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Water Management in the Republic of Slovenia (Historical Overview and Current Regulations)[2]

Abstract

This paper undertakes a detailed examination of the historical development and present-day regulatory framework governing water management within the Republic of Slovenia. It traces the evolution of water governance from the socialist system to the emergence of a legal and institutional framework oriented towards sustainability and environmental protection. Particular attention is afforded to pivotal legislative developments, notably the post-1991 shift to a market economy following Slovenia's attainment of independence, the subsequent privatisation of public enterprises, and the adoption of the 2002 Water Act (ZV-1). A milestone of considerable legal and constitutional significance was the 2016 amendment to the Slovenian Constitution, whereby the right to access to drinking water was elevated to the status of a fundamental human right—thereby reinforcing the principle that water are to remain subject to public authority and may not be surrendered to private dominion.

The analysis further elucidates the respective competences of the state and local communities in the governance of water resources, public utilities, and concession-based service delivery. It explicates the legal mechanisms governing the supply of potable water, the maintenance of water infrastructure, and the authorisation of special water use through permits and concessions. Furthermore, the study addresses the societal and legal ramifications of public opposition to privatisation initiatives, as demonstrated by the 2021 referendum in which Slovenian citizens overwhelmingly rejected legislative amendments that could have paved the way for commercial exploitation of water resources. In conclusion, the Slovenian legal order is shown to embody a robust commitment to the preservation of water as a public good, safeguarding its availability and equitable distribution for both current and future generations.

Keywords: Water Management, Sustainability, Environmental Protection, Drinking Water, Water Rights, Concessions, Public Good, Referendum, Natural Resources

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Introduction

The legal regulation of water management occupies a position of paramount importance in modern society, as it ensures the sustainable use, protection, and conservation of water resources. As the very wellspring of life, water must remain accessible to all, and the obligation to guarantee its availability is a duty we owe to future generations. Therefore, one of the principal tasks of modern water management legislation lies in securing the rational and prudent use of water in such a manner as to preclude the diminution of this vital resource for those yet to come. Yet, the sustainable management of water forms but one facet of a broader approach to environmental protection. Consequently, the legal regulation of water management is inextricably bound to the fundamental principles of environmental protection.

This responsibility does not rest with the state alone; it is likewise incumbent upon each individual to contribute—through conscientious conduct and deliberate choices—to the achievement of shared goals. This applies in particular to the actions of individuals that directly concern all forms of water use. Consequently, modern water management regulations must not only set forth the parameters within which water may be used but must also impose users the corresponding obligations to maintain both the quality and quantity of water resources. Moreover, such legislation must provide for protective measures to shield water bodies from contamination and degradation.

Modern water management legislation should further promote an integrated approach to the management of aquatic ecosystems—one that duly considers the interdependencies between water, land, and biodiversity. Central to this is the concept of ecosystem services, which recognises that ecosystems confer valuable certain goods or benefits upon humanity, and they do so in interaction with human capital, social communities (social capital), and the environment (built capital). Crucially, this concept highlights nature itself—natural capital—as a generative force, akin to other forms of capital, with an intrinsic capacity to furnish services to society.[3] Collectively, these elements of the legal framework ensure that water management is firmly aligned with the aims of sustainable development, environmental protection, and socio-economic justice.

3 | Gantar 2021, 10.

1. Historical Context

1.1 Regulation of Water Management Before the Independence of the Republic of Slovenia

Within the former Socialist Federal Republic of Yugoslavia (SFRY), a particular concept of socialist regulation emerged, grounded in the notions of social ownership, united labour, and socialist self-management. In the field of municipal activities, special decision-making bodies called self-governing interest communities (*samoupravne interesne skupnosti* – SIS) were established. These bodies were instituted across various areas of general interest, and each SIS included representatives of providers of specific services of general interest—such as companies or organisations of associated labour in the field of water management[4]—alongside delegates representing service users, and members of the broader socio-political community.

In the socialist context, public utility enterprises were precluded from functioning according to entrepreneurial logic. Rather, their activities were subject to the determinations and directives of the competent SIS, whose resolutions governed essential aspects of utility operations. These included the formulation of developmental guidelines, the establishment of general service provision conditions, the standards for assessing service quality, and other matters deemed to fall within the general interest. The remit of the SIS was both extensive and multifaceted, encompassing culture, science, healthcare, agriculture, railway transport, electricity supply, water management and municipal services, as well as postal and telephone services.[5] The SIS system reached its final form after the adoption of the 1974 Constitution of the SFRY and the subsequent enactment of the 1976 Act on Associated Labour.[6] Owing to excessive institutionalisation, this system failed to remedy the manifest deficiencies and inefficiencies in the operation and provision of services of general interest. On the contrary, it rendered their governance increasingly convoluted, opaque, and, in the ensuing years, verging on the ungovernable.[7]

Following Slovenia's transition to independent statehood, the Republic of Slovenia was governed in matters of water management and water infrastructure

