

Nóra JAKAB* – Gábor MÉLYPATAKI**
The right to water as a social fundamental right***

Abstract

*In our study we would primarily like to introduce the interpretation of the European Pillar of Social Rights (hereinafter 'the Social Pillar'). Article 20 of the Social Pillar deals with the right to access basic services. Basic services include the right to water and sanitation. The quoted article of the Pillar highlights that people in need should be supported in the access of these services. The Social Pillar defines the access right in the framework of social protection and social inclusion. In our opinion, this aligns a new interpretation of the right to water nearby the earlier ones which recognises the right to water not just as a fundamental right, but a social fundamental right as well. The characteristic of social fundamental rights is that they are not included in the orders of the *ius cogens*, but they protect so essential things that are connected closely to the right to life and to subsistence in general. This statement can be valid to the definition of right to water. If we analyse the classical social rights more precisely, we will have similar conclusions. This interpretation is reflected by Article XX of the Fundamental Law as well. The access to drinking water is highlighted as an important element of the right to physical and mental health. We can see that this element itself is not enforceable, but it also connects to the right to physical and mental health, and indirectly to the right to social security and the right to life. Drinking water is a very important matter from the aspect of human life.*

Keywords: right to water, human rights, social fundamental right, European Pillar of Social Rights

1. Social protection floor – The international context

In 2004, the World Commission on the Social Dimension of Globalization established by the ILO concluded, inter alia, that „*a minimum level of social protection needs to be accepted and undisputed as part of the socio-economic floor of the global economy*”. Notwithstanding the technological and other benefits of globalization, the Commission warned that the prevailing model of globalization was morally unacceptable and politically and economically unsustainable and examined the severely unbalanced outcomes of the globalization process. It affirmed that a global commitment to effectively address growing inequality and human insecurity was critical if globalization was to gain widespread legitimacy. The world financial, economic and jobs crisis that

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* dr. jur., PhD, dr. habil., associate professor, University of Miskolc, Faculty of Law, Department of Agricultural and Labour Law, e-mail: jakabn81@gmail.com

** dr. jur., PhD, university assistant, University of Miskolc, Faculty of Law, Department of Agricultural and Labour Law, ORCID: 0000-0002-0359-6538, e-mail: jogmega@uni-miskolc.hu

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ensued some years later and is still with us confirmed many aspects of this stark assessment.

The Commission's call for a 'socio-economic floor' formed the new policy concept of a social protection floor developed by the ILO on the basis of recent experience, principally of developing countries. This initiative is grounded in the framework of the ILO's Decent Work Agenda in which social protection for all is one of the four interrelated strategic objectives along with the promotion of rights at work, employment creation by sustainable enterprises and social dialogue. The concept has been developed in the framework of the two-dimensional strategy of the global campaign *Social Security for All*, aiming at achieving universal coverage of the population with at least minimum levels of protection (horizontal dimension) and progressively ensuring higher levels of protection according to ILO standards (vertical dimension). The recent economic crisis has demonstrated the importance of structural progress towards extending social protection in a coherent and coordinated manner at national and local levels. Social protection measures have cushioned the impact of the crisis among the vulnerable population, served as a macroeconomic stabilizer fuelling demand and enabled people to better overcome poverty and social exclusion in developing and developed countries.¹

It is hard to understate the social challenges the world faces. In 2010, global GDP was ten times larger than in 1950 in real terms – an increase of 260 percent per capita. Yet despite the six decades of strong economic growth that followed the adoption of the Universal Declaration of Human Rights, *access to adequate social protection benefits and services remains a privilege, afforded to relatively few people*. Current statistics speak eloquently of widespread poverty and deprivation. About 5.1 billion people, 75 percent of the world population, are not covered by adequate social security (ILO) and 1.4 billion people live on less than US\$1.25 a day (World Bank). *Thirty-eight percent of the global population, 2.6 billion people, do not have access to adequate sanitation and 884 million people lack access to adequate sources of drinking water (UN -HABITAT); 925 million suffer from chronic hunger (FAO); nearly 9 million children under the age of five die every year from largely preventable diseases (UNICEF /WHO); 150 million people suffer financial catastrophe annually and 100 million people are pushed below the poverty line when compelled to pay for health care (WHO)*. While globalization has been a source of opportunities for those able to seize them, as the evidence above shows it has left many unprotected against new global challenges and transformations that are having deep repercussions at national and local levels. The persistence of such large numbers of excluded persons represents. Tremendous squandered human and economic potential. This is particularly important in a context of accelerated demographic ageing in countries with low coverage of pension and health systems.²

¹ Social protection floor for a fair and inclusive globalization, Report of the Advisory Group chaired by Michelle Bachelet, Convened by the ILO with the collaboration of the WHO, Geneva, International Labour Organization 2011. xi.

² See more: Social protection floor for a fair and inclusive globalization, Report of the Advisory Group chaired by Michelle Bachelet, Convened by the ILO with the collaboration of the WHO, Geneva, International Labour Organization 2011. xxi.

It can be seen, therefore, that access to basic public services is one of the key issues of social protection.

Where does social protection fit into this picture? This report shows how social protection can lay a pivotal role in relieving people of the fear of poverty and deprivation, delivering on the promises of the Universal Declaration of Human Rights. The extension of social protection, drawing on basic social floors, is a missing piece in a fairer and inclusive globalization. Social protection represents, in fact, an investment that pays off both in the short term, given its effects as macroeconomic stabilizer, and in the long term, due to the impact on human development and productivity. The social protection floor approach has been developed by the ILO, drawing on the recent experiences of extending protection, mostly in developing countries. It was endorsed by the United Nations Chief Executives Board and by the Heads of State and Government in the 2010 Millennium Development Summit as *an integrated set of social policies* designed to guarantee income security and access to essential social services for all, paying particular attention to vulnerable groups and protecting and empowering people across the life cycle.³

The social protection floor includes guarantees of the following:

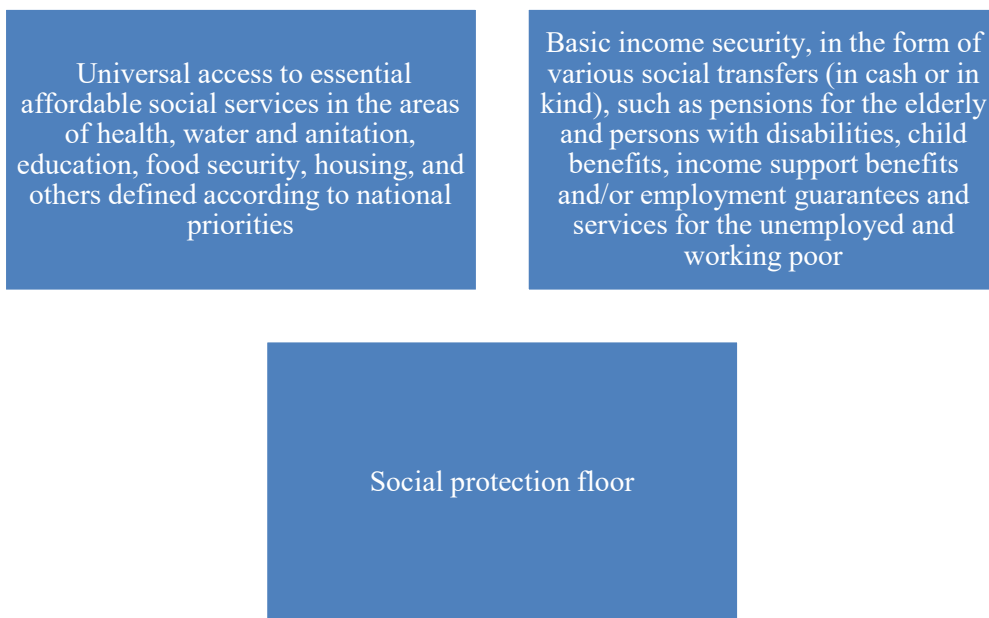


Table 1
Social protection floor

³ See more: Social protection floor for a fair and inclusive globalization, Report of the Advisory Group chaired by Michelle Bachelet, Convened by the ILO with the collaboration of the WHO, Geneva, International Labour Organization 2011. xxii.

