European Union water management law see the outstanding and topical analysis of János Ede Szilágyi, namely Szilágyi 2018a, 255–275 and Szilágyi 2018b, 184–202 and 215–217.

¹⁶ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds.

¹⁷ Report from the Commission to the Council and the European Parliament – The State of Nature in the European Union – Report on the status of and trends for habitat types and species covered by the Birds and Habitats Directives for the 2007-2012 period as required under Article 17 of the Habitats Directive and Article 12 of the Birds Directive (COM(2015) 219 final, 2015.5.20.) p. 2.

¹⁸ See furthermore Farkas Csamangó 2003.

intervention in hydrography, the reduction of habitat interconnection and the withdrawal of groundwater. This is consistent with surveys carried out under the Water Policy Framework Directive, according to which the greatest burden on water bodies is caused by agriculture and hydromorphological intervention.¹⁹ Considering marine ecosystems, the use of living resources (fishing and resource extraction, to a lesser extent aquaculture) and pollution are the major burdens and threats. Another important factor is the change of natural conditions (dredging, alteration of hydrology and coastal management), the disturbance caused by human activity and the impact of climate change on seabirds.

Wetland habitats, such as marshes, swamps and fens, are among the most endangered ecosystems in Europe, and have suffered significant destruction in recent decades. Although they constitute only 2% of the EU territory and 4.3% of the Natura 2000 sites, they are of great importance for the survival of many species. The most types of wetland habitats are protected in the EU. Assessing their security status, we can say that it is 51% unfavorable / bad. Anthropogenic alteration of hydrology (e.g. draining) is the biggest problem by far. For example, in Ireland all marshes, swamps and fens are in a status of unfavourable conservation, and the situation of peat bogs is still deteriorating due to peat extraction and drainage. Due to the massive destruction of wetland habitats, the number of many species associated with such environments are also declining: this is the case, among others, with the common curlew (*Numenius arquata*) and the European fire-bellied toad (*Bombina orientalis*). In Belgium and in the United Kingdom, a significant degree of recovery can be observed due to various programs. We would not like to cover marine ecosystems, but the protection of marine environment and the designation of NATURA 2000 sites are progressing slowly.²⁰

3. The role of Natura 2000 network

The Natura 2000 network includes areas with great biodiversity. These can be special bird protection areas under the Birds Directive or special nature conservation areas under the Habitats Directive.²¹ The network covers 18% of the Union's land area and 4% of European maritime area. This is the most important tool for achieving the objectives of the nature conservation directives, the good / favorable status of species and habitats.

¹⁹ See 'A Blueprint to Safeguard Europe's Water Resources' (COM(2012) 673) and 'The Water Framework Directive and the Floods Directive: Actions towards the 'good status' of EU water and to reduce flood risks' (COM(2015) 120).

²⁰ Report from the Commission to the Council and the European Parliament – The State of Nature in the European Union – Report on the status of and trends for habitat types and species covered by the Birds and Habitats Directives for the 2007-2012 period as required under Article 17 of the Habitats Directive and Article 12 of the Birds Directive (COM(2015) 219 final) p. 16.

²¹ The areas to be designated under the Habitats Directive are proposed by the Member States: they are first designated as natural areas of Community importance and then they become special nature conservation areas officially. The data in this report applies to both categories.

Some of the species and habitats protected by the legislation are improving, as evidenced by success stories in different parts of Europe. It is clear that the Natura 2000 network plays a key role in the conservation of less-favored habitats and species, especially if the necessary conservation measures are taken on an appropriate scale.

However, the overall status of species and habitats has not changed significantly between 2007 and 2012 in the EU; there are still many less-favored species and habitats, and the proportion of ones that has a deteriorating situation is also high. Much stronger protection is needed to meet the number 1 objective of EU's biodiversity by 2020. Certain groups of species, e.g. freshwater fish and certain habitat types, such as grasslands and wetlands are of particular concern. There is a significant burden on nature because of changing farming practices and hydrological interventions.

21.44% of Hungary's territory belong to the network of Natura 2000, which is slightly above the European Union average (18.12%). With the accession of Hungary to the European Union, the Natura 2000 network of the European Union has been supplemented by a new Pannonian biogeographical region covering the entire territory of Hungary. There are many species in the Pannonian region that cannot be found in the territory of other Member States or in other Natura 2000 regions at all. The 56 different habitat types in the Pannonian region represent about 26 percent of all habitat types in Europe, and one of them is exclusively and ten of them are predominantly in the Pannonian region. The concept of Natura 2000 is defined in 275/2004. (X.8.) Government Decree on European Community Conservation Areas paragraph (2), which can be interpreted as a national implementing act of the Natura 2000 network in the European Union.²²

4. The Hungarian situation

The national ecological network, the green network of Hungary, namely the extension of areas that are close to natural habitats, covers more than 36% in Hungary and the conservation status of species is improving. One of the key factors in the spread of wildlife species is the availability of water and its quantity, temporal distribution and quality. Mainly our flatland habitats and even their internationally outstanding natural values were negatively affected by the water management works that did not take into account the natural needs of the last two centuries. Due to climate change, on the basis of available models the quantity and temporal distribution of rainfall in the Carpathian Basin may change significantly in an unfavorable direction of our current natural values. This can affect not only water-intensive (e.g. moorland) or special water-related (saline) communities, but also, for example, the hill and mountain areas through the success of forest regeneration, so special attention should be paid to water management issues and water conservation.²³

²² 28/2017. (X.25.) Constitutional Court Resolution (16).