4 | Economic activity was carried out by legal entities in a proprietary partnership, which for a certain period of time were called companies, and later organisations of associated labour.
5 | Prinčič 2014, 68.
6 | Compare this with other ex-Yugoslav ways of dismantling the SIS system and the various methods of compensation: Ernst & Josipović 2024, 103–133; Karakamisheva-Jovanovska 2024 227–250.
7 | Prinčič 2014, 69.

primarily by the Fundamental Water Act (*Temeljni zakon o vodah* – TZV)[8], which served as the principal legislative instrument in this domain. The cornerstone of the TZV was the recognition of water as a good of general importance, classified as social property and capable of being utilised to meet both general and individual needs (Art. 1 TZV). The concept of social property was a hallmark of the socialist legal order inherited from the former Yugoslavia. Social property, under that regime, essentially meant the denial of private ownership by individuals of certain assets. However, social property could not be wholly equated with state property. Theoretically, social property belonged to all working people and citizens, who managed social property through self-governing organisations. In practice, these self-governing organisations could acquire the right to use individual items within social property. Such a right of use was defined as exclusive and conferred upon its holder de facto powers of possession comparable to those enjoyed under private ownership. In exceptional instances, this right could also be granted to private individuals or legal persons governed by private law, thus extending the functional domain of social property beyond collective structures.[9]

Although the TZV operated as a federal law applicable across the entire territory of the Yugoslav federation, the Republic of Slovenia, within its delegated legislative competence, adopted its own Water Act (*Zakon o vodah* – ZV),[10] which supplemented the TZV. This Act provided more detailed regulations regarding water and water infrastructure management and is therefore of greater significance. The ZV remained operative following Slovenia's declaration of independence and the transition to a market-based economy, until the adoption of the current Water Act (ZV-1)[11] in 2002.

Pursuant to the provisions of the ZV, natural watercourses, natural lakes, natural springs, coastal seas, public wells, and water lands were deemed social property. Additional categories, including certain water resources and coastal lands, were also subject to legal regulation. While coastal land could be either socially or privately owned, the rights of private proprietors were not absolute. Indeed, even privately owned coastal land was encumbered by public obligations: owners were obliged to permit the implementation of all water management

8 | Official Gazette of the SFRY, Nos. 13/65, 50/68, 60/70 and 29/71, Official Gazette of the Socialist Republic of Yugoslavia, Nos. 51/71 and 16/74, Official Gazette of the SFRY, No. 22/74, Official Gazette of the RS/I, No. 1/91 – UZITUL.

9 | It should be noted that the establishment of private law legal entities was limited.

10 | Official Gazette of the SFRY, Nos. 38/81, 29/86 and 32/89, Official Gazette of the SFRY, No. 83/89, Official Gazette of the Republic of Slovenia, Nos. 42/89 and 5/90, Official Gazette of the Republic of Slovenia – old, Nos. 8/91 and 10/91, Official Gazette of the Republic of Slovenia, Nos. 15/91 and 17/91 – ZUDE, Official Gazette of the Republic of Slovenia, Nos. 4/92, 55/92 – ZVDK, 13/93, 32/93 – ZGJS, 29/95 – ZPDF, 52/00, 2/01 – CC dec. and 67/02 – ZV-1.

11 | Official Gazette of the Republic of Slovenia, Nos. 67/02, 110/02 – ZGO-1, 2/04 – ZZdrI-A, 10/04 – CC dec., 41/04 – ZVO-1, 57/08, 57/12, 100/13, 40/14, 56/15, 49/20 – ZIUZEOP, 65/20, 65/20 – ZPKEPS-1D, 80/20 – ZIUOOPE, 152/20 – ZZUOOP, 112/21 – ZIUPGT, 187/21 – ZIPRS2223, 35/23 – CC. dec., 78/23 – ZUNPEOVE, 95/23 – ZIUOPZP, 131/23 – ZORZFS and 52/24 – CC dec.

measures on their land (Art. 69 (1) ZV) and, above all, to ensure that everyone could access water (Art. 2 (1) ZV). Of particular note is the 1982 ZV's express recognition of the primacy of drinking water, which was accorded precedence over all other uses and forms of exploitation of water resources (Art. 2 (3) ZV), thereby foreshadowing later constitutional and statutory developments affirming water as a basic human entitlement.

Within the field of water management, a series of priority tasks were articulated, chief among them being the regulation of the water regime to provide protection against flooding and erosion; the safeguarding of water reserves and quantities; the preservation of water quality; the monitoring of the status of water systems; the oversight of the construction of water management structures and installations; the direction of interventions and other arrangements in watercourses and natural water reservoirs; the maintenance of natural watercourses and other natural water reservoirs as well as water management facilities and installations in general use; and the collection and processing of data relevant to water management. Under the socialist regime, these tasks were centrally coordinated through the SIS. However, after the transition to a market economy, responsibility for these tasks was devolved to local communities and the state. The execution of services in the water management sector was entrusted to labour organisations established at the level of local communities. In the socialist system of united labour, labour organisations operated as enterprises in accordance with the then-applicable legislation. The linchpin of the Yugoslav socialist system was workers' self-management: labour organisations (companies) were governed by workers' councils, whose members were elected by the company's employees. These councils exercised all essential managerial functions, including the appointment of the management bodies, and were expected, in the exercise of their competences, to give due regard to broader social interests. This expectation was especially acute in the area of municipal services, where adherence to the decisions and other legal instruments adopted by the SIS was mandatory.