The concept is part of a two-dimensional strategy for the extension of social security, comprising a basic set of social guarantees for all (horizontal dimension), and the gradual implementation of higher standards (vertical dimension), in line with the ILO's Social Security (Minimum standards) Convention, 1952 (No. 102), and others, as countries develop fiscal and policy space.⁴

The notion of the social protection floor is anchored in the fundamental principle of social justice, and in the specific universal right of everyone to social security and to a standard of living adequate for the health and well-being of themselves and their families. The core idea is that no one should live below a certain income level and everyone should at least have access to basic social services. The social protection floor relates strongly to the Decent Work Agenda; to succeed in combating poverty, deprivation and inequality, it cannot operate in isolation. In order to realize poverty reduction effectively, its strategies must be accompanied by others, such as strengthening labour and social institutions and promoting pro-employment macroeconomic environments.⁵

Inadequate access to water, sanitation and housing is a crucial point while defining the elements of social protection floor. According to the Water Supply and Sanitation Collaborative Council, *“some 2.6 billion people or 40 percent of the world's population do not have access to basic sanitation. Inadequate sanitation and hygiene have huge consequences on human health, while the impacts on the environment, education and economic activities are enormous”*⁶. People living in precarious conditions are more prone to preventable diseases and health problems. Unsafe water supply, poor sanitation and hygiene together constitute the third most significant risk factor for poor health in developing countries with high mortality rates. In low-income countries access to improved drinking water sources and sanitation is low, especially in rural areas. People using improved drinking water sources reached 60 percent in rural areas and 86 percent in urban areas; and those using adequate sanitation reached 37 and 52 percent in rural and urban areas respectively.⁷

⁴ The 2011 International Labour Conference undertook an extensive discussion of social protection, and in the process of defining its view of the social protection floor concurred with a unified approach to income security and access to essential goods and services set out as follows: social protection floors, containing basic social security guarantees that ensure that over the life cycle all in need can afford and have access to essential health care and have income security at least at a nationally defined minimum level. Social protection floor policies should aim at facilitating effective access to essential goods and services, promote productive economic activity and be implemented in close coordination with other policies enhancing employability, reducing informality and precariousness, creating decent jobs and promoting entrepreneurship. See more: Conclusions of the Committee for the Recurrent Discussion on Social Protection, International Labour Conference, 100th Session, 2011 (Geneva). para. 9)

⁵ See more: Social protection floor for a fair and inclusive globalization, Report of the Advisory Group chaired by Michelle Bachelet, Convened by the ILO with the collaboration of the WHO, Geneva, International Labour Organization 2011. xxiv.

⁶ See more: United Nations Human Settlements Programme. 2010. State of the world's cities 2010–11: Bridging the urban divide (London, Earthscan).

⁷ The aforementioned lack of services is also linked to additional precarious living conditions that characterize urban poverty, such as illegal and inadequate building structures, high-density,

Nonetheless, overall progress to improve access to clean drinking water has been strong. Globally, coverage increased from 77 percent in 1990 to 87 percent in 2008. If this trend continues, the MDG drinking water target of 89 percent coverage will be met – and likely surpassed – by 2015. But, in all regions, coverage in rural areas lags behind that of cities and towns. In 2008, an estimated 141 million urbanites and 743 million rural dwellers continued to rely on unimproved sources for their daily drinking water needs.⁸

As indicated above, the need to define a minimum level of social protection at international level was formulated. The European dimension of social protection will be dealt with hereafter.

2. European Pillar of Social Rights – The European context

Article 151 of the Treaty on the Functioning of the European Union provides that the Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.

Article 152 of the Treaty on the Functioning of the European Union provides that the Union recognises and promotes the role of the social partners at its level, taking into account the diversity of the national systems. It shall facilitate dialogue between them and respect their autonomy.

The Charter of Fundamental Rights of the European Union, first proclaimed at the Nice European Council on 7 December 2000, safeguards and promotes a number of fundamental principles that are essential for the European social model.

The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law.

formal settlements and overcrowding, atmospheric pollution, unhealthy living conditions and hazardous locations. About 32.7 percent of the urban population lived in slums worldwide in 2010, mostly concentrated in developing countries. See more: WHO, World Health Statistics (Geneva) 2010. Social protection floor for a fair and inclusive globalization, Report of the Advisory Group chaired by Michelle Bachelet, Convened by the ILO with the collaboration of the WHO, Geneva, International Labour Organization 2011. 26-27.

⁸ Social protection floor for a fair and inclusive globalization, Report of the Advisory Group chaired by Michelle Bachelet, Convened by the ILO with the collaboration of the WHO, Geneva, International Labour Organization 2011. 27.

The European Parliament in 2016 called for a solid European Pillar of Social Rights to reinforce social rights and deliver a positive impact on people's lives in the short and medium term and enable support for European construction in the 21st century. The European Council stressed that economic and social insecurity needs to be addressed as a matter of priority and called for the creation of a promising future for all, safeguards for our way of life and the provision of better opportunities for youth. The leaders of 27 Member States and of the European Council, the European Parliament and the European Commission made a commitment to work towards a social Europe in the Rome agenda. That commitment is based on the principles of sustainable growth and the promotion of economic and social progress, as well as cohesion and convergence, while upholding the integrity of the internal market. The social partners have committed to continue contributing to an Europe that delivers for its workers and enterprises.⁹ In the creation of social Europe, the concept of social protection includes access to basic services, which states that: *“Everyone has the right to access essential services of good quality, including water, sanitation, energy, transport, financial services and digital communications. Support for access to such services shall be available for those in need.”*¹⁰

According to this the right to access essential services of good quality, including water, sanitation could be understood within the social dimension of the European Union. It is worthy to scrutinize the character of the Pillar.

According to Frank Hendrickx among the documents the European Pillar of Social Rights is obviously outstanding. The Pillar basically changes the game in general in European politics and in particular the thinking about social Europe. At the same time, we must be critical that the rules of European labour law and the social dimension are really changed by this document. We can assume that the Pillar is indeed a decisive moment in changing the rules of the game, but for this to be true, the Pillar must be able to relieve the tension between the Union's economic and social dimension.¹¹

The Pillar is linked to the social dimension of the European Union and Article 153¹² of the Treaty on the Functioning of the European Union, which is in line with the European social model. The term European social model was popularized by Jacques Delors in the 1980s, which also functioned as a counterpart to the US economic model, marking the goal that Europe should not only pursue economic goals, but also look at the state of social balance before the economy is shaped.

⁹ See more: COM(2017) 251 final Proposal for an Interinstitutional Proclamation on the European Pillar of Social Rights Brussels, 26.4.2017. European Parliament resolution of 19 January 2017 on a European Pillar of Social Rights (2016/2095(INI)). The Bratislava Declaration of 16 September 2016. The Rome Declaration of 25 March 2017. Joint statement of the social partners of 24 March 2017.

¹⁰ COM(2017) 251 final Proposal for an Interinstitutional Proclamation on the European Pillar of Social Rights Brussels, 26.4.2017. 20. point.

¹¹ Hendrickx 2018, 49.

¹² Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union - Consolidated version of the Treaty on the Functioning of the European Union - Protocols - Annexes - Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007.

