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Natural law aspects for legal regulation of water[**]

Abstract

The change of actual economic, social conditions and internal and external policies of Hungary had a significant impact on the natural condition and water management of Carpathian Basin. The state played an increasingly active role in water management and its legal regulation. The 19th century version of natural law provided a theoretical basis for this role of the state. The merit of this new critical theory of reason was to elaborate the theoretical principles of individual rights and legal regulation of public law derived from them in a coherent system. Special maxims have not been elaborated yet, but the certain parts of natural law concept involve aspects which are related to water as a subject of legal regulation. The state recognizes natural resources, including water, as part of its national wealth. They are subject to legal regulation, according to which the state is empowered to interven in ownership relations of individuals. Natural law lays down the legitimate criteria of this state's intervention. The state, on the one hand, must ensure the protection of private interest, on the other hand, under strict conditions, the public reason also has to be enforced against private interests.

Keywords: natural law, state authority, national wealth, natural resources, public reason

1. Introduction

Legal regulation of water as a result of its diverse nature has not been framed coherently. The problem area relating to water could hardly meet the requirements of homogenous rules, since a number of political aspects, changing environmental, economic and demographic tendencies, and last but not least, the explosive improvement of scientific and technological solutions have a significant impact on the relationship of humanity with water. More and more problems are becoming global issues in the 21st century and the making their legislative framework requires global solution, as well. It can therefore be said, that nowadays the situation came to a comprehensive review and rethinking based on reasonable concepts of water-related legal regulations, particularly the Sustainable Development Goals[1] adopted by the members states of the UN in September 2015, for which water has a key role according to point 6 of the document.

Anna Petrasovszky: Natural law aspects for legal regulation of water – Természetjogi szempontok a víz jogi szabályozásához. *Journal of Agricultural and Environmental Law* ISSN 1788-6171, 2019 Vol. XIV No. 26 pp. 193-218 doi: 10.21029/JAEL.2019.26.193

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[**] *A tanulmány az Igazságügyi Minisztérium jogászképzés színvonalának emelését célzó programjai keretében valósult meg.*

[1] Zlinszky & Balogh ed. 2016, 57.

The need for a comprehensive and coherent legal regulation of water[2] is justified by two further factors. On the one hand, the water can be regarded as an increasingly scarce natural resource by the middle of 21st century – in accordance with the studies of *World Resources* Institute.[3] The global population growth and the technological innovations available for richer and richer societies increase the worldwide demand for water. However, it foreshadows the collisions between different needs, the risk of conflicts becoming global. On the other hand, water – often due to irresponsible activity of mankind – is considered to be a major issue of a number of disasters and harmful events.

In such cases the natural and man-made environment should even be protected against damages caused by water. It is therefore appropriate to consider the water issues together with its environmental concerns, not just its natural resource aspects.

2. The change of water management and its environmental impacts in Hungary until the 19th century

The thousands of years of history of our nation proves the conclusion, that the water managament and its legal regulation shall simultaneously be taken into consideration with its natural, economic, political and social reasons and consequences. After settling in the Carpathian Basin the Hungarians were engaged with the water-preserving water management of complex nature as the study of Bertalan Andrásfalvy[4] pointed out. During the Middle Ages there existed a highly-considered water managament in flood-plains. Our predecessors did not attempt to prevent the sping abundant flooding, but on the contrary, they tried to spread it in a wider area digging fosses of hundreds of meters and canals. As the water receded, the fosses and canals led the water back to the rivers with the growing number of fishes in the flooded areas. Foreigners visiting Hungary noticed how rich our waters were in fish. The flood-plains were dry all the winter, where sufficient feeding was provided for the livestock of population without fodder produced in arable land. During floods the excrement of grazed animals in flood-plain accelerated the formation of biological chain for feeding fish. Forests of fruit trees were planted in the flood-plains, which also favoured the apiculture, and in summer they provided an excellent soil for producing vegetable. The large water area kept for a longer period was beneficial for the microclimate of the area, so a significant drought did not have to be anticipated. All this assumed a biophilia of high level, primarily an advanced handling of water.

