

György MARINKÁS*
The conformity of Hungary's bilateral water management treaties with the
international and community law**

Abstract

The aim of the study is to introduce and examine the bilateral treaties concluded by Hungary with her neighbouring states on water management and to evaluate them with regard to their conformity with the recent developments of international and community law. In doing so, the author first examined, introduced and summarized the developments in the law on water management and the law to water and sanitation. The author – as a result of his research – came to the conclusion that the above mentioned treaties do not contain the developments and the main principles of the community law or international law. Their revision therefore seems to be an actual questions.

Keywords: water law, Water Framework Directive, bilateral water management treaties

1. Introduction

The aim of the current study is to introduce and examine the bilateral treaties concluded between Hungary and her neighbouring states on water management and to evaluate them with regard to their conformity with the recent developments of international and community law. Having regarded the fact that these treaties were concluded before Hungary's accession to the EU¹ – except for the one concluded with Romania in 2004 –, these treaties do not contain a single reference to community law,² thus they do not contain the main principles of the community law. Similarly they do not reflect the developments occurred in the international law, since their conclusion. Their revision therefore seems to be a current problem.

The author – in order to examine the treaties in all details and to facilitate drawing the conclusions regarding the aspects of the revision – introduces the developments, the water-legislations, the concerning regulation and the main principles of the international and community water-law. Regarding the regulation, the author puts the emphasis on the rules of the community. On the other hand, however, the rich

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¹ The European Economic Treaty – the predecessor of the EU – did not even exist.

² Which, having regarded the date, when these were concluded is a feature not a fault.

European and Hungarian literature render the complex introduction of these topics unnecessary. Thus, the author only introduces them in to an extent, which is needed to the evaluation of the said bilateral treaties. Subsequently, the author introduces the said treaties in the second chapter: *firstly*, summarizing their main characteristics based on the earlier researches and then, *secondly* introducing his own researches and the main conclusions of the research. The latter ones are arranged into nine points, which provide the grounding for the conclusions drawn in the last, concluding chapter.

2. The development of the water right in the international and the EU law

2.1. The main universal and regional multilateral treaties

On the universal level, the Convention on the law of the non-navigational uses of international watercourses³ is worth to be mentioned, which enacted several provisions acknowledged as customary law⁴ by the international community. Thus the convention can be called upon on the non-member states.⁵

The draft law of transboundary aquifers⁶ too, is worth mentioning, which has not yet been enacted, but promises to be suppletory since the legal regulation of this area of water law can be regarded rather neglected on the international level.⁷

On the regional level the Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes⁸ (hereafter: Helsinki Convention) and the Sofia Convention on Cooperation for the Protection and Sustainable Use of the Danube River⁹ (hereafter: Sofia Convention) are worth highlighting. – Both conventions were ratified by Hungary, her neighbouring states¹⁰ and the EU.¹¹ Furthermore several bilateral agreements concluded between Hungary and the

³ UN *Convention on the law of the non-navigational uses of international watercourses* (A/RES/51/229; signed: 21 May 1997, entry into force: 17 August 2014).

⁴ See: International Court of Justice, *Gabčíkovo -Nagymaros Project* (Hungary v. Slovakia), Judgement of 25 September 1997, 85.

⁵ For a more detailed analysis: Raisz 2012a.

⁶ The resolution of the UN GA, 15 January 2009 (A/RES/63/124).

⁷ For more details see: Raisz 2012b; Szilágyi 2013, 100–101.

⁸ Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes (1936 UNTS 269; 31 ILM 1312 (1992); signed: 17 March 1992, entry into force: 6 October 1996).

⁹ Sofia Convention on Cooperation for the Protection and Sustainable Use of the Danube River (signed, 29 June 1994, entry into force: 22 October 1998).

¹⁰ *State parties to the Helsinki and the Sofia Conventions*, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-5&chapter=27&clang=_en [22.11.2018] and <https://www.icpdr.org/main/icpdr/contracting-parties> [22.11.2018]

¹¹ Helsinki Convention (OJ L 186, 5.8.1995, 44–58); Sofia Convention (OJ L 342, 12.12.1997, 19-43)

neighbouring countries refer to these treaties or stipulate their dispute resolution mechanisms to be applied in any case of any possible dispute between the said states.¹²

The positive aspects of the Helsinki Convention – as Anikó Raisz argues¹³ – that it reflects (i) the precautionary principle; (ii) the polluter pays principle; (iii) it covers both the quantitative and qualitative protection of water,¹⁴ that is to say it applies an combinative approach.