The creation of the internal market has thus given a social dimension.¹³ According to Hendrickx, with Delors' statement, Europe has been redrafted, within which Europe wants to develop equally both economically and socially.¹⁴ Delors' statement certainly had a huge impact on the development of European labour law and the European employment strategy.¹⁵

Subsequently, on 26 April 2017, the Commission published its proposal on the European Pillar of Social Rights.¹⁶ Finally, the Pillar was announced at the Social Summit on Fair Employment and Growth in Gothenburg on 17 November 2017,¹⁷ which further strengthened the social dimension of the Union with the cooperation of the European Parliament and the Council. Juncker has set up a fair and fully pan-European labour market that takes into account changes in European societies and the world and which can serve as a compass for eurozone members. He stressed that the Pillar should include what the Union has already achieved in the field of worker protection. He attached importance to the social partners.¹⁸

¹³ Hendrickx 2018, 50.

¹⁴ Hendrickx 2018, 50.

¹⁵ Hendrickx 2018, 49.

¹⁶ The Pillar has been created as a set of other documents: Brussels, 26.4.2017 COM(2017) 250 final Communication From the Commission to the European Parliament, The Council, The European Economic And Social Committee and the Committee of the Regions Establishing a European Pillar of Social Rights. Brussels, 26.4.2017 COM(2017) 2600 final Commission Recommendation of 26.4.2017 on the European Pillar of Social Rights. Brussels, 26.4.2017, COM(2017) 251 final Proposal for a Interinstitutional Proclamation on the European Pillar of Social Rights. Brussels, 26.4.2017 SWD(2017) 201 final Commission Staff Working Document Accompanying the Document Communication From the Commission to the European Parliament, The Council, The European And Social Committee And The Committee Of The Regions Establishing a European Pillar of Social Rights. Brussels, 26.4.2017, SWD(2017) 206 final, Commission Staff Working Document, Report of the public consultation, Accompanying the document, Communication From The Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions, Establishing a European Pillar of Social Rights.

The first preliminary draft of the Pillar has taken over three main areas: „Equal opportunities and access to the labor market, including skills development, lifelong learning and active employment support, with a view to increasing employment opportunities, facilitating employment transitions and improving employability of individuals: fair working conditions that ensure an adequate and reliable balance between the employer and employee rights and obligations and the flexibility and security of employment in order to promote job creation, employment and subsequent career adjustments and to encourage social dialogue;

Ensuring adequate and sustainable social protection and access to high-quality basic services, including childcare, health and long-term care, ensuring decent living and risk protection, and ensuring full access to employment and, in general, to enable it to participate.”

¹⁷ https://ec.europa.eu/hungary/news/20171117_socialrights_hu; [7.09.2017.]

¹⁸ *“We have to step up the work for a fair and truly pan-European labour market. As part of these efforts, I will want to develop a European Pillar of Social Rights, which takes account of the changing realities of Europe’s societies and the world of work. And which can serve as a compass for the renewed convergence within the euro area. This European Pillar of Social Rights should complement what we have already jointly achieved when it comes to the protection of workers in the EU. I believe we do well to start with this initiative within the*

The Pillar has initiated at the same time the following: the Proposal for a Directive of the European Parliament and of the Council establishing a balance between work and life between parents and carers, repealing Council Directive 2010/18/EU,¹⁹ and the Directive on information of employees,²⁰ proposal for the extension of social protection²¹ and supervision of the Working Time Directive.

According to Hendrickx, the Pillar has a number of positive effects, it reaffirms the European Union's commitment to social policy and social rights. At the same time, doubts arise about the Pillar. If you look at the Pillar's content, you can make the following comments. The Pillar, on the one hand, is like a legal catalog, which logically follows from the name of the Pillar. The Pillar also contains rights that are serious labor law and social protection issues. The legal nature of the Pillar is also questionable. It is clear that the Pillar sets new rights, but it also appears that the document is not legally enforceable. We read in the Preamble: The implementation of a European Pillar of Social Rights requires joint commitment and responsibility from the Union, the Member States and the social partners. The principles and rights defined by the European Pillar of Social Rights should be implemented at both EU and Member State level within the given competences and in accordance with the subsidiarity principle. It is important that since the rights are very clearly and intelligibly phrased, it is conceivable that, *by soft law, court practice will refer to it as the general and explanatory principles of EU law.*²²

It is important that European Pillar of Social Rights includes the principles and rights of a fair and well-functioning labour market and welfare systems of the 21st century. It strengthens existing rights²³ and highlights principles that address the challenges of economic, technological and social development. According to Hendrickx, therefore, we must be cautious about its effect. One is certain: it is a new political impulse, different from the documents before the Millennium.²⁴ The Pillar's message is therefore positive. It is very similar to the Community Charter on the Fundamental Social Rights of Workers, although it was not binding, but thanked to it the European Union Charter of Fundamental Rights has been created.

euro area, while allowing other EU Member States to join in if they want to do so.” State of the Union 2015: Time for Honesty, Unity and Solidarity, Strasbourg, 9 September 2015, Jean-Claude Juncker President of the European Commission.

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<https://eur-lex.europa.eu/legal-content/HU/TXT/HTML/?uri=CELEX:52017PC0253&from=EN> [2.11.2018.]

²⁰ Brussels, 21.12.2017, COM(2017) 797 final, 2017/0355(COD) Proposal for a Directive of the

European Parliament and of the Council on transparent and predictable working conditions in the European Union

²¹ Strasbourg, 13.3.2018, COM(2018) 132 final, 2018/0059(NLE), Proposal for a Council Recommendation on access to social protection for workers and the self-employed.

²² Hendrickx 2018, 61.

²³ Preamble *”The European Parliament called for a solid European Pillar of Social Rights to reinforce social rights and deliver a positive impact on people's lives in the short and medium term and enable support for European construction in the 21st century.”*

²⁴ Hendrickx 2018, 61.

The Pillars have the potential to influence the development of European social policy, and thus European labour law.

The Proposal for a Council Recommendation on access to social protection for workers and the self-employed²⁵ also deals with the issue of social protection within which we interpret *the right to access essential services of good quality, including water, sanitation*.²⁶ Welfare and social protection systems differ across the EU reflecting different national traditions, political preferences and budgets. Nevertheless, they are faced with similar, transformative challenges. Namely, in the past, work relationships were mainly characterised by full-time, open-ended contracts between a worker and a single employer. Over the last two decades however, globalisation, technology, changes in individual preferences and demographic changes have contributed to important changes in the labour markets. They have led to the growth of forms of employment other than full-time open-ended contracts such as temporary work, part-time work, and casual employment. Such forms of employment are providing more flexibility for companies to adjust work supply to their business needs and for workers to adjust their work patterns in line with personal preferences. Careers have also become less linear, with people more often transitioning between labour market statuses and/or combining salaried employment and self-employment. In the long run, it is the social and economic sustainability of national social protection systems that is at stake. Gaps in access to social protection for growing groups of the workforce will lead them to take recourse to tax-funded safety nets of last resort in case of social risk while the number of people contributing to social protection will be proportionately smaller. These gaps also may result in abuse of employment statuses and create unfair competition between companies that continue to contribute to social protection and those that do not contribute. The present Recommendation builds on and complements the ILO Social Protection Floors Recommendation,²⁷ which provides guidance to countries in extending social protection coverage by prioritizing the establishment of national floors of social protection accessible to all in need.

The challenge addressed by the Recommendation affects a significant number of people in the EU. Altogether self-employment and non-standard forms of work represent a significant share of the labour market. In 2016, 14% of the employed persons in the EU were self-employed, 8% were full-time temporary employees, 4% were part-time temporary employees, 13% were part-time permanent employees and 60% were employees with a full-time permanent contract.²⁸

²⁵ Proposal for a Council Recommendation on access to social protection for workers and the self-employed, COM(2018) 132final.