[2] Recognising the importance of demand for these problems the Hungarian Academy of Sciences launched its National Water Research Programme in 2016, *"the purpose of which is to provide the scientific base of National Water Strategy (Jenő Kvassay Plan) of the Hungarian Goverment and to put water science researches in the focus of international forefront. The principal goal is to elaborate a multidisciplinary and practice-oriented water science research programme, as well as to strengthen the institutional basis and international relations, and to support the integration of relevant science workshops and databases"* Hungarian Academy of Sciences 2016.

[3] World Resources Institute 2018.

[4] Andrásfalvy 2013, 1313–1321.

doi: 10.21029/JAEL.2019.26.193

This complex agricultural practice declined from the 13th century onwards as a result of change of the external economic conditions and external and internal political circumstances. The Hungarian gray cattle began to become a sought-after commodity in Western Europe, which made the involvement in producing goods for external markets more and more profitable exceeding the previous, subsistence, self-sustaining nature of agriculture. The role of pasture in treeless flat country began to be appreciated instead of groves, forests and orchards. The gradually worsening internal political conflicts from the beginning of the 13th century accelerated this process, when weakening of the central state authority the feudal lords fought against one another ravaging one another's land. It had been culminated by the era of Turkish occupation from the 16th century, which led to the depopulation of the central parts of the country, the destruction of agricultural practices and the desolation of huge area of the Great Plains. Moreover neglecting water management resulted in paludification in other areas. Several villages specialised for self-catering disappeared and the population was crowded into market towns. The lucrative production of goods was concentrated on expropriated large-scale holdings in Royal Hungary.

By means of the Urbarium of 1767 issued by Maria Theresa the structure of agricultural holdings disadvantageous from an economic point of view was consolidated de jure, as well. By virtue of this legal regulation the expropriation of forests for arable area formerly possessed by the community of peasants took place. The main exploitation of remaining forests with their dense plantations of trees of the same age and breed suitable for growing straight tree trunks was represented by the industrial production of wooden goods. In such forests the near-ground vegetation was reduced. On the one hand, it meant less amount of food for farm animals. On the other hand, due to the deforestations and changing nature of plantantion of trees the rainwater reached the rivers in a shorter time causing floods in spring and autumn, and drought in summer. It gradually claimed the need for flood defence and solution of agricultural irrigation. The prosperity of industrially growing cereal crops and their selling at foreign markets required the construction of the network for waterway transport. It is not by chance, the matter of canalization, redrawing the map of water area of the Great Plains and the development of irrigation canals proved to be one of the crucial national economic issues in the 19th century. All this led to the cessation of flood plain management.[5] The claim for water regulation is shown by the fact that whereas the legal regulation regarding water hardly ever appeared in our laws in the course of the former centuries, however, in the years of 1800's, especially in their last third, the Hungarian Parliament established acts referring to water issues.[6]

[5] Andrásfalvy 2013, 1313–1321.

[6] Act 4:1840, Act 10:1840, Act 38:1840, Act 13:1867, Act 1:1868, Act 10:1870, Act 19:1870, Act 25: 1868, Act 34:1870, Act 19:1871, Act 21: 1871, Act 39:1871, Act 40:1871, Act 11:1874, Act 43:1876, Act 25: 1879, Act 34: 1879, Act 35:1879, Act 21:1880, Act 39:1880, Act 40: 1880, Act 61: 1881, Act 7: 1882, Act 26: 1882, Act 14: 1884, Act 35:1884, Act 8:1885, Act 15:1885, Act 23:1885, Act 27:1885.

doi: 10.21029/JAEL.2019.26.193

3. Natural law as the foundation of the state coordination of rational management

From the 16th century onwards the issue of the effective management of state was brought to the focus of ideas seeking explanations for social phenomena. Natural law researching self-organizing mechanism took a strong racionalistic turn from the 17th century. In this process, in view of the ideas of enlightenment, it created a specific version known as the law of reason doctrine by the turning point of the 19th century, which became a synonym for the theoretical jurisprudence.[7] By this nomination it referred to the fact, that contrary to the former natural law based on racionalism in its strict sense '*the source of rights are provided by their ethical justification'*,[8] and that can be concluded by pure reason by means of formal logic. The law of reason doctrine approving the '*moral turnaround'* by Immanuel Kant derived the source of rights not from human instincts, but it started from the premise that human being is able to control himself as a rational being, and in consequence he is ethically responsible for his deeds.[9]