On the other hand, its rather general and weak guaranty system can be considered as its mean weakness.¹⁵ The 2003 Protocol to the Convention¹⁶ was adopted in order to correct this insufficiency; however the protocol has not entered into force yet. The Sophia Convention can be regarded as a modern Convention, which main points – as Ede Szilágyi argues – can be summarized as follows:¹⁷ (i) the regulation is based on surface and ground waters of the Danube-basin; (ii) it lays special emphasis on the sustainability, the prevention of the damages and integration. Furthermore (iii) it covers a wide spectrum of the quantitative and qualitative water protection (iv) is not satisfied with the conservation of the already established state, but it strives its enhancement. Last, but not least (v) the whole treaty is dominated by the principles of polluter pays and the precaution. The International Commission for the Protection of the Danube River, hereafter: ICPDR) was established to facilitate the execution of the convention's goals. However this mechanism suffers from several shortcomings too, the ICPDR participated in the elaboration of several integrated water-basin management plans and the Water framework directive.¹⁸

2.2. The right to water and sanitation: the development, the current status and the main principles in the international law

The right of every person to water is a relatively recent development of water law, which is to be found under different names¹⁹ in the international documents and national constitutions. It is not only the name, what is disputed, however; some argue that it cannot be classified based on the classic first-second-third generation rights.

As Ede Szilágyi points out, one of the recent developments is that basic sanitation services are implied to the concept of the right to water.²⁰ This argument is

¹² This issue is to be introduced in more details in the second chapter.

¹³ Raisz 2012b, 152–153.

¹⁴ As the water law of the EU, which to be introduced in the next chapter.

¹⁵ The state parties are not obliged to submit themselves to the judicial dispute resolution methods offered by the agreement.

¹⁶ *Protocol on Civil Liability for Damage and Compensation for Damage Caused by Transboundary Effects of Industrial Accidents on Transboundary Waters* (Kiev, 21 May 2003).

¹⁷ Szilágyi 2013, 99–100.

¹⁸ 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 (OJ L 327, 22.12.2000, 1–73).

¹⁹ Among others: the right to sufficient and continuous water supply, the right to clean/safe water etc.

²⁰ Szilágyi 2015, 41.

proven by the fact that Catarina de Albuquerque – The UN special rapporteur on the human right to safe drinking water and sanitation – mentions the two rights separately in her report.²¹ She argues that treating the two rights separately can facilitate the prevalence of the right to sanitation, which otherwise would be abstracted by the other. Similarly, the resolution of the European Parliament²² mentions the two rights as distinct under the name of: safe drinking water and sanitation.

On the other hand the international documents in force at the moment do not grant the right to water as *sui generis* right: the UN Committee on Economic, Social and Cultural Rights (hereafter: CESCR) grants protection to water via Articles 11 and 12 – the Right to an adequate standard of living and the Right to health – of the International Covenant on Economic, Social and Cultural Rights²³ (hereafter: ICESCR), that is to say it classifies it as a second generation right in its General Comment No. 15.²⁴ The Commission argues that the right to water implies four conditions: adequacy, availability, quality and accessibility. The special rapporteur complemented²⁵ the list with a fifth element: the acceptability,²⁶ which means cultural and religious acceptability. This condition can be found in the GC too, but implied to the other four.

2.3. Water law in the EU: the regulation and the main principles

The extent limits of the current study withhold the author from introducing the regulation of the EU as a whole; instead the author only grants a general overview, including the introduction of the main characteristics of the regulation, which are (i) the important role of the general rules²⁷ and rules of other fields of law;²⁸ and (ii) the importance of the case law of the CJEU²⁹ and the (iii) international treaties.³⁰

The water law of the EU is built on directives, with Articles 191-193 of the TFEU³¹ serving as the background rules. As a result of the directive based regulation, the Member States – in accordance with Article 193, which among others requires the

²¹ de Albuquerque, 27.

²² European Parliament, resolution of 8 September 2015 (2014/2239 (INT)), 10.

²³ International Covenant on Economic, Social and Cultural Rights (United Nations, Treaty Series, vol. 993, 3).

²⁴ CESCR, *General Comment No. 15 on the right to water* (E/C.12/2002/11), 10–12.