²⁶ Proposal for a Council Recommendation on access to social protection for workers and the self-employed, COM(2018) 132final 3. See more the works of Szekeres, Bernadett: Jakab & Szekeres 2017, 55–69.; Jakab & Szekeres 2015, 141–159.; Szekeres 2018, 439–450.; Szekeres 2018a,128–144.; Szekeres 2018b, 1–404

²⁷ Az ILO 2012., Proposal for Social Protection Floor (N. 202).

²⁸ Proposal for a Council Recommendation on access to social protection for workers and the self-employed, COM(2018) 132final 5.

In its Resolution on a European Pillar of Social Rights²⁹ the European Parliament underlined the need for adequate social protection and social investment throughout people's lives, enabling everyone to participate fully in society and the economy and sustaining decent living standards. In its opinion on a European Pillar of Social Rights,³⁰ the European Economic and Social Committee emphasised the need to ensure that all workers are covered by fundamental labour standards and adequate social protection.³¹

Social protection is considered as adequate when it allows individuals to uphold a decent standard of living, to replace their income loss in a reasonable manner and to live with dignity and prevents them from falling into poverty.³² To achieve this it is vital to ensure the right to access essential service as a social right. This point lead us to the issue of social rights. The principle that everyone has the right to high-quality basic services, including water supply and sanitation, is based on a brief examination of the nature of social rights and on the question of the right to water as a human right.

3. The nature of social rights

The social protection floor may be seen in the broad perspective of a drive to realize key human rights, reflecting principles of social justice and providing an institutional framework for embedding fair development. The right of individuals to provision by way of social protection is articulated specifically in a number of international instruments, notably the universal Declaration of Human Rights and the International Covenant on Economic, Cultural and Social Rights. These provisions under international law regarding human rights and social justice, and also more specifically regarding the right to social protection and social security, are translated into constitutions and national legislation of most States. Many States find it difficult to provide effectively the social protection and human rights guaranteed in their constitutions, but by enshrining them as objectives and principles in their legal framework, countries set a clear path for the future.³³

At this point, we do not look at the entire catalog of human rights but focus on economic and social rights, their nature, their relevance, and the international legal context.³⁴

²⁹ Proposal for a Council Recommendation on access to social protection for workers and the self-employed, COM(2018) 132final. 18.

³⁰ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0010+0+DOC+XML+V0//HU> [6.12.2017.]

³¹ Proposal for a Council Recommendation on access to social protection for workers and the self-employed, COM(2018) 132final. 18.

³² Proposal for a Council Recommendation on access to social protection for workers and the self-employed, COM(2018) 132final. 18.

³³ Social protection floor for a fair and inclusive globalization, Report of the Advisory Group chaired by Michelle Bachelet, Convened by the ILO with the collaboration of the WHO, Geneva, International Labour Organization 2011. 33.

³⁴ On human rights see the excellent works of Raisz: Raisz 2010, Raisz 2006, 238–241.; Raisz 2012, 37–70.

The principle that everyone has the right to high-quality basic services, including water supply and sanitation, is in our view entirely connected with social security and life under adequate living standards, which is human right, including economic and social rights. Social security, and the right to an adequate standard of living are a commitment from the States. They honor and protect these rights, but deciding what measures are being implemented to achieve the rights fall within the competence of the states. The state decides on the way it is implemented because it knows the performance and capacity of the given country, which is strongly influenced by the economic environment. Taking social security and employment rights, for example, it is a question that it is determined by the resources available, as it affects the stability of the national economy and the labor market. The protection of economic and social rights at international level has always issued the question of democratic rights as states want to register a catalog of rights, but their respect was based on voluntary compliance. For example, if a state does not provide the right to social security, ie. it does not establish the legal conditions for the provision of social security at the highest possible level for citizens, no legal sanction will be applied. There are two main reasons for the lack of sanctions: the uncertainty of the content of rights to social security, work and living on a decent standard of living, and the fact that the implementation depends on the resources available in that state, and the sovereignty and autonomy of the states on social policy issues. (Everything is to be decided locally!) For this reason, states simply undertake national reports on the implementation of a given law for a specified period, and do not take any concrete actions. It would be a concrete undertaking to say that the right to social security is guaranteed in such a way that everyone has a centrally determined basic income. Such commitments are not made by States for the above reasons. The nature of economic and social rights anticipates the scope for international law to control the realization of these rights and to enforce rights. These rights are not directly enforceable in court, ie. they can not be directly invoked in a court case, they do not give rise to subjective rights. If a person argues before a court that the Hungarian state has not ensured its right to social security, it will not succeed because that right can not be called upon by a state in itself. Because the Hungarian state has established a system of social security. What is the opportunity then? To help social security and the right to live on a standard of living, satellite rights might help. What does this mean? Think about the right to work, to which the right to vocational training is related as satellite law.³⁵ By analogy, let's think about the fundamental right to basic services of good quality. By referring to the violation of this right, an individual can successfully enforce his rights instead of referring to the right to social security. The ensure the right to social security, as a satellite right, it can be related to our view of Article XXII of Hungary's Fundamental Law as it is seeking to ensure the conditions for decent housing and the access to public services for all.

³⁵ On satellite rights see Kardos 1996, 21–22. On the principles of international relations see between the states Kovács 2011, 232–252.; Környei 2011, 24–26.

4. Right to water

Ede János Szilágyi points to with regard to water law, water-based governance, water policy, and he has been dealing with water as human right, that the recognition of water as access to water and as human right is still in progress today.³⁶

Traditional rights are more about abstract values: the right to have an own voice, to maintain physical integrity or to participate in a religious community. They are usually not about tangible and quantifiable things.³⁷ Szilágyi explains that water can be a service, it can be goods, but can it be a human right? Szilágyi quotes Antoinette Hilderling's approach, which interprets the concepts of water regulation in the three (social, economical and environmental) dimensions of sustainable development. Accordingly, he submits water as social goods, water as economical goods, and water as environmental goods. From the point of view of this study, the interpretation of water, as social goods, is important. In this case, right to water as human right at national level means the *abolition of poverty* and *fairness at international level*.³⁸

However, the fact that water is getting scarcer and scarcer and predictions of global water shortages are becoming more prominent, gives some indication that the current status of fresh water could be exactly in that mentioned timeframe of progressing scarcity. That water is a tangible thing is no valid counter-argument, as other rights include tangible objects as well; it is more an (acceptable) inaccuracy of the term itself. Secondly, only in a certain timeframe, namely between abundance and extinction, the evolution of a new right to a resource is feasible. The scientific findings available to us indicate that – far from being too early and hopefully not being too late – the correct timing for the rise of a human right to water might be exactly now.³⁹

Another related question is whether a rights-based approach is the best answer to the problem of a global water-crisis. What distinguishes a rights-based approach from other approaches? What is the added value of a right? Is a right to water not simply a redundancy, if we assume the general duty of the State to supply its population with the most essential goods? Perhaps the individual and societal need for water is better addressed not through rights but through the general political duty of overnments to act for the general welfare of their citizens?⁴⁰

Firstly, we cannot claim a right, if this is not mirrored on the other hand by institutions to promote and monitor the realization of these rights. Onora O'Neil voiced this critique by saying that the content of economic and social rights and the relation between right- and duty-holder often remains 'wholly obscure', claiming that economic and social rights 'must be institutionalized: if they are not, there is no right.'

³⁶ Szilágyi 2018, 210., See more: Horváth, Bartha & Szilágyi 2018, 14–19.; Raisz & Szilágyi 2017, 73–98.; Szilágyi 2018; Raisz & Szilágyi 2012, 107–148.; Szilágyi 2015, 38–54; Szilágyi 2015a, 38–43.; Szilágyi 2015b, 41–43.