The natural law approach focuses on man. Principles and system tools of it serve the improvement of the living conditions of man by means of recognizing and distinguising the morally correct from the incorrect. In the moral aspect natural law considers man to be able to differentiate the legitimate from the illegitimate. Therefore, the issue is not what he can do within the scope of natural rules and his physical abilities, but what it is allowed to do, in other words, what he should do on the basis of reason.[10]

Natural law elaborated its theoretical conclusions for the practical application from this new aspect, in which it attributed a prominent role to public management in the public interest. It strived to reveal the principles of operating rationally organized state based on an up-to-date legitimate legal order. Therefore, the state as a political community demanded an important role in managing economic, social and political processes. It also elaborated its theory in accordance with the fact on what basis the state interferes in the economic and private matters of individuals. The realization of public good was considered to be the central idea, for which the state was endowed with extensive power. It was also willing to ensure the private interests, however, it tried to comprise the diversified private interests along community goals. All this assumed the organisation and operation of a modern public administration.

The merit of this new critical theory of reason was to elaborate the theoretical principles of individual rights and legal regulation of public law derived from them in a coherent system. This natural law trend rooted in the Hungarian legal philosophy in the first decades of 19th century, as well as it is available in the contemporary legal

[7] cf. Szabadfalvi 2011, 1–13.
[8] Balogh 2015, 13.
[9] Bayer 1998, 157.
[10] "*Si igitur quaeratur de jure, et injuria, non quaeritur, quid possimus, h. e. quid juxta leges physicas per vires naturales valeamus, sed quid liceat nobis, h. e. quid nobis juxta leges rationis competat.*" Szibenliszt 1820, 1–2., cf. Kant 1991, 325.

doi: 10.21029/JAEL.2019.26.193

literature written in Latin.[11] Special maxims have not been elaborated yet, but the certain parts of natural law concept involve aspects which are related to water as a subject of legal regulation.

4. The concept of ownership of natural resources

The beneficial water management from the viewpoint of the common goods envisaged by natural law cannot do without the clarification of issues concerning the ownership of water, therefore a coherence between private and public interests is needed to be created. In the system of natural law, the legal institutions originally based on individual legal institutions are explained and derived from them, expressing the convictions that „*all rights of civil society can be derived from the rights that originally belonged to an individual*".[12] Amongst the individual rights, the ownership possesses one of the most decisive features, which is considered to be an essential legal institution in relation to the disposal over water.

Natural law among individual rights draws a distinction between inherent rights and acquired rights, the first category of which is characterized by formal equality of rights and inalienability, amending the previously mentioned statement with the issue, that in case of the type of inherent rights, that can be materialized, the possibility of alienation is provided.[13] Regarding the acquired rights, the acquisition of rights shall be conditional, since by this our competencies can be extended, and simultaneously the rights of others are restricted. Acquired rights contain entitlements which entitle man on the basis of the accomplished fact. Therefore, the ownership can be classified in the category of acquired rights, and it is defined by natural law as a right of driscretional disposition over substance of a certain thing and benefits originated from it.[14]

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[11] Literature in Latin used in the study are as follows: Carl Anton Martini: *De lege naturali positiones in usum Academiarum Hungariae, Pars Theoretica,* Budae, Typis Regiae Universitatis, 1795, Carl Anton Martini: *Positiones de iure civitatis in usum auditorii Vindobonensis*, Vindobonae, Typis Ioann. Thom. nobilis de Trattern, 1779., Francisci Nobilis de Zeiller: *Jus naturae privatum*, *Editio Germanica tertia Latine reddita a Francisco Nobili de Egger*, Viennae, apud Car. Ferdinandum Beck, MDCCCXIX (1819)., Franz Edlen von Zeiller- Franz von Egger: *Das natürliche öffentliche Recht, nach den Lersätzen des seligen Freyhern C. A. von Martini vom Staatsrechte, mit beständiger Rücksicht auf das natürliche Privat-Recht des* k. k. Hofrathes Franz Edlen von Zeiller/von Franz Egger, Wien und Triest: Geistinger Band 2., 1810., Szibenliszt Mihály: *Institutiones juris naturalis, conscriptae per Michaelem* Szibenliszt, Tomus I. Jus naturae extrasociale complectens, Jaurini, Typis Leopoldi Streibig, 1820., Szibenliszt Mihály: *Institutiones juris naturalis conscriptae per Michaelem Szibenliszt* Tomus II. Jus naturae sociale complectens, Eger, 1821., Virozsil Antal: *Epitome juris naturae seu universae doctrinae juris philosophicae*, Pest, Typis Josephi Beimel, 1839. – Interpretation of Latin texts is based on the translation of author of the study.