²⁵ Or rather deduced it, as *this condition can be found in the GC too, but implied to the above mentioned four*. Szilágyi 2015, 43.

²⁶ de Albuquerque, 35.

²⁷ E.g. Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances (OJ L 10, 14.1.1997, 13–33).

²⁸ Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ L 143, 30.4.2004, 56–75).

²⁹ Lásd: Szilágyi 2013, 115; Szilágyi 2014a; Szilágyi 2014b.

³⁰ See: Szilágyi 2012, 580–581

³¹ Consolidated version of the Treaty on the Functioning of the European Union (OJ C 326, 26.10.2012, 47–390).

notification of the Commission – are entitled to introduce a more strict regulation compared to those adopted according to Article 192.³²

The domestic regulation does not even have to fulfil the criterion of proportionality according to the case law of the CJEU;³³ the only requirement is that the member state cannot accept regulation, which is based on a different type of regulation.³⁴

Until the adaption of the water framework directive,³⁵ the directives applied either: (i) the emission model;³⁶ (ii) the immission model;³⁷ (iii) and the model based on certain polluting activities.³⁸

Among the directives, the current study highlights and introduces the Water Framework Directive in details, which pushed the water law of the EU towards an integrative approach, which devotes attention to the hydrologic cycles. Furthermore, the Water Framework Directive (i) implements water basin management approach instead of the classical territorial units of the member states; (ii) applies a combined approach, which unites the emission and the immission models. It is proven by the fact that good status of waters³⁹ can only be achieved by fulfilling quantitative and qualitative aspects. The directive requires that the states elaborate their programmes of measure within nine years from the entry into force of the directive and to implement it into the practice not later than 12 years. In doing so, the member states have to pay attention to the following principles: polluter pays, cost recovery and that environmental damage should – as a priority – be rectified at source.

The advocate general in the legal dispute concerning Article 9 of the Water Framework Directive summarized the main principles of the directive as follows:⁴⁰ (i) river basin management; (ii) the setting of objectives per 'body of water';

³² Szilágyi 2012, 579.

³³ C-6/03, *Deponiezweckverband Eiterköpfe vs. Land Rheinland-Pfalz case*, 14 April 2005, 64.

³⁴ Szilágyi 2012, 579.

³⁵ 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 (OJ L 327, 22.12.2000,1–73).

³⁶ Directive 2006/11/EC of the European Parliament and of the Council of 15 February 2006 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community (OJ L 64, 4.3.2006, 52–59); 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 (OJ L 372, 27.12.2006, 19–31); and the relevant case law of the CJEU: C-231/97 *A.M.L. van Rooij vs. Dagelijks bestuur van het waterschap de Dommel*, 29 September 1999; C-184/97 *Commission vs. Federal Republic of Germany*, 1 November 1999; C-282/02 *Commission vs. Ireland*, 2 June 2005.

³⁷ 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.

³⁸ Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment (OJ L 135, 30.5.1991, 40–52); Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 375, 31.12.1991, 1–8).

³⁹ The good water status does not mean the same category in every instance.

⁴⁰ C-525/12 *Commission vs. Germany*, the opinion of advocate general Niilo Jääskinen, 22 May 2014, 72.

(iii) plans and programmes with a specific working method and deadlines; (iv) an economic analysis of the detailed arrangements governing water pricing; the integration of environmental costs; (v) and public consultation with a view to increasing the transparency of water policy.

The Water Framework Directive – and the other directives – are supplemented by the communication of the European Commission: A Blueprint to Safeguard Europe's Water Resources,⁴¹ (hereafter: European Water Strategy), which contains proposals for future developments. It has to be mentioned here that the Commission interprets the notion of water services in a wide-scope⁴² contrary to the majority of the member states, including Hungary. Although, when the Commission tried to enforce its interpretation⁴³ in the C-525/12 Case, which concerned Article 9 of the Water Framework Directive, the CJEU dismissed⁴⁴ this interpretation. Nevertheless, it accepted certain parts of it.⁴⁵ The European Water Strategy in accordance with the UN institutions and bodies pays special attention to water, be it horizontal (sectoral) or vertical⁴⁶ (that is to say local, national, regional or international level) decision making. Regarding this, the strategy stipulates that on the one hand the 'water-food-energy-health-environment' connection has to be recognized and acknowledged, on the other hand, that water cannot be regarded as local or regional issue instead of global. In accordance with this, the document proposes to introduce the notion virtual or embedded water concerning the trade of water. The embedded water – just like the water footprint – indicates the amount of water used to produce a given product. Considering the ever growing population of the Earth and the limited amount of water available on the Globe, increasing the effectiveness of water usage is of paramount importance.⁴⁷ The European Commission proposed labelling and certification programmes on a volunteer basis.⁴⁸