³⁷ Thielbörger 2014, 96.

³⁸ Szilágyi 2018, 225–226.

³⁹ Thielbörger 2014, 98.

⁴⁰ Thielbörger 2014, 101.

Secondly, so it is argued, socio-economic rights, like the right to water, are not judicially enforceable by courts. Given how unspecific their content is, some authors have even argued that they are too indeterminate to be properly enforced in the first place (no matter by which institution): they should not be a matter of enforceable law at all.⁴¹

Can we accept a right whose realization would ultimately be impossible, given that it is aimed towards a truly global population? Accepting water as a human right would ultimately mean the whole global population should receive access to water. Yet such a right for all people is impossible to realize, at least immediately. Whether the right to water would be such an ‘impossible’ right, is ultimately a question for scientists. However, for the purposes of this study, one should assume the worst case in terms of the argument – that there is not enough water for all humans. This argument is not new: the argument that one cannot have a right to the impossible has often been used as one of the main arguments against the use and development of social and economic rights in a general sense. As Maurice Cranston claims, it is ‘totally impossible’ to translate socio-economic rights in the same way into positive enforced legal rights by political and legal action; claiming welfare rights in poor countries, where industrialization has hardly begun, would be ‘vain and idle’. Assuming ever more of these new rights, so the argument goes, adds to the incoherence of human rights theory and hinders the effective protection of genuine human rights.⁴²

However, the overall answer to the question of whether a ‘right’ can be an appropriate legal answer to the human need for water can therefore be answered positively. Although water is a right without choice, it gives an added value for the individual’s moral position. The argument that water is limited and that the right to water under the current circumstances might be considered an (almost) impossible right, imposing currently substantial duties, is valid, but only in parts. States derive their legitimacy *inter alia* from their duty to protect and promote the rights of their people. In turn, they are under a duty to ensure that the realization of basic rights does not become impossible. They have to make enormous efforts to protect and promote scarce resources that are essential for human survival. The very fact that a human right to water is precarious or difficult to achieve cannot lead us to abandon the concept as a whole. Instead, these are precisely the circumstances in which the rights-discourse becomes most important. Keeping these highlighted particularities in mind, there are good reasons to phrase the issue of access to water in human right terms.⁴³

Thielbörger regards the right to water as a *sui generis* human right. As Szilágyi points out, this is still not generally accepted in the general literature, and his function can be provided by other human rights. At the same time, we can perceive the right to water, as an *expressis verbis* state goal, which provides access to water.⁴⁴ The Pillar seems to express the right to water and sanitation as state goal requiring state actions to promote and realize it.

⁴¹ Thielbörger, 2014, 102.

⁴² Thielbörger 2014, 102.

⁴³ Thielbörger 2014, 104.

⁴⁴ Szilágyi 2018, 260.

The implicit right to water is involved in the Comment no. 15 issued by the Committee on Economic, Social and Cultural Rights in 2003. Major international conventions which explicitly include the right to water, though not as human rights are the followings: the Convention on the Elimination of Discrimination Against Women, the Convention on the Rights of Persons with Disability and UN Declaration of 64/292., which recognizes the right to safe and clean drinking water and sanitation as a human right, also declares that the right to water is indispensable for all human law compared to the right to human dignity.⁴⁵

In the Hungarian legal system, for example, the right to water as a *sui generis* human law can not be found, but *expressis verbis*, as we have previously mentioned, appears as a state obligation.

Social security and social protection has been at the center of attention both internationally and at European level. It has several aspects, but basic services, undoubtedly, form part of it. As stated in the Pillar, for the sake of access to basic services, each state must strive to reach the state's goal. This includes the right to water and sanitation. All in a wider sense relate to the right to social security and the right to life with an adequate standard of living.

5. Interpretation of the right to water in the domestic legal environment

As we have already mentioned, the interpretation of the right to water is possible in more ways. In our study we would primarily like to introduce the interpretation of the European Pillar of Social Rights (hereinafter 'the Social Pillar'). Article 20 of the Social Pillar deals with the right to access basic services. Basic services include the right to water and sanitation. The quoted article of the Pillar highlights that people in need should be supported in the access of these services. The Social Pillar defines the access right in the framework of social protection and social inclusion. In our opinion, this aligns a new interpretation of the right to water nearby the earlier ones⁴⁶ which recognises the right to water not just as a fundamental right, but a social fundamental right as well. The characteristic of social fundamental rights is that they are not included in the orders of the *ius cogens*, but they protect so essential things that are connected closely to the right to life and to subsistence in general.⁴⁷ This statement can be valid to the definition of right to water. If we analyse the classical social rights more precisely, we will have similar conclusions. This interpretation is reflected by Article XX of the Fundamental Law as well. The access to drinking water is highlighted as an important element of the right to physical and mental health. We can see that this element itself is not enforceable, but it also connects to the right to physical and mental health, and indirectly to the right to social security and the right to life. Drinking water is a very important matter from the aspect of human life.

⁴⁵ Szilágyi 2018, 260.

⁴⁶ See more about international interpretations: Raisz 2012a, 151–155; Szilágyi 2018, 259–271.

⁴⁷ Haugen 2007, 435.

At the same time the argument of János Ede Szilágyi serves further basis to our opinion, according to which the right to water is not a *sui generis* right in the Hungarian legal system, but the realization of this is in the enforcement of other fundamental rights implicitly. It does not mean that this right has not an adequate level of protection.⁴⁸ Based on the definition by Anikó Raisz the right to water connects strongly to the right to access to water. In her view our Fundamental Law gives a narrow interpretation compared to the international definitions, because for example the explanation of Article XX does not deal with the agricultural use of it.⁴⁹

In another interpretation the right to water defined in the Fundamental Law has four cornerstones. One is the obligation of founding waterworks and creating the access to water which is ordered as a function of the state and municipality by the Water Utility Service Act. The second is the obligation to maintain and operate waterworks, which is to maintain the element of continuity with regard to access. Thirdly, the provisions of the ownership of the waterworks can be highlighted. Fourthly, the extent or amount of availability is expressed which means the determination of the number of access points required in their physical reality with countable measures and their capacity to be able to provide enough water to ensure adequately the success of the fundamental right.⁵⁰

The object of our analysis is primarily the research of use linking to the water consumption along the question of that how the right to water as a social fundamental right can work. From the social law approach, we must test that who can access certain water resources and in what kind of circumstances. Does the financial situation influence the access to water, or can it be interpreted as an independent social fundamental right? Our questions are partly shaded in the beginning of our analysis by that drinking water service is performed as a public service form, for which the users must pay fee. However, we also must add that the water utility contract does not fall within the mandatory public utility contracts. In parallel with this, it is worth mentioning that the Act CCIX in 2011 about Water Utility Services (hereinafter referred to as WUS) also mentions the requirement of equal treatment and solidarity as factors affecting the development of rules of water utilities and the application of the rules. Firstly, we will examine these concepts in the light of the rules of access to water. The right to water can be referred to as a third-generation right which, by its nature, is linked to the right to food. Both rights are in connection with the fundamental right to physical and mental health defined in Article XX of the Fundamental Law.⁵¹ However, because of their nature, they operate as a fundamental social right derived from the right to health. It does not mean a constitutional right to a specific bottle of water or a piece of bread, but the access to these should be a kind of social fundamental right for everyone.

⁴⁸ Szilágyi 2018, 260.

⁴⁹ Raisz 2012a, 157.

⁵⁰ Spiegler 2015, 48.