[12] Strauss 1992, 132.

[13] "*Formale jus (personalitatis) est necessarium, inalienabile […] E contra omne materiale jus connatum est contingens, alienabile. […] Ideo etiam haec [jus]aequitatis non est per se subsistens jus, sed potius proprietas omnium jurium connatorum.*" Szibenliszt 1820, 53., cf. Zeiller & Egger 1819, 55.

[14] "*Acquirere jus significat, nostram juris sphaeram ampliare, et aliorum restringere. Quod nisi velimus esse injusti, nonnisi supposito quodam facto fieri potest; hinc jura acquisita sunt, quae homini competere sola ratione*

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Interpretation of ownership as an acquired right does not mean that it would not be regarded as a fundamental right.[15] It cannot be interpreted as an inherent right because if we were to do, anyone could use anything arbitrarily as his own property. In contrast, on the ground of ownership it is the owner who has the right to use the matter by excluding anyone else.[16] Natural law examines ownership from the viewpoint of acquiring it, and in this context the examination of original acquisition – as legitimity of which all derivative ownership is based on – is of primary importance.[17] It prescribes three classic conditions for original property acquisition: 1) the objective acquirability, i. e. thing should be acquirable without prejudice to the rights of others; 2) seizing upon (*apprehensio*) subjectively, i. e. having regard to the acquiring subject, and finally 3) the indication of it (*signatio*) to the outside world.[18]

Natural law proves the interpretation of ownership as a fundamental right, origin of which is not derived from the state, it can exist regardless of it.[19] Only the state, however is able to provide the security most effectively where the ownerwhip can be enforced relatively scot-free. The protection provided by the state proves to be even the most effective that guaranteeing perfect safety by the state is an utopian goal.[20] To create a relativly safe existence the state has the duty to prescribe and ensure the legitimate way of acquisition and protection of ownership by means of appropriate acts.

Nevertheless, this obligation of state does not mean that the state wouldn't be able to limit the enforcement of ownership in the public interest, the reason of which has been traced back to principle of *Salus rei publicae* as the supreme law. According to natural law the idea of the legally protected freedom of citizens may be originated from this supreme law, which empowers all citizens to pursue their aims freely and legitimately until they threaten the objective of state, i. e. the aim of the whole

intelliguntur proposito quodam facto, et systematica eorumdem expositio est objectum juris hypothetici naturalis.[…] Inter jura acquisita primum est jus dominii, quod est objectum juris hypothetici naturalis" Szibenliszt 1820, 65., cf. Zeiller & Egger 1819, 76–78.

[15] "*Verum igitur est titulum originariae acquisitionis subjective consideratum remote in jure personalitatis proxime vero in jure connato rebus utendi situm esse*" Szibenliszt 1820, 78., cf. Zeiller & Egger 1819, 76–78.

[16] "*Jus dominii non esse connatum, sed acquisitum, patet. Nam jus dominii cum juribus connatis stat in contradictione: quia vi jurium connatorum quilibet qualibet re externa pro arbitrio uti potest, vi juris dominii autem dominio competit jus omnes reliquos ab usu rei excludendi.*" Szibenliszt 1820, 76., cf. Zeiller & Egger 1819, 78.

[17] "*jam ideo […] quia in originaria justa existentia derivativae acquisitionis sita est.*" Szibenliszt 1820, 70.

[18] "*Itaque tria sunt requisita originariae acquisitionis dominii: 1-um est objectivum, ut nempe objectum immediate sit acquiribile, quin aliorum jus violetur, 2-um et 3-um est subjectivum, quia subjectum acquirens spectat, nempe apprehensio, et signatio.*" Szibenliszt 1820, 81.