Beyond setting out provisions on water management organisation, the ZV also prescribed conditions governing the use of water resources. Pursuant to Article 45(1) ZV, any alteration of the water regime resulting from water use, water exploitation, or the discharge of polluted water or substances that contaminate water, as well as the construction and reconstruction of water management and other facilities and installations, and other interventions in natural or artificial watercourses and water lands that may alter water quantity, quality, spatial or temporal distribution, or change conditions on water and coastal lands, required the prior acquisition of a water management consent or permit. This requirement applied to both labour organisations and private individuals.

A *water management consent* was specifically required for the construction or reconstruction of water management facilities or installations, as well as for other facilities or installations that could influence the natural or artificially established

water regime. The competent authority for issuing such consents was the relevant local community body, or, in the case of larger and more significant installations, the responsible state ministry (Art. 48 ZV). A *water management permit* was likewise mandatory for water use and for discharging wastewater, refuse, or any other substances capable of polluting water or altering the water regime. The issuance of such permits was similarly entrusted to either local authorities or the competent state ministry, depending on the magnitude and significance of the intervention concerned.

1.2 Independence of the Republic of Slovenia and Privatisation of the Economy

Water management was among those spheres in which the advent of a new state and the establishment of a new legal system necessitated a different approach from that developed under socialist self-management. While it must be recognised that certain fundamental objectives—such as the protection and sustainable use of water resources—remained substantially unaltered, the legal framework required a thorough overhaul. This entailed the introduction of new legal concepts as well as the revival of institutions that had been abolished under the previous regime.[12]

With the proclamation of independence in 1991, Slovenia not only asserted its political sovereignty but also marked the definitive cessation of the socialist economic system, reintroducing a market economy. One of the most significant processes immediately following independence was the privatisation of labour organisations (companies) that had conducted various activities based on socially owned assets.

Privatisation in Slovenia proceeded on diverse legal bases and through various methods. Nonetheless, the unifying feature across all forms of privatisation was the transformation of socially owned labour organisations (enterprises) into commercial companies. This transformation was codified in the enactment of the Companies Act (*Zakon o gospodarskih družbah* – ZGD)[13] in 1993, which set out the forms and methods of governance of legal entities engaged in economic activities. The Act, closely modelled on the German legal system, established limited liability companies and joint-stock companies as the principal corporate forms. Its transitional provisions required all existing enterprises to bring their internal organisation and operations into conformity with the Act. Most labour organisations (companies) within the water management sector underwent transformation into either limited liability or joint-stock companies.

A particular hallmark of these newly constituted companies was was the treatment of their capital structure. The share capital of such companies was no longer

12 | See, in more detail, Pličanič 1997, 1302.
13 | Official Gazette of the Republic of Slovenia, No. 30/93.

ascribed to a specific individual or legal person as the bearer of partnership or shareholder rights, but was held in an abstract form as social capital. This capital, formerly regarded as a collective societal asset, was to be gradually privatised and distributed among designated eligible parties. The determination of such eligible beneficiaries and, in particular, the methods of allocating business stakes in limited liability companies or shares in joint-stock companies were regulated by special privatisation legislation.

Most of the former labour organisations (companies) in Slovenia were privatised under the general model introduced by the Ownership Transformation of Companies Act (*Zakon o lastninskem preoblikovanju podjetij* – ZLPP).[14] Under this model, each enterprise was required to determine the total amount of its social capital. In the majority of instances, this capital was classified entirely as social in nature. However, there were cases in which a portion had been contributed by private investors prior to privatisation or was earmarked for owners whose capital shares were expropriated under socialism (denationalisation).[15]

The decision regarding the method of privatisation lay with the enterprise's governing body, which at that stage continued to function as a representative assembly of all employees. Before implementation, however, the programme required the formal approval of the state authority designated for such matters, namely the *Agency for Restructuring and Privatisation of the Republic of Slovenia*.

The greater part of enterprises possessing social capital were converted into joint-stock companies, issuing shares representative of that capital which were subsequently allocated among the eligible recipients. Of particular note, 40 per cent of all shares were earmarked for general purposes and transferred to state-established funds or investment companies. Of these, 10 per cent of the shares were transferred free of charge to the Compensation Fund—a statutory fund established pursuant to denationalisation regulations to pay compensation for property confiscated without adequate grounds during the socialist era. A further 10 per cent of the shares were similarly transferred without charge to the Pension and Disability Insurance Capital Fund. The remaining 20 per cent was reserved for Authorised Investment Companies.

A hallmark of the Slovenian privatisation model was the issuance of ownership certificates, to which all citizens of the Republic of Slovenia were entitled. These certificates could be exchanged directly for shares in a joint-stock company or invested in an Authorised Investment Company, which would pool and convert such certificates into shares via special competitive procedures.