⁵¹ Téglásiné 2017, 130

6. Equal treatment in connection with the right to water

A reference to equal treatment can be found directly in the preamble of WUS, according to which the goal of the legislator is the regulation based on objective, transparent and equal treatment. The enforcement of this principle, which is in the preamble, is also promoted by the Act CXXV in 2003 about the Requirement of Equal Treatment (Act of Equal Treatment). On the one hand, the Act of Equal Treatment specifies the side of the obliged and entitled persons in the personal scope.⁵² The f) point of Article 4 in the Act enumerates the utility service providers on the side of obliged persons besides the state organs. The utility service providers must keep equal treatment in their process, whether it is a contracting or providing service. The d) point of Article 3 (1) of Act of Equal Treatment explains what should be considered as a public service in the application of this Act. The right to water and the right to sanitation is included in this definition. Accordingly, the requirement of equal treatment should be ensured in connection with the right to water and the right to access to water. The question is in what context the success of equal treatment should be interpreted? In the sense that it should be provided for everyone in the same way or in the sense that the right of access should be considered? In our opinion, the interpretation of equal treatment happens on a double plane in relation to the right to water in the researched context. On the one hand, the distinction between those in the same situation can not be justified. Persons in the same situation should have the same rights to water services. This interpretation range is related to the quality of the service.

The other interpretation range is the equality of the access to the service. Everybody should have an opportunity to the service with the same conditions. This does not necessarily mean that everybody is entitled to the same level of services, because we speak about people in different situation. Equal treatment should primarily prevail in the access to service. The properly justified limitation of service for some consumers does not mean the hurt of equal treatment. The limitation of the right to water could not be discretionary, and proportionality also needs to be analysed as a main definition.⁵³ The proportionality of limitation of water and the equality of access played an important role in the Ózdi case, which has received great publicity. It can be seen from the morals of this case that the definitions of equality and solidarity are connected. The equality of the access to water can only be materialised if social solidarity works properly, like social insurance.⁵⁴ Disproportional restriction of access and inadequate level of service providers' actions do not promote rights. This conclusion can be deduced from the report of the Commissioner for Fundamental Rights in which the integrated official investigation performed by public authorities and public service providers in some suburban areas of Miskolc has been examined.⁵⁵

⁵² Jakab 2016, 20

⁵³ Az alapvető jogok biztosa és a jövő nemzedékek érdekeinek védelmét ellátó biztos-helyettes Közös Jelentése az AJB-5527/2013 számú ügyben.

⁵⁴ Tóth 2013, 15.; Mélypataki 2017, 25.; Vallasek 2018, 12.

⁵⁵ Az alapvető jogok biztosa és a Magyarországon élő nemzetiségek jogainak védelmét ellátó biztoshelyettes közös jelentése, az AJB-1474/2014. számú ügyben.

The correlation of the researched cases with equal treatment is that the social groups affected by water restriction or the increased controls in Ózd and Miskolc have some protected characteristics compared to most of the society. These protected characteristics are usually the origin, race and social situation. These protected characteristics are cumulated, not separated. In the investigated cases the social situation of the affected person is bad or hopeless, which coheres with origin or race, as a protected characteristic in a significant part of the cases. Both reports of the Commissioner for Fundamental Rights mentioned earlier touch upon that the provisions could relate to the rules of the Act of Equal Treatment. The connection between the investigated cases can be detected along the elements of indirect (disadvantageous) discrimination and, in some cases, the unlawful segregation. The re-entrant question in the reports of the Commissioner for Fundamental Rights is compliance with proportionality. The Commissioner for Fundamental Rights also have to perform the test of proportionality. Proportionality test indicates the infringement of lawful rights. If an infringement has occurred, is it proportionate with the purpose to be achieved? In this way, the social situation is linked to the equality of access to water.

However, the question of social necessity and equal treatment can not be examined only on the basis of necessity. It is the fact that its determination on a need basis is more common. The issue of equal treatment and, consequently, the issue of equal access to water may also arise in cases where the distinction happens by the municipality's omission. In the investigated case, a certain area in a certain county got downtown status. The complainant lived in a street of this area which was partly publicized. Where he lived it was not. The street was classified as a downtown area in 1997. Since then 20 years have passed and the total development of the street has not been completed. Although, the submitter has his own drilled well, but he does not consider this as a final solution. The municipality has recognized its obligation and plans the expansion of the network in that area. The Commissioner for Fundamental Rights had made decision that, over time, it is not an excessive expectation that the applicant wants to exercise his right to water. The planning of the municipality is welcome, but it does not mean in itself the replacement of the deficiencies. However, the report does not deal with the issue of equal treatment, but it can be seen that unjustified differences have been maintained at the disadvantage of the applicant compared to those who are in the same situation with other immovable properties in the downtown area.⁵⁶ Breaching of the requirement of equal treatment happened based on other protected characteristic against others. The other protected characteristic in this case was the place of the residence.

Examination of the question of equal access, as mentioned above, should not be achieved by itself in relation to water law. As for access to water, the solidarity element should also be examined. The research of the issue of equal treatment explains if the distinction between certain consumers happens based on some protected characteristics. Distinction usually occurs on the basis of such protected features that are related to the social positions.

⁵⁶ Az alapvető jogok biztosának Jelentése az AJB-858/2017. számú ügyben.

That is why further investigation of the domestic legal environment is proceeding along the lines of the examination of solidarity and the social principle.

7. Relationship between solidarity and the social principle with the access to water

According to literature, both the right to water and the right to food belongs to the third-generation laws. These rights are usually called global rights or solidarity rights.⁵⁷ The essence of these rights is that they cannot be broken down for certain individual persons, but they are rights for groups of people.⁵⁸ This is the general approach of this issue. But we would like to deal with specific legal situations in our paper. Primarily, we would like to deal with the interpretation of solidarity, which connects to the second-generation rights. Society should be interpreted as such a community in which the effects of the market prevail, and which influences the structure of the society. From this point of view, there will always be winners and losers. The task of society is compensation. It has to be a risk community which should compensate the losers with the prevail of the principle of solidarity. Compensation can occur on the level of individuals or a group. Linking this with the right to access water, we need to talk about measures that help people in need to get some water and thus to secure their right to life. Social support systems are moved by solidarity in all cases. Ensuring access to water can improve the dignity and independence of poor households and save time for them.⁵⁹ The necessity of solidarity should be highlighted in legislation and the application of law as well. According to the Ombudsman's opinion in the case AJB-5527/2013, the right to water has four cornerstones. Besides of these, it is also remarkable that, according to the Commissioner for Fundamental Rights, the importance of social solidarity is fundamental towards those who are unable to pay a fair fee because of their income conditions. The latter is related to the fact that there are more people in the society who cannot pay their utility bills, including water supplies. There are several aspects of the exercise of solidarity. The task of each legal institution is to provide support with special tools. Some legal institutions are in the area of consumer protection, others can be found in certain areas of the right to an aid.

7.1. Consumer to be protected

Some public utility service providers and the legislator have recognized that there are some consumers who cannot pay the fees of utilities fully or partly. Paying difficulties are usually related to the consumers' social and financial positions. On the one hand, the social situation reduces the possibilities to use public utility services. On the other hand, there is no contractual compulsion in this area, as in the areas of waste removal and chimney services. The legislator has recognized in the electricity and gas supply that creating this category is necessary.

⁵⁷ „Az emberiség közös öröksége elmélete” Raisz 2012b, 158.

⁵⁸ Téglásiné 2017, 80.

⁵⁹ Mehta & Madsen 2005, 154.