[19] "*Ideo certum est omne dubium circa talia signa nonnisi in Civitate per determinatas dispositiones tolli posse; at propterea non sequitur „jus dominii ex effectu societatis civilis esse derivandum, societas enim civilis dominii titulum non creat, ut Rousseau erronee docuit, sed societas civilis dominium tantum conservat, et tuetur.*" Szibenliszt 1820, 81.

[20] "*an jus dominii sine Civitate satis securum foret? Respondemus plene convicte cum adversariis nostris, tantum in Civitate verum, securumve dominium dari posse, quamvis etiam in Civitatibus omnimoda securitas haberi non possit.*" Szibenliszt 1820, 81.

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community. This is the basis of the natural law doctrine that the freedom of citizens to act can only be restricted by the state in the public interest. Individuals, therefore have their own authority, own freedom to act, protection of which is the responsibility of state.[21]

Natural law considers all those natural resources, regardless of their ownership, as the assets of state (*bona civitatis*) that can serve as suitable instruments for the purposes of state. Natural law considers all those natural resources, regardless of their ownership, as the assets of state that can serve as suitable instruments for the purposes of state. Natural law in the sphere of division of things adopts a special categorisation regarding the goal of state. Goods considered as natural resources (*bona civitatis*) can be owned either by persons (*bona propria*), or can temporarily belong to no-one as free-standing goods (*bona iacentia*), i. e. they exist as assets no logner at disposal of certain persons in the territory of state. The latter category is not completely covered by the scope of term *res nullius*, i. e. nobody's thing. Thus, the free-standing goods in the territory of state cannot be occupied freely by anyone. Such goods cannot be the subject of original acquisition, because the territorial sovereignty of state (*ius territoriale*) refers to them. The goods in someone's ownership can be owned privately (*bona privata*) or by the public (*bona publica*). According to further differentiation among public goods there are some that belonge to the community thought, they are still used by individuals, such as rivers, river banks, montains, roads, etc. Goods, however, which are not used by individuals but all citizens are entiled to them are called as patrimonial wealth of state (*patrimonium civitatis*). Public buildings, public spaces, lakes, and mines etc. are regarded as such by natural law. This latter group of goods is allocated to the category by natural law, that is generally referred to as treasury wealth (*bona Camerae*), and it is considered in monarchial states as crown wealth (*bona coronalia*), and in republics as national wealth (*bona nationalia*).[22]

In order to attain the objective of state, i. e. for the sake of sate's welfare, the state power extends to both free-standing and public goods in the territory of state and even more in some cases for public interest the state may still claim for private goods. The regulation of disposal over natural resources, such as water and land ownership, in accordance with the above stated, is determined by the community approach of the state. However, the enforcement of it falls into competence of the effective governance.

[21] "*proinde singulus habet suam juris spheram, cujus protectio toti Civitati incumbit (§ 47.). Cum porro in omni societate per commune bonum ipse finis societatis, quatenus obtinetur, et per salutatem publicam non impeditus progressus ad finem societatis obtinendum intelligatur, clarum est, cur fini Civitatis, vel jurium securitati commune bonum, vel salus publica substitui possint.* "Szibenliszt 1821, 64.

[22] "*Haec etiam bona Camerae, in monarchicis Civitatibus bona coronalia, in republicis bona nationalia appellantur*" Szibenliszt 1821, 177., cf. Martini 1779, 57., Zeiller & Egger 1819, 165–166., Virozsil 1839, 366.

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5. Ius emines as the theoretical basis of state intervention in ownership relations

The natural resources, including waters in their natural forms are cosidered by natural law regulation of ownership as the environmental values relevant for the community of state. These values – regardless of their ownership – from the viewpoint of the state are regarded as assets (*bona in civitate, dominium nationale*), for the sake of conservation, enhancement and consumption of which natural law provides particular legal instruments for the state which must be enforced in exercising effective governance.

Natural law regards the principle of purpose limitation as the major characteristic feature of the effective governance. State as the supreme political entity exclusively possesses the fundamental right according to which it defines the tools needed to achieve its goal by applying the valid legal order and it is entitled to enforce them.