As for the remaining sixty per cent of social capital, its privatisation was governed by the specific provisions of each enterprise's privatisation programme. Virtually all companies included an internal share distribution programme, typically

14 | Official Gazette of the Republic of Slovenia, No. 7/93.
15 | See, in more detail, Vlahek & Damjan 2024.

covering 20 per cent of the issued shares, in which only current and former (retired) employees could participate by exchanging their ownership certificates for shares. The purchase price of shares was lower in the internal distribution scheme, thereby encouraging employee ownership. The remaining shares could be sold or transferred to a special Development Fund of the Republic of Slovenia. Sales were effected either for cash or in exchange for ownership certificates, and were conducted through a public tender or public auction to ensure that share prices were determined by market demand. Any shares that remained unsold following the conclusion of this process, together with all ownership certificates and cash proceeds derived therefrom, were transferred without charge to the Development Fund. Shares acquired through ownership certificates were subject to a mandatory *lock-up period* of two years, during which they could not be sold or otherwise alienated.[16]

For labour organisations (enterprises) engaged wholly or partly in the performance of public utility functions, general rules po privatisation. Pursuant to the Services of General Economic Interest Act (*Zakon o gospodarskih javnih službah* – ZGJS),[17] such services include, inter alia, those related to energy, transport and communications, communal and water management, and the management of other types of natural resources and environmental protection (Art. 2 ZGJS). Based on the old and still valid ZV, the entire field of water management—from the supply of drinking water to the regulation and maintenance of natural watercourses—was regarded as a service of general economic interest. The ZGJS also provided a special method of privatisation for companies operating public utility activities.[18]

Unlike the general system of privatisation provided for by the ZLPP, the legal rules on privatisation under the ZGJS did not prescribe a uniform procedure for the transformation of all social capital. Instead, the social capital of enterprises engaged in the performance of public service activities was divided into three distinct categories. The first category comprised infrastructure facilities, devices, or networks, as well as mobile and other assets used for the performance of public utility services. These infrastructure assets were transferred into the ownership of the state or the competent local community (municipality), depending on he manner of their acquisition or financing (Art. 76 ZGJS). Under the ZGJS, only infrastructure that had either been transferred free of charge to public service providers or created from self-governing funds was subject to nationalisation. The second category encompassed social capital provided to companies through the system of self-governing interest communities. This capital, following an appraisal of the relevant investments, became the ownership share of the state or local

16 | For more information on the method of ownership transformation, see Pečenko (1993) and Tinauer (1993).
17 | Official Gazette of the Republic of Slovenia, Nos. 32/93, 30/98 – ZZLPPO, 127/06 – ZJZP, 38/10 – ZUKN and 57/11 – ORZGJS40.
18 | See, in more detail, Juhart 1993, Bohinc 1993 and Markovič 1993.

community in the commercial companies—namely, limited liability companies or joint-stock companies—formed through the transformation of the original labour organisations.. The third category comprised all residual social capital not falling within the scope of the preceding two. This capital was then transferred via one of the methods prescribed by, and following the procedures set out in, the Ownership Transformation of Companies Act (ZLPP). In practice, however, this route was rarely employed. In the field of water management in particular, privatisation under both the general and special regimes was virtually non-existent. Companies were reorganised into commercial companies whose ownership shares (equity) were held exclusively by public legal entities, primarily local communities. Parallel to the privatisation process, the Republic of Slovenia also undertook a comprehensive reform of its local self-government system, significantly increasing the number of local communities (municipalities). Today, most water management companies are jointly owned by multiple local communities, with each share determined through negotiations carried out as part of these local government reforms.

1.3 Conclusion

In the Republic of Slovenia, the water management sector remained largely insulated from privatisation following the transition from a socialist system to a market economy. Throughout this period, the public interest in the sector was consistently upheld. A special Act (ZGJS) applied to companies providing public services, stipulating particular privatisation rules. Water management infrastructure became state-owned or local community-owned, depending on funding arrangements. Equity in the newly formed commercial companies were allocated to public legal entities, predominantly local communities. Moreover, reforms to local self-government influenced the ownership structures of water management companies, with ownership shares being determined by mutual agreements among the various local communities involved.

2. Other Specificities and Characteristics of the Legal Regulation of Water Management after the Independence of the Republic of Slovenia

The legal framework governing water management in the Republic of Slovenia has continuously ensured that the public interest is taken into account. This outcome has been achieved primarily through the transfer of water infrastructure into the ownership of the state and local communities, coupled with the transformation of socialist-era water management companies into commercial companies owned by these public entities. The Constitution of the Republic of Slovenia has also played a

substantial role in shaping this framework. Upon its adoption in 1991, the Constitution highlighted the special importance of natural resources and national assets. Article 70 of the Constitution addresses these two fundamental aspects in the following manner:

> "Article 70 (National Assets and Natural Resources)
> Special rights to use national assets may be acquired, subject to conditions established by law. The conditions under which natural resources may be exploited shall be established by law. The law may provide that natural resources may also be exploited by foreign persons and shall establish the conditions for such exploitation."