²³ See more: National Nature Conservation Plan IV. Policy strategy for nature protection 2015-2020. The National Nature Conservation Plan (NTA) is a strategic document of Hungary's nature conservation strategy, a policy strategy that defines the main objectives to be pursued by the State in the nature conservation tasks as an independent but integrative part of the National

Similarly to the previous financial period, there is no separate nature conservation fund for funding nature conservation developments in EU. Development needs must be solved within existing EU funds, in particular in the framework of rural development, cohesion, fisheries and LIFE. The regulations of the mentioned funds set out a number of concrete funding options, so, depending on the decisions taken at Member State level, almost any fund can be used directly or indirectly to implement nature conservation projects. The integrated approach to financing will also be reinforced by the objectives of the EU Biodiversity Strategy to be met by 2020. By adopting the strategy, the European Commission and the Member States have committed themselves to creating an adequate funding base for Natura 2000 sites, among others by the use of EU funding instruments, as well as they maximize the extent of the areas affected by the CAP payments for nature conservation. LIFE is the only EU funding instrument in the 2014-2020 multiannual financial framework dedicated exclusively to environmental and climate policy objectives. The LIFE as an opportunity for applications in the 2014-2020 EU financial period will also be a major resource for nature conservation. There is still scope for application from LIFE sources for both national park directorates and other public and municipal organizations as well as NGOs. On the basis of the EU Regulation for the Environment and Climate Action Program (LIFE) for the period 2014-2020 (1293/2013/EU), at least 55% of the LIFE financial framework should be devoted to nature conservation at EU level. A new project type, so-called integrated projects can also be applied under the renewed LIFE program. The integrated project – compared to the ‘traditional projects’ – means a much larger project to implement a particular strategy, plan or program, using other EU or domestic financial resources at the same time. In addition, we should also mention the financing of the sectoral and domestic budgets of nature conservation.²⁴

5. Legal background of nature conservation and the protection of aquatic ecosystems in Hungary

The provisions of our Fundamental Law concerning environmental protection specifically enunciate the general constitutional duty of protection, reservation and preservation of the natural resources for future generations, the right to physical and mental health, the right to a healthy environment, the GMO-free agriculture, the polluter-pays principle, as well as the prohibition of importing polluting waste to Hungary for the purpose of placing. Provisions concerning environmental protection cover an ever broader range, which, by bringing it to a constitutional level of

Environmental Protection Program, defines the directions of action, not only for the nature management administrative authorities, but for all public authorities. NTA is based on Act LIII of 1995 on General Provisions of Environment Protection, paragraph 40. Its 4th planning cycle is the strategic nature conservation plan document for the period 2015-2020.

²⁴ NTA-IV see furthermore: Nagy 2012, Nagy 2011, Olajos 2008.

protection, increases the possibility of environmental interests. Several provisions in Fundamental Law go far beyond the level of protection of European constitutions.²⁵

Tvtv. lays down the general rules for nature conservation and 11 government decrees, more than 30 ministerial decrees, and nearly 300 ministerial decrees declaring protection or treating a management plan are in force. In the framework of sectoral division of labor, in order to preserve natural values there are more than 600 regulations related to nature conservation.

Tvtv. regulates (a) the protection of natural values and areas (landscape protection, protection of wildlife, protection of natural areas, protection of habitats, protection of geological natural values), (b) provisions related to the protection of priority areas (protection procedure, protected natural areas, protection zone, designation of Natura 2000 sites, protected plants and species, associations, caves, protected mineral formations), (c) the planning and organisational system of nature conservation, (d) the ownership and economic foundations of nature conservation, (e) the procedural rules and sanctions for nature conservation (responsibility).²⁶ Unfortunately, due to volume constraints we cannot deal with all the issues in detail, so we focus on only a few problems.