It requires the measures which allowe the state to govern all persons effectively under its territorial jurisdiction. It requires the measures which allowe the state to govern all persons effectively under its territorial jurisdiction.[23]

Ownership is also interpreted by natural law as a tool for achieving goals of man, rather than an end of it. The system of ownership - derived from freedom as a legal institution – is guaranteed by the state, its main objective is to grant freedoms, therefore to protect ownership. The state is able to fulfill this defence function with legitime practice of appropriate regulatory and restrictive instruments granted for it. In order to achieve it, the state based on its territorial authority (*ius territoriale*) disposes of the ownership over its national assets and state function as an owner is exercised as public authority (*imperium*). Accordingly, relations of the ownership in the territory of state are regulated by the state in the interest of public. Regarding the principle *summum ius, summa iniuria*, the unlimited ownership is not to be acceptable. Therefore, the public good - including the private interest of others to be protected – requires the restriction of ownership in certain cases. This is the supreme power of state (*ius eminens*), and it is derived from the ownersip of state based on its territorial authority, it is also called the eminent domain (*dominium eminens*). The attribute of eminent expresses the dual tendencies of the state authority. On the one hand, it refers to the peculiar, overcoming all other authories and power-based character of the state in its territory as the *maxima societas*, on the other hand, to the exceptional opportunity of exercising this power.

For the reason that the primary duty of state is to grant the undisturbed practice of civil rights, the intervention of state in private relations can only be taken place on an exceptional (*eminens*) basis, in preference of public interests. General interest objectives, which can be related to the legal regulation of water, are primarily explained with regard to the police power of the state (*ius politiae*) by natural law of the early

[23] "*Civitati essentiale Imperium civile* […] *est jus media ad finem Civitatis jure valido determinandi, et exequendi* […] *h. e. actiones omnium subditorum ad communem securitatem pro arbitrio dirigendi, et cum hae directio in suo exercitio etiam Civitatis gubernatio vocetur* […]. *Eum [imperium civile] tot juribus gaudere, quot necessaria sunt ad finem Civitatis assequendum.*" Szibenliszt 1821, 166–167., cf. Martini 1779, 18., Zeiller & Egger 1819, 49.

doi: 10.21029/JAEL.2019.26.193

19th century. According to its interpretation, the police power of the state is aimed at determining the measures and their application which – moreover, they are suitable for the protection and increase of private property – are able to guarantee an adequate living standards for citizens.[24] In addition, this state power indirectly serves defence of the security of state and the removal of counteracting forces.[25] The particular tasks are categorized by natural law concepts in the interest of three objectives: 1) ensuring the basic needs for living (*ius politiae respectu rerum necessariarum*), 2) providing the useful goods (*ius politiae respectu rerum utilium*), and finally 3) guaranteeing the pleasure of pleasant pastime (*ius politiae respectu rerum iucundarium*).

The part of certain measures taken for this purpose are aimed at promoting these goals, and the others must be applied to remove barriers of public goals.

In order to enforce public interests grouped in the above-defined categories – taking the legal regulation of water in consideration – natural law of that time presents the following duty and entitlements of the state:

Regarding the basic needs for living the provision of healthy water supply, the safe organisation of sanitation and wastewater management, and the prevention of accidents and incidents treathening them. They relates to the measures that are suitable for preventing and eliminating flooding and other water-related disasters, crimes and acts of terrorism. The provision of healthy water supply for everyone is served by the public price control applied (*ius rerum pretia levia reddendi*), as well as the social measures taken for most deprived persons (*ius egenis prospiciend*). Regarding the health care considered to be basic necessity there exist measures taken for the benefits of therapeutic or health purpose of water use. By promoting the profitalbe activities the supports the prosperity of agriculture (*ius agriculturam promovendi*) including the provision of water used for irrigation, the protection against damages caused by flooding and groundwater, as well as, their mitigation. Regarding the support of industrial production (*ius opificia perficiendi*) the issues of industrial use of water should be regulated.

The state measures referring to the meaningful use of leisure time (*ius civium iucunditati*) are aimed at guaranteeing citizen's moral character, social relationship, intellectual life and recreation and leisure opportunities at an appropriate level. It refers to promoting constructions based on both public and private initiatives for this pupose. Regarding water, for example, establishing swimming pools and other water sports complexes should be taken into consideration.