A key legal consequence arising from this constitutional provision is the obligation of the legislature to regulate legal relationships concerning the use of goods of particular societal relevance. Accordingly, Article 70 is inextricably linked to other constitutional provisions governing property rights and their limitations, as well as those relating to the protection of nature and the safeguarding of a healthy living environment.

Pursuant to the *Water Act* (*Zakon o vodah* – ZV) and its successor, the *Water Act* (*ZV-1*), the majority of water resources and water management infrastructure were accorded the legal status of public goods. Nonetheless, some uncertainty remained as to whether at least some water resources could be considered natural resources. In this context, the 2016 amendment to the Constitution assumed particular significance. The newly introduced Article 70a supplements Article 70 of the Constitution and reads as follows:

- Everyone shall have the right to drinking water.
- Water resources shall constitute a public good administered by the state.
- Water resources shall serve the priority and sustainable supply of the population with drinking water and water for household use, and shall not constitute marketable goods in this respect.
- The supply of the population with drinking water and water for household use shall be secured by the state through self-governing local communities, directly and on a non-profit basis.

Numerous factors underpinned the need to amend the Constitution to introduce a specific right to drinking water, encompassing aspects of environmental protection, social policy, public health, and the economy. Prior to the constitutional amendment, Slovenia had experienced financial pressures from international institutions—collectively known as the Troika, comprising the European Central Bank, the International Monetary Fund, and the European Commission. There existed a tangible risk that, in return for financial support, Slovenia would be compelled to liberalise its services market and privatise water management undertakings, including the provision of drinking water. Analogous developments

had been observed in other financially vulnerable countries (Greece, Spain, and Portugal). These concerns were further heightened by the proposed EU Directive on the award of concession contracts, which would have required the mandatory publication of any concession award with a value equal to or exceeding five million euros—a threshold that could encompass contracts for the supply of drinking water.[19]

A working document prepared as the basis for amending the Slovenian Constitution identified numerous other examples of external pressure and attempted transfers of water management responsibilities from the public to the private sector. Despite some opposition,[20] a high degree of consensus was reached in Slovenia on the proposed constitutional amendment. Incorporating the right to water into the Constitution is particularly significant in light of the likelihood of ongoing or future pressures from financial institutions and international corporations to liberalise drinking water supply and subject it to market dynamics. Given that Article 3a of the Slovenian Constitution grants EU legal acts (regulations, directives) primacy over domestic legislation, including statutes, the legislature considered that legislative protection alone would prove insufficient. Constitutional protection was thus deemed necessary, although in the EU's political and legal environment, even constitutional safeguards cannot always be guaranteed to prevail.[21]

The newly enacted Article 70a of the Constitution is situated within the chapter on economic and social relations, reflecting the breadth of its content, which extends beyond the recognition of a right to drinking water. In addition to affirming that everyone has the right to drinking water, it provides that water resources shall be a public good managed by the state, shall serve the priority and sustainable supply of the population with drinking water and water for household use, and shall not be marketable commodities in this respect. Furthermore, the responsibility for ensuring such supply is vested in the state, which is to discharge this duty through self-governing local communities, directly and on a non-profit basis.

In light of the challenges posed by climate change, Slovenia may, in future, be required to devise water supply strategies that facilitate the collection of water during periods of abundance and its distribution during times of drought.[22] Such strategies may involve the construction of artificial reservoirs, dams, embankments, and other man-made drinking water storage facilities. It was therefore necessary to protect all water resources at the constitutional level as public goods. Concessions for the economic use of certain water resources already exist, such as mineral springs and sources used for bottling. However, the constitutional amendment unequivocally states that water resources are primarily intended for the

19 | Proposal 2015.
20 | Avbelj 2016.
21 | Ude 2017, 8.
22 | Ude 2017, 12.

sustainable supply of the population with drinking water and water for household use, and that they are not marketable goods in this respect.[23]

By recognising the right to water as a fundamental human right, the state has assumed the duty and clear obligation to preserve natural resources, including Slovenian waters and water resources, for future generations. Ensuring the sustainability of water resources for the population necessarily entails implementing measures that enable future generations to have access to quality drinking water. This includes proactive efforts to prevent and reduce pollution, protect the environment, and act proactively to safeguard water.[24]

3. Applicable Regulations and Supervisory Regime

3.1 Applicable Law

Within the hierarchy of legally binding sources, Article 70a of the Constitution occupies a position of paramount authority. It not only enshrines the right of access to drinking water as a fundamental human right, but also prescribes, in clear terms, the principles by which essential services—most notably water supply—are to be provided.

In response to the constitutional amendment, the legislature undertook a comprehensive review and adaptation of the statutory framework to ensure full conformity with the new constitutional mandate. At a systemic level, the principal enactments are the Environmental Protection Act (*Zakon o varstvu okolja* – ZVO-2)[25] and ZV-1, both of which have been subject to frequent amendments, including changes introduced following the constitutional amendment by Article 70a. These legislative reforms reflect the State's acknowledgement of its constitutional obligations concerning water rights, the protection of water resources, and the modalities of public service provision.