Than this legal entity was introduced in the water supply area as well. The purpose of introducing the status called consumer to be protected was to provide special protection in the energy service for people in the most difficult financial circumstances to preserve housing and prevent homelessness. Two categories are distinguished in the range of consumers to be protected. One category of these consumers is the group of people socially in need and the other category is the category of disabled consumers. According to point 29 of § 2 of WUS, the user to be protected is a natural user person, including users with a sewage water meter with an after-water meter and disabled users who, because of the statutory social status, may participate in water supply service because of a differentiated condition. According to the governmental order 58/2013 (II.27.) of the CCIX Act in 2011 about WUS, those natural persons should be regarded as a person socially in need who or whose house-mate: (a) gets old age allowance based on § 32/B of Act III in 1993 about Social management and social benefits (hereinafter Soc); (b) is entitled to the care of people in active age by § 33 of Soc; (c) gets housing allowance based on § 38 of Soc; (d) gets nursing fee based on § 40-44 of Soc; (e) gets regular child protection benefit based on § 19 of Act XXXI in 1997 about Protection of children and guardianship administration (hereinafter Gyvt.); (f) gets housing allowance for three years after deciding about it based on § 25 of Gyvt.; (g) a foster parent parenting child placed under his/her care temporary or permanently in his/her household based on § 54 of Gyvt.; (h) who is in rental relationship with the National Asset Manager based on the Act about ensuring housing for natural persons who are unable to fulfil their obligations originated from a loan contract.

The above list, at first glance, is quite widespread and involves many life situations. However, it should also be noted that some of the listed legal entities do not exist since 1 March 2015 or on referred name. The referred Soc. was modified significantly and as a result, the housing allowance ceased totally in its earlier form. This legal institution was such a financial social benefit that was given by the municipality as a benefit in kind. The entitled persons could mark, which utility bills meant difficulty for them and the municipality transferred the money in the name of the consumers to the public utility services. The Act defined the payment of this benefit as the state's task. This legal institution was totally deleted by the modification of the Act. The municipal support described in § 45 of Soc. includes a similar solution.

Aid may be given as a municipal support: (a) to bear regular housing expenditures; (b) for those who care for a long-term patient of more than 18 years old; (c) to pay for medical expenses; (d) persons accumulating arrears payment linking to housing expenses.

Beyond the above, according to § 45 (2) of Soc, the contribution to the regular expenditures on accommodation specified in (a) should be considered as a housing allowance. On the one hand, giving this support was transformed by the legislator from obligatory function of the state to an alternative function of the municipality. On the other hand, the question arises that can the person who gets housing allowance in the framework of municipal support be called as a consumer to be protected? If we look just the text of the Act, the answer is no, because it refers to the eliminated legal institution, and the new rules are even not mentioned. If we look the practice, the answer is yes.

The application forms of the utility services were analysed by us in our research. In all of the applications examined, housing allowance as a qualifying factor occurs with reference to § 45 of Soc. The reason for this is that there is an implicitly formulated legitimate interpretation in the text of the Act. According to this interpretation, this legal institution takes over the role of the earlier housing allowance. If another Act talks about housing allowance, § 45 of Soc should be automatically understood.⁶⁰

Another group of the consumers to be protected is the group of disabled persons. According to point 30 of § 2 of WUS disabled user is a person who gets disability benefit based on the Act about right of disabled persons and their equal treatment, the person receiving blind person's allowance and the person whose life or health is directly endangered by the suspension or limitation of water supply. The categories of these consumers cannot always be separated sharply. Both groups are the same in many cases. A big part of disabled persons is socially in need. Of course, need and disability should be proved. The provider takes up the entitled persons on the list of the consumers to be protected, if their conditions are certified. These consumers can get special help, which is adequate for their special situation. Socially deprived persons may receive a payment benefit in the form of a payment delay or instalment payment. Disabled consumers should be given special treatment, particularly in situations of measurement, reading, billing and paying methods. If the consumer has the right for the status basis on both titles, he/she may get the right. After registration, the user is obliged to prove his/her protection by 31 March of each year. In the case of fixed-term protection, the user should be exempted from the obligation to certify on 31 March in the defined period of the protection. In the year of the expiry of the protection, the existence of the protection should be proved for the water service provider according to this Act. It is important for these consumers not to get out from the group of consumers because of their social or financial positions or health. The goal in the case of this status is not to stay without supply despite of being unable to pay the fees. This category is a legal institution that provides access to water on a solidarity basis for certain types of persons in need. However, the consumer to be protected status is not only relevant to payment difficulties but also to the consumers' legal obligation to connect to the water and sewage network.

As the quoted list shows the status of consumers to be protected primarily connects to life situations defined in Soc an Gyvt. The incomes of these entitled people do not exceed, or barely exceed the 28500 HUF (ca.90 Euro), which is the minimum amount of full old-age pension. In the case of old age allowance, it gives help for people who reach pension age, but do not have the right to pension. In the case of active age persons, it helps people who are in need and in active age but cannot present in the labour market. The person who nurses a close relative in his/her home is helped by the nursing fee. The person getting nursing fee cannot work over his/her nursing tasks. These people are entitled to a basic amount of money defined in the budget act.

⁶⁰ Tóth 2016, 172.

The hypothetical question of changing nursing fee may arise what is planned from 1 January 2019.⁶¹ As a result, the nursing fee for people nursing their child would be increased to 100 000 Ft/ month. The question is that how this would change the determination of the needs and the status of consumers to be protected, if it will be changed? This brings up the analysis of the question of equal treatment and not just in relation with the question of the right to water, but the right to social benefits as well. In this case both rights are strongly connected. The legislator would make difference between people nursing a child or an adult at home. The person who nurses a child at home would get higher benefits. If the legislator pulls out these persons from the group of consumers to be protected, then it would commit double discrimination. In one case those would be discriminated who would stay at home to nurse an adult patient. In the other case the entitled persons would be discriminated, if the right to water become narrower. In our opinion, increasing the sum of a benefit does not result in the difference of two groups, so the right to water should also be the same. Our latter opinion is quite hypothetical, but we thought it is important to mention it, because there is a big chance for this to arise.

7.2. Ensuring the access to water without a utility service contract

Ensuring the access to water is based on a contract, which is made by the consumer and the water utility service provider. Based on this the question arises that how can a person who does not have a contract access to water? Typically, those are in this case who are needy and cannot fulfil the conditions of being a consumer to be protected. The question is right whether these people will live without supply or not. The basis of this question is that the right to drinking water is also included in the Fundamental Law. Pursuant to Section 57 (11) of WUS, persons who do not have a public utility contract must have access to drinking water through a drinking fountain. The person concerned should be able to access the public drinking fountain within 300 meters, from which you can purchase a minimum of 20 liters per person per day. This connects to the case AJB-5527/2013 mentioned above. The case also includes that Ózd and county of Ózd are one of the poorest areas in the country, so nearly 1,000 households may have no contracts with waterworks. People concerned are primarily considered to be socially disadvantaged in some settled residential environments and most of them are of Roma origin. Based on the Fundamental Law and the rules of WUS, water service providers are obliged to provide service. This service obligation is based on Article XX of the Fundamental Law about the right to physical and psychological health. Accordingly, service providers must ensure that not only contracted consumers, but also non-contracted persons have access to drinking water.

⁶¹ Pap (2018) *100 ezerre emelkedik az ápolásra szoruló gyermekek után járó ápolási díj*, <https://merce.hu/2018/10/11/100-ezerre-emelkedik-a-gyermekek-apolasi-dija-de-mi-lesz-ha-felnonek/> [28.10.2018]

Ensuring the right amount of water and purity is primarily in connection with the right to physical health. The drinking water supply required to meet public health requirements is ensured if the drinking water supply is at least 20 l / person / day within a maximum of 150 meters from the place of residence. In this case, social and public health issues were significantly linked. The closure of the drinking fountains by the city occurred on a day when it was the weather was extremely hot in summer. The city's justification for closing the public drinking fountain was the sudden increase in water consumption and the location of public drinking fountains. The Commissioner for Fundamental Rights classified the measure as indirect discrimination. In addition to the issues of discrimination, it raises the issue of proportionality as well. Proportionality is related to solidarity. The question is always the extent to which solidarity is needed. Can it be measured at all? Proportionality is related to the answer for this question.