In the interest of the objectives stated above, besides the fact that the state can provide specific support and incentives for its citizens, it can restrict their freedoms in an exceptional (*eminens*) way. The state power extends to all the matters which, on the one hand, can be suitable tools for achieving public goals, for public necessity, on the other hand, to the ones which hinder the achievement of this goal. Therefore, *ius eminens* covers such things in the state territory, the possession of which in private

[24] Martini 1779, 158.

[25] "*Haec notio convenit cum recentiorum notion, qui Politiam definiunt, esse complexum remediorum, quibus securita […] promovetur.*" Szibenliszt 1821, 158–159., cf. Zeiller & Egger 1819, 163–167., Virozsil 1839, 329–335.

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hands undermines the realisation of public objectives, so by means of withdrawing them from the private property they become necessary and useful for achieving of public goals.

In addition to the public interest, the principle of gradualness should be of primary importance in the field of opportunity reserved for the state. By practicing this opportunity the state is expected to keep the principle of graduality.

In this regard, the *ius eminens* may refer to whole substance of private wealth, but in specific cases it may relate to the requisition of personal service, such as military service in the event of war or enforcement of doing personal service in catastrophic events, for example in flood prevention. Therefore, this right is regarded as *ius supereminens* by the contemporary scientific literature referring to the fact that it involves the personal and material capability of citizens.[26]

Considering the fact that this state action may drastically restrict the rights of citizens, when exercising it the state should meet certain requirements as follows: 1) It can only be practiced for the purpose of state and it may only take place, if it seems to be the only effective tool to achieve the state goals. Consequently, based on the principle of graduality, as far as the goal of state can be achieved by more gentle means, this right may not be exercised. 2) The legal base for exercising this right can only be an emergency situation or achievment of a greater benefit for the community. Ultimately howerer, there cannot be more reasons than state's interest, as well as public welfare (*ratio status*). 3) Persons whose property or personal service was concerned by *ius eminens* should receive fair compensation (*resarcitio damni)*.[27]

6. Other legal means of state: *ius financiale, ius tributi*

The state is endowed by natural law with additional legal means relating to private ownership for the effective management of its economic life. The financial authority of state (*ius financiale*) as well as the right of taxation derived from it, as opposed to *ius eminens* referring to substance, i. e. capital of wealth – they exclusively extend to the income of private fortune.[28] Systematic and structuring theory

[26] "*Quare dominium eminens res subditorum proprias versatur; potestas vero eminens in personas exercetur. Utrumque venit nomine juris eminentis, supereminentis, quia super jura, ac dominia privatorum omnia eminet*" Szibenliszt 1821, 189–190., cf. Kautz 1871, 164., Martini 1779, 62., Virozsil 1839, 376–377., Zeiller & Egger 1810, 230–231.

[27] "*Conditiones, sub quibus justum exercitium juris eminentis agnoscitur, sunt sequentes: 1) Exercitium juris eminentis tantum propter finem Civitatis fiat; […] 2) Si super bonis, vel personalibus praestationibus unius vel aliquorum pro bono Civitatis per Imperantem disponatur, iis, qui praecipuo onere gravati fuerunt, simus ac finis Civitatis admittit, resarctito damni fieri debet […] 3) In solo statu necessitatis, vel majoris cujusdam utilitatis reperitur sufficiens ratio, ex qua jus eminens intelligi possit, quae ratio justifica, seu principium juris hujus cum ratio status adpelletur, dicere possumus, jus eminens in ratione status fundari.*" Szibenliszt 1821, 152–153., cf. Martini 1779, 62., Zeiller & Egger 1809, 232–234., Virozsil 1839, 379–383.

[28] "*Modus, quo potestas financialis in bona privata exerceri potest, est duplex: nempe vel quad quaedam solum consectaria, vel quoad ipsam horum substantiam. […] Si potestas financialis in consectaria bonorum privatorum exerceatur, jus tributi sensu lato nominari potest*" Szibenliszt 1821, 186., cf. Martini 1779, 60–61., Zeiller & Egger 1809, 226., Virozsil 1839, 371.

doi: 10.21029/JAEL.2019.26.193

of 19th century natural law concept also indicated that taxes are different depending on what purpuse they are imposed and what activities the taxable person refer to, and to what extent they are considered to be necessary.