The Water Act (ZV-1) serves as the primary instrument through which the Republic of Slovenia transposed 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 into Slovenian law. In addition, ZV-1 implements a number of other directives within the broader *acquis communautaire* pertaining to water management.[26]

Beyond sector-specific legislation, attention must also be drawn to several general statutory provisions relevant to the governance of public water services.

23 | Ude 2017, 12.
24 | Ude 2017, 12.
25 | Official Gazette of the Republic of Slovenia, Nos. 44/22, 18/23 – ZDU-1O, 78/23 – ZUNPEOVE and 23/24.
26 | These directives are listed in Art. 2 (4) ZV-1.

The ZGJS classifies water supply and some other water management activities as public utilities. This means that companies that carry out this activity are subject to certain special corporate governance rules. Under Slovenia's system of state administration, responsibility for water supply lies with self-governing local communities. The tasks of local communities are further detailed in the Local Self-Government Act (*Zakon o lokalni samoupravi* – ZLS).[27] The undertakings entrusted with water supply and certain ancillary water management functions are, in most cases, the legal successors to former socially owned enterprises. Ownership of these undertakings was transferred to local communities pursuant to the provisions of the ZGJS. The management of local community shares in these commercial companies is regulated by the Public Finance Act (*Zakon o javnih financah* – ZJF).[28]

3.2 Water Management

3.2.1 Starting Points

Under the prevailing statutory framework, the management of water and riparian lands encompasses water protection, water regulation, and decisions regarding water use (Art. 1 (2) ZV-1). In line with the core tenets of environmental law, the governance of water and riparian areas is guided by a set of fundamental principles enshrined in Article 3 of the Water Act (ZV-1), namely:

1. The principle of integrity, which takes into account natural processes and water dynamics, as well as the interlinked nature and interdependence of water and riparian ecosystems within a river basin;
2. The principle of long-term protection, promoting the safeguarding of water quality and the rational use of available water resources;
3. The principle of protection from water-related harm, recognising the need to shield human populations and their property from adverse hydrological effects, whilst respecting natural processes;
4. The principle of reimbursement of costs, associated with water burdens;
5. The principle of public participation, enabling public involvement in the drafting of water management plans;
6. The principle of applying the best available techniques and new scientific knowledge, regarding natural processes.

27 | Official Gazette of the Republic of Slovenia, Nos. 94/07 – official consolidated text, 76/08, 79/09, 51/10, 40/12 – ZUJF, 11/14 – corr., 14/15 – ZUUJFO, 11/18 – ZSPDSLS-1, 30/18, 61/20 – ZIUZEOP-A, 80/20 – ZIUOOPE, 62/24 – CC dec. and 102/24 – ZLV-K.
28 | Official Gazette of the Republic of Slovenia, No. 11/11 – official consolidated text, 14/13 – corr., 101/13, 55/15 – ZFisP, 96/15 – ZIPRS1617, 13/18, 195/20 – CC dec., 18/23 – ZDU-1O and 76/23.

Primary responsibility for the stewardship of water, and of water and riparian lands, lies with the state—understandably so, as most water resources span multiple local communities and are of broader public interest. Consequently, certain water management functions are statutorily designated as public services, to be performed exclusively by the State. These include:

1. The operation and maintenance of water infrastructure intended for the conservation and regulation of water quantities (Art. 81 (3) ZV-1);
2. The operation, maintenance, and monitoring of water infrastructure for protection against the harmful hydrological effects (Art. 93 (1) ZV-1);
3. The implementation of emergency measures during periods of heightened risk from the harmful hydrological effects (Art. 95 (1) ZV-1);
4. The implementation of emergency measures following a natural disaster caused by the harmful hydrological effects (Art. 96a (1) ZV-1);
5. The maintenance of water and riparian lands (Art. 98 (1) ZV-1);
6. The supervision of water protection measures (Art. 177 (1) ZV-1).

Notwithstanding the State's dominant role, local self-governing communities also bear specific responsibilities, most notably the provision of drinking water to the population. This competence derives directly from Art. 70a of the Constitution and is reaffirmed in several legal provisions (e.g., Art. 21(2) ZLS and Art. 233 (1) ZVO-2). The supply of drinking water to the population is thus designated as a local economic public service.

The implementation of core water management services may be illustrated by reference to three representative examples, each grounded in applicable legislative provisions. The first concerns the supply of drinking water to the population, a function explicitly enshrined in the Constitution as the primary responsibility of local self-governing communities. This service must be delivered as an economic public service. The second example involves water management services for maintaining water bodies and coastal lands, which is the responsibility of the state. In practice, the State has opted to discharge this responsibility by granting concessions, thereby delegating these duties as an economic public service. The third example pertains to the use of water resources for individual purposes, which is subject to the prior acquisition of a water right. Any natural or legal person who meets the conditions specified in the law or its implementing regulations can acquire a water right through a special procedure. These conditions primarily concern the ability to use and exploit water and are independent of personal characteristics. Only in exceptional cases are financial non-compliance or violations of environmental regulations considered grounds for exclusion. There exists no justification for distinguishing between locals and foreigners in establishing these conditions.