Tvtv. includes a number of regulations in the field of general nature conservation, among which the following ones can be emphasized: in the field of agriculture, forestry, reed, fish and game management sustainable use must be ensured, which includes durability, the use of nature-friendly methods and the protection of biodiversity; it is important to preserve natural and near-natural shores of watercourses and lakes in order to protect wetland habitats; nature-friendly solutions should be favored in water construction work; because of the protection of interests of wild organisms and their biodiversity all activities shall be carried out with an obligation to preserve natural habitats and their biodiversity and to spare the conservation of natural values and natural habitats; during the utilisation of natural areas it is obligatory to be attentive to the type of the habitat, the richness of wild organisms, the maintenance of biodiversity; on the natural and near-natural wetland habitats the water quantity needed for the conservation and maintenance of natural systems (ecological water quantity) shall not be distracted by artificial intervention. Statutory provisions enunciate prohibitions and authorised activities. Beyond the general protection, the natural areas and values declared protected have intensified protection. The protection may be granted with the protection procedure or *ex lege*, by virtue of the law. Apart from Natura 2000 areas,²⁷ all springs,²⁸ bogs,²⁹ caves,³⁰ sink-holes of sinking streams,³¹

²⁵ See furthermore: Fodor 2006, Fodor 2005, Fodor 2011, Fodor 2012, Bándi 2012, Kecskés 2009.

²⁶ Szilágyi 2010.

²⁷ Natura 2000 area (nature conservation area of European Community importance): special bird protection area defined in separate legal act, special nature conservation area, area designated as natural conservation area of accentuated significance, as well as special nature conservation area and nature conservation area of accentuated significance approved by European Union.

²⁸ Spring means any natural issue of water from the earth provided that its discharge exceeds 5 l/min, even if it becomes temporarily dry.

salt lakes,³² tumuli and earthen fortifications are protected by virtue of this law. Protected bogs and salt lakes are also considered as natural conservation areas of national significance, and protected springs, sink-holes, tumuli and earthen fortifications are also considered as natural memorials of national significance.

The nature conservation authority shall mark protected natural areas and Natura 2000 areas with signs, announcing the protected status and drawing attention to the main restrictions. The protected or strictly protected status of an area shall be recorded in the land register; should the protection be lifted, the record of protected status shall be cancelled. The recording and cancelling shall be initiated by the nature conservation authority *ex officio*.

The nature conservation authority shall determine the extent of the protected natural area in a manner suitable for the registration of real estate records by an official decision, which shall be delivered to the owner and the trustee of the property concerned and to the relevant authority and the directorate.

The Government designates and publishes Natura 2000 areas, and determines the provisions concerning these areas. Land parcels in Natura 2000 areas are announced by the Minister. The designation shall be recorded in the land register, and it shall be cancelled after the dissolution of designation. The recording and cancelling shall be initiated by the nature conservation authority *ex officio*.

According to surveys, 1 300 bogs are protected *ex lege*. There are many cases when designation, decision-making and real estate recording does not happen which makes the applicability of protection level impossible and from the other side it makes the rights of ownership unsure. Tvtv. 23. § subsection (4) determines that the Minister shall publish the register of natural formations being under natural protection, which is informative and does not concern the protection of natural formations occurred by the Act's entry into force. Tvtv. 26. § subsection (2) ordains that the protected or strictly protected status of an area shall be recorded in the land register. The recording shall be initiated by the nature conservation authority *ex officio*. The accentuated protection of bogs is guaranteed and issued *ex lege*, but because of its territorial extension the decision of the authority is inevitable and its recording to the land register is unquestionable with informative and declarative effect.

²⁹ Bog means a land that is exposed to water effects permanently or intermittently, whose soil is periodically saturated with water, and (a) on a significant part of which mollusc life and mire living organisms can be found, or (b) its soil is characterized by varying levels of peat content and peat formation processes.

³⁰ The cave is a natural cavity formed in the rock forming the Earth's crust, whose longitudinal axis exceeds two meters and - after the removal of its current or natural filling - allows one person to enter.

³¹ Permanent or temporary sink-hole means any cleft in karst which conducts a permanent or temporary watercourse underground.

³² Salt lake is a natural or near-natural wetland whose bedrock is covered by surface water with a soluble mineral content of at least 600 mg / litre of sodium cation permanently or intermittently, and there are succulent communities in its area.

6. Conclusions

On the basis of Constitutional Court Resolution 964/B/1998: “According to the Constitutional Court, the constitutional right to healthy environment declared in Article 18 of the Constitution and the weight of the public interests related to the protection and enhancement of natural values and to the prevention of irremediable and irreversible nature damages provide sufficient reason for that the legislator limits the property rights of owners concerned according to the provisions of Tvtv. The protection status serves the public interest and the record in land register ensures the cognisance of this status. In the view of the Constitutional Court, the declaration of protection does not constitute a disproportionate restriction of property in relation to an objective of public interest intended to protect the protection of natural values.³³

Alongside the Environmental Protection Act the protection of aquatic ecosystems is provided by a number of legal institutions, such as the Nature Conservation Act, the Water Management Act and their implementing decrees, which promote the achievement of the objectives set by EU directives, domestic environmental policy documents and international conventions by introducing restrictions, prohibitions and licensing procedures. The Hungarian regulation follows and enforces the implementation of the goals set in the field of environmental protection and nature protection, the maintenance and increase of the level of protection, despite the fact that there are still some obstacles and shortcomings that have to be solved.

³³ 964/B/1998 Constitutional Court Resolution, Reasoning III/2. subparagraph, see more: 28/2017. (X.25.) Constitutional Court Resolution.

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