Our starting point is that the degree of solidarity is never unlimited. Solidarity is not just a matter of limited action, but of solidarity-sponsored action or opportunities, just like the social security system. The necessity of limitation is never the question itself, but the extent of it. The proportionality of the restriction on the right to water can be paralleled by the exemption rule applicable to breach of equal treatment. § 7 (2) a. of Equal Treatment Act defines⁶² the options for saving. That provision is without prejudice to the requirement of equal treatment which inevitably limits the fundamental right of the disadvantaged party to another fundamental right, provided that the restriction is appropriate and proportionate to the attainment of the purpose. In our opinion, the principle can be applied by analogue way to restricting the right to water. The key to these is proportionality. However, in the present case, proportionality was missing. The right to property claimed by the local government was not proportionate to limiting the right to water and thereby the right to life and physical integrity. In the closing part of our study, we would like to present the relationship between the articles XX and XXI of the Fundamental Law based on the recent decision of the Constitutional Court (CC).

7.3. The practical issues of proportionality and the limitation of the right to water based on the decree 13/2018. (IX.04) of CC

On its special meeting day on 20 July 2018, the legislator accepted the modification of Act LVII of 1995 on water management and deleted setting up private drinking fountains from the list of procedures requiring previous licensing. The text of the Act was sent by the President of the Republic to the Constitutional Court under preliminary norms. The petition of the President of the Republic was based on the right to a healthy environment defined in Article XXI of the Fundamental Law. The motion underlines that, according to the ministry's internal affiliation linked to the amendment to the Act, the aim is to establish a regulation that does not require authorization or notification procedures to run up to a depth of 80 m. Accordingly, a water facility of less than 80 m depth and enough for water supply not exceeding domestic water requirements can be created without special permission and declaration.

⁶² Gyulavári & Kádár 2009, 118–131; Jakab 2016, 79.

The proposal would make the installation of wells, independently of the depth of them, to be licenced if the goal of the well is economic use and/or it reaches the closing layer of a karst. This provision would have broadly guaranteed the right of access to water for the population. If it had not been a personal right, but it would have been possible to create a well free, without limitation and licensing obligations. The Constitutional Court's decision and the petition primarily seeks to limit the access to the right to water to ensure the right to access to water. The limitation of the right to water contained in Article XX is necessary to enforce the right to water through the right to the natural inheritance in Article P and the right to a healthy environment defined in Article XXI. However, the significant risk of loss of quality due to the possibility of denying the consequences of not following the professional and quality standards can directly affect the life conditions of the present generations, not only through Article XXI (1), but Article XX (1), which guarantees the right to physical and mental health and the enforcement of which is guaranteed by the right to access to healthy drinking water by Hungary.⁶³ However, the social element also appears in the conflict between the right to water in Article XX and the right to water in Article XXI. As András Zs. Varga, Judge of the Constitutional Court emphasizes in his separate opinion: “*Although the Constitutional Court has not yet pronounced the fundamental right to access to drinking water, life cannot be imagined without drinking water. Wired drinking water is not available to everybody, and in the absence of this, your own well can be the only water source. In such cases, linking the access to drinking water to permissions is obviously not a constitutional solution.*”⁶⁴ The interpretation of the right to water as a social right assumes that there are not enough financial resources for everyone to finance their access to water. That is why it is important that law also cares about the access to water for those who do not have access to the service on their own. The examination of this question is also important in connection with the well drilling rules. Well drilling is primarily important for people who otherwise cannot get water because there is no public utility or because they do not have the financial resources. Here, firstly, we would like to talk about water consumers who would be non-contracted consumers or would like to supplement the existing water supply because of cost reduction. The question is whether the licensing process would cause disproportionate damage to the residents? We need to start from the point that the construction of wells plays a major role in the water supply of rural settlements and farms. As mentioned above, well can often be an alternative to wireline water. The lack of wireline water often occurs in the poorer regions mainly in impoverished settlements or settlement parts. The municipality often has no money to develop infrastructure.

One of the reasons behind the lack of development is often the payment of social benefits, which takes up a significant part of the municipality's budget. The settlement has little income, there is no industry and other tax revenues. As a result, a significant proportion of locals are considered to be persons in need. Many have no wired water, but many may have a well, which is the only source of access to water. The question, however, is whether licensing is a limitation of the right to water for people in need of such a solution because of their social situation?

⁶³ The Constitutional Court of Hungary, Decision 13/2018. (IX.4.) AB határozat, point 72.

⁶⁴ The Constitutional Court of Hungary, Decision 13/2018. (IX.4.) AB határozat, point 136.

The enforcement of the right to the environment is the commonly formulated counter pole. The deterioration of water bases and their easier contamination⁶⁵ would mean a shortage of possibilities to access to water. Consequently, the restriction of the right to water laid down in Article XX of the Fundamental Law is not a disproportionate restriction on the basis of Article XXI of the Fundamental Law to protect the environment in order to ensure access to water for society. Exercising collective rights affecting most of the society should prevail over the individual's rights in some cases. In the case outlined, licensing well drilling activity does not, in principle, mean a decline in social rights if a significant part of the watercourse can be preserved with it. From a practical point of view, however, it can be possible that it creates disproportions. The disproportion is that many people are required to impose obligations that many of them will not be able to fulfil during the moratorium period. The other problem is the cost of legalizing these wells, which will cost at least 100 000 Ft. This sum is the survival cost of wells licensed earlier. Every sum should be understood per well, so if a person has more wells, he will pay multiple.⁶⁶ The question is important from the aspect that can such a high expense be required from people in need?

8. Summary

The explicit definition of the right to water as a social fundamental right occurred in the text of the Social Pillar at first. However, this approach has been common in its practical use. This is essentially because it is a third-generation right, but by nature it acts as a fundamental social right, which comes from the right to health and is related to communities. The members of the community are those who require social aid. However, the basis for eligibility is not the actual exercise of the right, but the equality of the access to the law. Investigating the concepts of equality, proportionality and solidarity completes the picture. These elements are parts of all social fundamental rights. From this perspective, the nature of the right to water has dual nature. On the one hand, as a third-generation right,⁶⁷ addressees cannot always be defined. As a result, similarly to other third-generation rights, its enforcement is contested. Although, in connection with the right to water, the state's active involvement is also needed. In this context, the notion of the state should be interpreted extensively, it also includes local governments, which traditionally play a major role in social areas, both in terms of organization and financing.⁶⁸ This also comes up in the case of the right to water.

⁶⁵ Raisz 2012c, 378.

⁶⁶ *Százszázakat tart teljes bizonytalanságban a kúttörvénykáosoz*, 2018, https://hvg.hu/kkv/20181025_Betarthatatlan_a_kuttorveny [30.10.2018]

⁶⁷ Szalai & Erdős 2018, 89.

⁶⁸ Szalai & Erdős 2018, 89.

Access to water must be equally guaranteed for everyone, and it should be organized where needed. The state must never aim at aid, but rather on the position of an individual: creating conditions and creating (supporting) communities that can help the individuals to cope with their social difficulties.⁶⁹

And the right to water can be qualified as a fundamental social right on the basis of the above, as there is a need for a significant amount of public investment in this area to try to put people in position by providing the possibility of equal access for them. Analysing domestic and international sources of law, we can say that the right to water is a social fundamental right, just as a third-generation right, derived from its connection to Article XX of the Fundamental Law and the nature of legitimacy outlined above.

⁶⁹ Halász ed. 2018, 258.

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