3.2.2 Implementation of Public Utilities in the Field of Water Management

Where legislation stipulates that a given activity must be performed as an economic public service, the provisions of the ZGJS apply. This Act regulates the form and manner of performing economic public services. Public services aim to provide material public goods—whose continuous and uninterrupted provision is assured in the public interest by the Republic of Slovenia, a municipality, or another local community— particularly in cases where market mechanisms are insufficient to satisfy such needs (Art. 1 ZGJS). In delivering public goods, the pursuit of profit is subordinate to the imperative of fulfilling public needs.

Economic public services may only be delivered through legally prescribed organisational forms: a public utility unit, a public utility institute, a public undertaking, or by concession. A public utility unit is organised within a local community as a legal entity and forms part of the local community's administration. A public utility institute is utilised for performing one or more public economic services that, by their nature, are not intended to be profit-driven. Due to their particular characteristics, these forms are not typically used for water management services.

The most prevalent model for delivering public services in Slovenia is through a public undertaking. A public undertaking is a commercial entity, typically structured as either a limited liability company or a joint-stock company, with shareholdings held by both the local community and the state. It is estimated that the majority of public services in the Republic of Slovenia are provided through public undertakings.[29] Public undertakings, as legal entities, are governed by specific rules outlined in the ZGJS, which operates as a *lex specialis* vis-à-vis the general corporate provisions of the ZGD-1. Only the state or a local community may establish a public undertaking. In addition to the corporate rights derived from ownership stakes as outlined in the ZGD-1, the founder of a public undertaking possesses special founder's rights as specified by the ZGJS. These include the power to impose specific conditions concerning the performance of activities, and the provision, use, and pricing of public goods (Art. 26 ZGJS). A fundamental distinction exists between founder's rights and capital rights: founder's rights are retained in full by each founding local community, irrespective of its shareholding, whereas capital rights correspond to the proportion of ownership held in the company. All founding local communities possess these rights equally, and decisions falling within the scope of founder's rights must be adopted by mutual consent, ensuring collective agreement on the execution conditions, service provision, and pricing of public goods.[30]

29 | Prodan 2015, 617.
30 | Judgment and decision of the Ljubljana Higher Court I Cpg 743/2020 of 2 February 2021.

The current legislation of the Republic of Slovenia contains no explicit prohibition on the alienation of a local community's ownership stake in a public undertaking. The ownership shares of a local community are deemed financial assets that the local community must manage in accordance with the law (Art. 67 (1) ZJF). The municipal council, as the highest representative body of the local community (Art. 29 (2) ZLS), bears overall responsibility for the management of these financial assets. The specific exercise of management rights arising from ownership shares in public companies is undertaken by the local community's administrative body responsible for finance.

In exercising these management rights, the local community is, in particular, required to: ensure the coordination of work programmes and financial plans of public undertakings, supervise their operations and the implementation of their programmes and borrowing, exercise its rights at general meetings, and propose members to the management bodies of commercial undertakings, such as the supervisory board (Art. 71 (1) ZJF). The disposal of ownership shares in public companies is, however, permissible only where the competent authority has adopted a decision that the public interest in holding the financial investment has ceased (Art. 73 (3) ZJF).

That said, in the field of water supply activities, such disposal is constitutionally impermissible. Article 70a of the Constitution obliges municipalities to provide water supply through a prescribed method of service provision. In respect of other water management services, however, such a possibility could exist, provided that a legal act is first adopted exempting the activity from the system of economic public services, or reclassifying it as a service deliverable by concession. In such circumstances, the sale of the capital investment would need to be included in a special resolution of the local community council, and the disposal itself must proceed via a competitive public tendering procedure. At the time of writing, no instances were known in which local communities had divested their shareholdings in public undertakings active in the field of water management.

The provision of a public service by granting a concession entails the transfer by the state of responsibility for the delivery of that service to a private-law entity engaged in economic activity. A concessioned public service is performed by a concessionaire (a private-law entity that provides a public service) in its own name and for its own account, based on the authorisation of the grantor (the entity awarding the concession—the state or a municipality).[31] Concessions are typically awarded through a public tender process, which ensures the selection of the most suitable concessionaire. The grantor adopts a concession act specifying the conditions and manner of providing the concessioned public service. Upon the selection of the successful tenderer, the legal relationship between the grantor and the concessionaire is formalised by mutual agreement in the form of a concession contract.

31 | Prodan 2015, 617.

3.2.3 Supply of Drinking Water to the Population

The supply of drinking water constitutes a mandatory local economic public service, meaning that each municipality or city municipality bears the responsibility for ensuring the availability of drinking water throughout its respective territory. This arrangement is consistent with Article 70a(4) of the Constitution, which mandates that the supply of the population with drinking water and water for household use must be ensured by the state directly through self-governing local communities, and on a not-for-profit basis.[32] At the national level, this obligation is implemented through a subordinate regulation—the Decree on Drinking Water Supply[33]—which governs the manner in which the public service of drinking water supply is to be performed. It sets out the procedures and conditions for connecting to the public drinking water network, as well as conditions for potential downtime in the supply.