The National Water Strategy Plan of Hungary⁴⁹ (hereafter: NWSPH) – which takes into consideration the Water Framework Directive, the European Water Strategy, the international obligations of the Hungarian states and the principles of the Hungarian constitutional law – aims at (i) avoiding water crisis, which threatens the world; (ii) preserving the water for the future generations; (iii) exploiting the economic advantages (iv) providing a decent level of protection from the damages caused by water. The scope of the NWSPH covers every activity connected to water within the boundaries of the state.

⁴¹ EC COM (2012) 673.

⁴² Water-framework directive, 2. cikk 38. pont.

⁴³ C-525/12, *European Commission vs. Germany*, the application of the EC, 9 November 2012, 35–36.

⁴⁴ C-525/12, *European Commission vs. Germany*, judgement of the court 11 September 2014, 61.

⁴⁵ *Ibid*, 56.

⁴⁶ Regarding the latter one, the EC has to pay attention to the principle of subsidiarity.

⁴⁷ Szilágyi 2013, 480.

⁴⁸ EC COM (2012) 673, 18.

⁴⁹ Department of Agriculture (2017) Kvassay Jenő Plan. The National Water Strategy Plan of Hungary, (NWSPH).

– This wide interpretation of water services is in conformity with the concept of the European Commission. – Furthermore the NWSPH stipulates that issues concerning water can no longer be solved by traditional hidro-technical tools: inter-sectoral cooperation and an enhanced level of public awareness are needed. In accordance with this, the document stipulates that the water is a resource and an environmental compartment at the same time, and creates connection between waterflood protection and the utilization of water. The latter scheme means that the post-disaster, reacting protection is gradually replaced by a preventive, deliberative and differentiated water protection,⁵⁰ which *on the one hand* means the harmonization of flood and drought protection – that is to say the storage of water surplus occurring at flood to use it, when there is a shortage in water –, *on the other hand* preparing the people concerned to be able to protect themselves.⁵¹

3. The bilateral treaties concluded by Hungary with her neighbouring states and the conformity of these treaties with the community law and some of its certain principles

3.1. Why the conclusion of these treaties were reasonable?

Water policy is of paramount importance in case of Hungary, since 90% of surface water arrive transborders, and 85 out of 185 ground water bodies are cut by state boundaries.⁵² Having regarded these data it is no wonder that Hungary concluded one or more bilateral agreements with every neighbouring state.⁵³

⁵⁰ The latter requirement is also stipulated by the Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks (OJ L 288, 6.11.2007, 27–34).

⁵¹ NWSPH, 1–6, 10, 57–67, 69–70, 79–82.

⁵² General Directorate of Water Management (2015) Waterbasin Management Plan for the Hungarian Part of the Danube (WMPHPD), 65.

⁵³ Serbia: (1) Convention between the Hungarian People's Republic and the Federal People's Republic of Yugoslavia on water management (08.08.1955). Austria: (2/A) Legislative Decree 32 of 1959 concerning the Convention between the Hungarian People's Republic and Republic of Austria on the water management of border-land; (2/B) Austrian-Hungarian International Agreement No 17/1985 on the environmental protection cooperation. Slovakia: (3/A) MT Decree 55/1978 concerning the Convention between the Governments of the Hungarian People's Republic and the Czechoslovak Socialist Republic on the management of transboundary waters; (3/B) International Agreement between the Slovakian and Hungarian Governments No 17/1999 on the environmental protection and nature conservation cooperation. Croatia: (4) Government Decree 127/1996 concerning Convention between the Government of the Hungarian Republic and the Government of the Republic of Croatia on the water management cooperation. Slovenia: (5) Government Decree 41/2001 concerning the Convention between the Government of the Hungarian Republic and the Government of the Republic of Slovenia on the water management. Ukraine: (6/A) Government Decree 117/1999 concerning the Convention between the Government of the Hungarian Republic and the Government of the Republic of Ukraine on the management of transboundary waters; (6/B) International Agreement between the Ukrainian and Hungarian Governments No 1993/11 on

Having regarded that the topic was processed by several authors earlier, the author of the current writing – before examining the EU conformity of these treaties – summarizes the results of the earlier researches.