Natural law defines the purpose of taxation to provide material resources necessary for the operation of state (*ad sumtus publicos*). In so far as the required amounts for the purpose of the state are not available, the means necessary for it have to be provided by citizens.[29] The financial power of the state, however, can only be enforced to such an extent as far as it is justified by state's needs which cannot be covered by public purse.

There is a specific kind of taxation when it is based on and justified by beneficial ownership (*ususfructus*) related to public goods, i. e. using a thing without spoilage of its substance. Taxes with those characteristics is nominated *vectigal*, and the right related to it is named *ius vectigalis*. In practice wildely used contributions of that nature are the charges to be paid for the use of roads, bridges, markets and in special regard to natural waters for the use of rivers, maritim straits and ports (*maris vectigal*), or fees liable for natural water resources. Today such a *vectigal*-type of contributions is considered to be the fees to be paid for the pressure and private use of natural environment, for example the fees for pressure on the groundwater. The contributions by the name of *taxa* are classified into a separate category by natural law theory, they include fees chargeable for receiving service provided by public costs. According to this classification, in case the state or municipalities are responsible for drinking water supply as well as treatment of waste water, the fees for them should be considered to be a type of tax (*taxa*).

The general principles of legitimate exercise regarding the tax policy of state are summarised in five points by contemporary natural law theorists: 1) The extent of contribution to public spending shall correspond to whatever is the necessary extent of expenditure. 2) In the case of the extraordinary expenditure of state – in line with the principle of expropriation relating to the substance of private property – by the cessation of the necessary cost claims, the obligation to contribute to public costs on account of private property should be removed. 3) The contributions of citizens shall meet their material conditions, therefore anyone earning more profit has to contribute more to public spendig, since those that are better-to-do can enjoy more benefits from public goods. The nature of equality of all citizens requires that both the richer and the poorer have to take part collectively in realizing the common goals. In order to ensure state's objectives in the most effective manner, the richer should be more involved in achieving it. 4) Since the consumption of citizens depends on the extent of their contribution, it is appropriate to impose less demand on the poor, considering the basic needs for living. 5) No person on his own, or from his own position, whether a native-

[29] "*Si illud, nulla est justa ratio, ob suam privati ad partem suorum bonorum suppeditandam adstringi, et Imperans potestatem financialem exercere posset: contra si hoc, potestatem financialem jure exercet in bona privata.*" Szibenliszt 1821, 184., cf. Martini 1779, 59–60., Zeiller & Egger 1819, 223–224.

doi: 10.21029/JAEL.2019.26.193

born or a legal resident, has any exemption from the financial power relating to private assets.[30]

7. Summary

The facts stated above clearly reveal that, in the field of water issues, the change of actual economic, internal and external political and social conditions of Hungary had a significant impact on natural conditions and water management of the Carpathian Basin.

It was the state that played an increasingly active role in water management and its legal regulation. The law of reason version of natural law served as a theoretical basis for it in the first half of 19th century. The merit of this version of natural law is that it elaborated the individual rights and principles of public regulation derived from them. Special maxims have not been elaborated yet, but certain parts of natural law concept involve aspects which may be related to water as a subject of legal regulation. Natural resources including water were considered by the state as the part of its national wealth. Regardless of their ownership they are treated as subjects of legal regulation whereby the state by the virtue of *ius eminens* is empowered to intervene in the ownership relations of society.

[30] "*Ex dato principio, et fine potestatis financialis in bona privata fluunt sequentes ejusdem justi limites: 1) mensura praestationum cum necessitate erogationum congruat; […] 2) Cessante necessitate erogationum praestationes quoque adoleri debent; […] 3) Praestationes sint pro ratione facultatum civium; […] 4) Quatenus pro mensura praestationum consumptio civium eligitur, eatenus rebus ad vitam necessariis, velut pani, carni, lignis, quam minima onera, contra iis, quae soli commodati, et voluptati inserviunt graviora imponatur, […] 5) In se, et natura sua nulli civi, sive sit persona physica, sive moralis competit immunitas a potestate financiali quoad sua bona.*" Szibenliszt 1820, 185–186., cf. Martini 1779, 60., Zeiller & Egger 1809, 224–226.

doi: 10.21029/JAEL.2019.26.193

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