Ede Szilágyi in a 2013 study compares the bilateral treaties based on thirteen aspects,⁵⁴ which are briefly introduced by the author of the current study in order to facilitate the further comparison: (i) the majority of these treaties were concluded for a definite period of time, only two of them were concluded for an indefinite time period. The (ii) scope of the treaties mainly covers the boundary waters and (iii) their scope practically covers surface and ground waters, although it cannot be deduced directly in every case and the definitions are also heterogeneous to say the least. Similarly, (iv) neither the definition of transboundary effects was clearly stipulated, nor the requirement regarding it: that is to say whether it requires consultation or prior consent? (v) The treaties include the quantitative and qualitative aspects of water protection – that is to say apply a combined regulation –, although they do it either applying a general or a more specific language. The majority of the treaties (vi) stipulate the obligation of the states to protect the clearness of the boundary waters and to prevent the harmful transboundary effects. They furthermore regulate the (vii) liability for extraordinary damages. The treaties (viii) include provisions regarding floods and inland waters, and several treaties include regulations on the mutual assistance in case of these events. Several treaties (ix) require the obligation to maintain the good status [of waters and the infrastructure]. The treaties furthermore contain provisions on the (x) *exchange of data and information*, or on the *research*, although it is only the Hungarian-Romanian treaty, which contains rules on the latter topic *expressis-verbis*. Some of the treaties contain (xi) unique obligations, depending on what the state parties held important enough to stipulate it in the treaty. Last, but not least (xii) the treaties – except for one of them – created joint commissions to supervise the execution of the treaty and (xiii) contain provisions on dispute settlement and the guarantees of executing the treaties. Regarding the latter one, the treaties rely firstly on the joint committees or inter-governmental dispute settlement; however some of the treaties stipulate the application of the dispute resolution mechanism of the Helsinki or the Sofia Treaties. Neither of the bilateral treaties refers to the obligation of the states to settle their disputes ‘within doors.’⁵⁵ The Raisz – Szilágyi co-authors draw the attention that fulfilling the obligations arising from the EU membership could sometimes hinder the achievement of environment protection goals,⁵⁶ as the *MOX-case*⁵⁷ highlighted.

the environmental protection cooperation. Romania: (7/A) Government Decree 196/2004 concerning the Convention between the Government of the Hungarian Republic and the Government of the Republic of Romania on the protection and the sustainable use of transboundary waters; (7/B) International Agreement between the Romanian and Hungarian Governments No 2001/9 on the environmental protection cooperation.

⁵⁴ Szilágyi 2013, 103–105.

⁵⁵ Independent of this, the states' obligation exist based on Article 344 of the TFEU.

⁵⁶ The proceedings were initiated by the Commission against Ireland before the CJEU because the respondent state strived to enforce its – well-grounded – claims aiming at the protection of the environment. Raisz & Szilágyi 2017, 81.

⁵⁷ C-459/03 Commission vs. Ireland case, 30 May 2006.

Summarizing the above mentioned, these treaties were concluded in completely different social, economic and legal environments,⁵⁸ as a consequence there is a significant difference regarding their scope, their subject and last but not least in their conformity with the recent developments of international and EU law.

A further fact that reasons the supervision of the treaties is that there are several issues regarding the surface waters arriving from the neighbouring countries, which are to be solved and which need international cooperation.

The NWSPH – without aiming to give an exhausting list – names the following: (i) reducing the amount of nitrates and phosphors within the whole Danube-basin; (ii) regulating the usage of the *Lajta-river* and eliminating the contamination of the *Rába-river* and the (iii) heavy metal contamination of the watercourses arriving from Romania. Furthermore (iv) the Rehabilitation of the so called *Szigetköz section* of the Danube river. – The latter one is the legacy of the *Gabčíkovo - Nagymaros case*, the negotiations aiming at the final settlement of the debate is still in progress.⁵⁹ A further treaty, which is under revision, is the Serb-Hungarian treaty.⁶⁰

3.2. The main principles of international and EU waterlaw in the treaties, or rather their absence in the treaties

Summarizing the first chapter, the author identified the following principles and aspects in the international and the EU law, which shall be taken into account during the possible revision of the treaties: river basin management, integrative approach – that is to say taking into account the whole hydrological cycle – and combined regulation, which applies both quantitative and qualitative approach. The principle of polluter pays, rectifying the environmental damage at source and the principle of cost recovery should also be taken into account. The further aspects are: proactive water-flood management, the wide appreciation of water services. – However the latter is not reflected in the secondary sources of the EU, the European Commission is consistent regarding this appreciation, thus one should take it into account as the path for future development. – Last, but not least the obligation to settle the disputes indoor – that is to say before the institutions of the EU – is worth mentioning.

⁵⁸ The most ample examples are the treaties concluded with the former Yugoslavia and Romania, which were concluded with an almost half-decade difference. Furthermore several treaties had been concluded before the Helsinki and the Sofia Conventions entered into force, thus these treaties do not even mention them. This fact does not exclude their application, however. Szilágyi 2013, 102.

⁵⁹ Raisz & Szilágyi 2017. *Már csak egy év, és tárgyalni kezdenek a bős-nagymarosi károkról*, 03.07.2017, https://index.hu/gazdasag/2017/07/03/mar_csak_egy_ev_es_targyalni_kezdenek_a_bos-nagymarosi_karokrol/ [09.11.2018]

⁶⁰ Országos Vízügyi Főigazgatóság, Alsó-Duna-völgyi Vízügyi Igazgatóság (2017) *A magyar-szerb határvízi egyezmény egyeztetésének 2. fordulója*, 10.10.2017, <http://www.aduvizig.hu/index.php/sajto/hirek/433-a-magyar-szerb-hatarvizi-egyeztetesenek-2-forduloja> [09.11.2018]

In the following sub-chapters, the author examines these aspects arranged into nine points.⁶¹

3.2.1. Whether they are based on the water-basins?

Five out of eleven treaties examined by the author, namely the Serbian,⁶² the Croatian,⁶³ the Slovenian,⁶⁴ the Ukrainian⁶⁵ and the Romanian⁶⁶ are based on the water-basins – or apply such a language, which can be regarded as equal to water-basin⁶⁷ –, although in the case of the Ukrainian treaty its not the water-management, but the environment and territorial development treaty, which is based on water-basins. Having regarded that water law of the EU prefers the water-basin management, the author argues that during the course of a possible revision of these treaties, this approach should be implemented.

3.2.2. Integrative approach

There is not a single treaty among the effective ones at present, which is based on an integrative approach. That is to say none of them takes into account the whole hydrogeological cycle. It is only the treaty concluded with Romania, which contains expressions⁶⁸ that can be considered as being close to the integrative approach.

3.2.3. Combined regulation

As mentioned above most of the treaties contain provisions on quantitative and qualitative requirements regarding waters. As an example while the treaty concluded with Serbia applies this combined approach, the treaty concluded with Austria does not mention any quality requirement; it only describes the quantitative ones.⁶⁹

3.2.4. The principle of polluter pays

Only two out of the eleven treaties contain provisions *expressis verbis* on the principle of polluter pays, which can be regarded as a determinant principle of the environmental law of the community.

⁶¹ See the enclosed chart!

⁶² Convention between the Hungarian People's Republic and the Federal People's Republic of Yugoslavia on water management (08.08.1955).

⁶³ Government Decree 127/1996.

⁶⁴ Government Decree 41/2001.

⁶⁵ International Agreement No. 1993/11.

⁶⁶ Government Decree 196/2004.

⁶⁷ The convention concluded with the (former) Yugoslavia uses the expression 'water system' in Section (3) Article 1.

⁶⁸ Point 'J' Section (1) Article 2 of Government Decree 196/2004.

⁶⁹ Section (6) Article 2 of Decree-law 32 of 1959.

While the treaty concluded with Ukraine regulates it jointly with the principle of environmental damage should as a priority, be rectified at source,⁷⁰ the one concluded with Romania contains it under a different article.⁷¹

3.2.5. The principle of environmental damage should as a priority, be rectified at source

This principle is mentioned in four treaties: the water management and environmental protection treaties concluded with Slovakia, and the water management treaties concluded with Ukraine and Romania. The latter one devotes a separate article to the principle.

3.2.6. The principle of cost recovery. How much is it emphasized?

In this field, the bilateral treaties concluded by Hungary with her neighbours are in a lag behind to the recent developments of international law and the community law: none of them contains this principle expressis verbis. Although point 'd' of Article 2 of the treaty concluded with Croatia⁷² refers to the protection of waters against unreasonable utilization of waters, which is one of the aims of the principle of cost recovery, the principle cannot be conducted directly from this provision. Furthermore, none of the treaties contain a single reference to the water footprint, the embedded water or the virtual water, which more or less is meant to indicate the amount of water consumed for the production of a certain good. It is worth mentioning that point 3, Article 2 of the treaty concluded with Slovakia⁷³ refers to the importance of environmental education and the enhancement of social consciousness, which is an important element of the European Water Strategy.

2.2.7. How wide the water services are interpreted

The wide or narrow interpretation of the water services has an importance regarding the cost recovery principle as it was stated regarding the C-525/12 case. Although the current community law applies the narrow approach, the European Commission insists on a wider appreciation,⁷⁴ which suggests that it may be the path of future development. It is only the Serb-Hungarian treaty, which is based on a wider appreciation: energetic questions can also be invoked under its scope.⁷⁵

⁷⁰ Government Decree 117/1999.

⁷¹ Article 8 Government Decree 196/2004.

⁷² Government Decree 127/1996.

⁷³ International Agreement No. 1997/17.

⁷⁴ See the application of the EC in the C-525/12 case.

⁷⁵ Szilágyi 2013, 105.

3.2.8. Is the flood-protection proactive

This requirement is stipulated on the hand in the 2007/60/EC directive,⁷⁶ and also in the European Water Strategy and the NWSPH, which was elaborated with a consideration to the second one.⁷⁷ In this regard, the author found that the majority of these treaties contain provisions on the flood protection, although these provisions have a defensive, reactive character that is to say they contain provisions on the already occurred catastrophic situation. The only treaty, which contains provisions on proactive – EU conform – defense is the one concluded with Romania.⁷⁸

3.2.9. Dispute settlement. Is there a reference to ‘indoor’ dispute settlement?

None of the examined international treaties contain provisions on the member state's obligation to settle their disputes before the EU institutions, moreover, except for the one concluded with Romania none of them contains a single reference to the community law. – Having regarded the time of their conclusion this is rather feature than a fault, however. – Nevertheless in case any dispute should arise between Hungary and one of her neighbouring states, they shall resolve it ‘indoor’, otherwise they would be condemned for the infringement of EU law as it is illustrated by the Mox-case. The author argues that during the supervision of the treaties it would be advisable to stipulate the obligation of settling the disputes indoor.

4. Summary

The author in his study briefly introduced the development of international and community water law and identified the main principles of it. Subsequently, he introduced the main characteristics of the bilateral treaties concluded by Hungary and her neighbouring states and examined whether the principles mentioned above in the writing are present in these treaties. As can be seen from the enclosed chart, these principles are barely present in the treaties or not; without repeating the above written: none of the treaties mention the principle of cost recovery, even the polluter pays principle is mentioned in only two of them. Although the water basin management and the combined approach are more common, it would be reasonable to base each and every treaty on these criteria for the sake of EU conformity.

⁷⁶ Directive 2007/60/EC, Article 7.

⁷⁷ NWSPH, 6, 81.

⁷⁸ Point ‘D’ Section (4) Article 9 of Government Decree 196/2004.

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Aspect/Country	Serbia	Austria		Slovakia		Croatia	Slovenia	Ukraine		Romania	
Code of the treaty	1	2/A	2/B	3/A	3/B	4	5	6/A	6/B	7/A	7/B
1. Water basin management	✓	×	×	×	×	✓	✓	×	✓	✓	×
2. Integrative approach	×	×	×	×	×	×	×	×	×	✓	×
3. Combined approach	✓	×	×	×	✓	✓	✓	✓	✓	✓	×
4. Principle of polluter pays	×	×	×	×	×	×	×	×	✓	✓	×
5. Environmental damage should be rectified at source	×	×	×	✓	✓	×	×	×	✓	✓	×
6. Cost recovery	×	×	×	×	×	×	×	×	×	×	×
7. Wide interpretation of water services	✓	×	×	✓	×	×	×	×	×	×	×
8. Proactive flood protection	×	×	×	×	×	×	×	×	×	✓	×
9. Reference to the obligation of 'indoor' dispute resolution	×	×	×	×	×	×	×	×	×	×	×

Annex: The overview of the bilateral treaties concluded with her neighbouring states by Hungary. The code of the treaties can be found in footnote No. 53