A notable shortcoming of the current regulatory framework is its reliance on a single subordinate legal instrument, with the bulk of general provisions concerning the supply of drinking water being contained within the aforementioned Decree. Simultaneously, local communities have the authority to regulate the supply of drinking water via municipal ordinances, which set out the method and conditions of supply at the local level. Although these municipal ordinances must comply with the Constitution and national laws, they are not formally required to align with other implementing acts. This leaves municipalities with latitude to adopt divergent regulatory solutions in this field. As a compulsory economic public service, water supply must be carried out by one of the prescribed methods under the Services of General Economic Interest Act (ZGJS). In practice, the vast majority of municipalities fulfil this obligation through public undertakings, which frequently serve multiple municipalities under joint arrangements.

Infrastructure such as pumping stations, waterworks, and distribution networks, constructed prior to the introduction of the ZGJS became the property of the local community by operation of law. Some local communities subsequently transferred these assets as contributions in kind to public enterprises, while others retained ownership and leased the infrastructure to public undertakings for use, typically without remuneration.

The public utility provider is under a statutory obligation to ensure that all facilities within its service area can connect to the public water supply network. Two scenarios should be distinguished. In the first instance, where a facility is located within the coverage area of a public water supply, connection is mandatory (Art. 10 (1) of the Decree). This applies even in cases where the land on which the facility stands possesses an independent source of drinking water; in such

32 | For an interpretation of the right to water as a social right, see Jakab & Mélypataki 2019, 22–28.
33 | Official Gazette of the Republic of Slovenia, Nos. 88/12 and 44/22 – ZVO-2.

cases, using a private source is expressly prohibited (Art. 12 (1) of the Decree). The contractual relationship between the public utility provider and the consumer is formalised through a water supply contract, the substance of which is largely governed by general terms and conditions reviewed and approved by local community authorities. These authorities also exercise the power to determine pricing (Art. 26 ZGJS). However, legal mechanisms in this domain remain underdeveloped, and to date, no significant difficulties have arisen in practice. For example, the legal consequences of a public undertaking failing to comply with a price fixed by the local community remain unclear. Nor are there any specific rules if the price is set so low that the public undertaking operates at a loss. So long as operations proceed without disruption, such legal lacunae have not posed material difficulties. It is anticipated that the legislator would address them only when problems arise.

The supply of drinking water represents both a state responsibility and an individual right, although it is accepted that the supply to an individual may be lawfully suspended.[34] The Decree on Drinking Water Supply at the national level regulates instances when supply may be interrupted due to maintenance work, force majeure and similar circumstances. Should the supply interruption exceed 24 hours, the operator of the public water supply system is under a statutory duty to ensure the provision of a minimum essential quantity of drinking water to affected consumers by appropriate alternative means (Art. 23 (5) of the Decree). The supply of drinking water may also be interrupted in cases where a user's conduct jeopardises the safety or continuity of the supply to others. However, the Decree is notably silent on the issue of interruption of supply owing to non-payment. Since water supply is a service for which payment is required, each customer is obliged to pay for the water consumed.

This sensitive issue—the interruption of supply for non-payment—is primarily left to the regulatory competence of local communities. The City of Ljubljana, the capital with the largest population, serves as an illustrative example. Drinking water in Ljubljana is supplied by VO-KA d.o.o. Ljubljana, a public company wholly owned by the city municipality and certain neighbouring municipalities. The terms and conditions of water supply are specified in the Decree on Drinking Water Supply in the City of Ljubljana.[35] Under this Decree, the company may interrupt supply if a customer fails to pay within fifteen days after receipt of a payment reminder. In brief, the customer is required to pay punctually; where payment is late, the company may issue a notice of intended interruption, granting a further grace period of not less than fifteen days. Should the arrears persist, the company may then terminate supply and disconnect the customer from the public water network. While this legal framework is strict and does not make

34 | See, in more details, Sancin & Juhart 2023, 116.
35 | Official Gazette of the Republic of Slovenia, No. 59/14.

provision for any mitigating personal or social circumstances, in practice, the utility typically issues multiple reminders prior to taking formal steps towards disconnection. A final warning is usually sent before any interruption of service is executed.[36]

3.2.4 Water and Coastal Land Maintenance

The maintenance of waters and coastal lands primarily entails the reinforcement of the banks and beds of surface waters and the sea coast, the removal of sediment deposits to ensure adequate river flow, the mowing and clearing of overgrowth along banks, the removal of floating debris and refuse from surface waters, and the prevention of pollution affecting watercourses and coastal zones (Art. 98 (2) ZV-1). These measures aim to prevent or limit the harmful effects of water and to protect human life and property. As such, they form part of the broader domain of water management, which is deemed a matter of public interest and, consequently, the responsibility of the state. In accordance with this public mandate, the maintenance of water and coastal lands constitutes an economic public service performed by the state. In determining how this service would be organised, the state might have opted to establish one or more public companies; instead, it elected to award concessions. To oversee these tasks, a specialised agency, the Slovenian Water Directorate, was established within the competent ministry.[37] The Directorate is tasked with preparing proposals for legal acts, managing concession-award procedures on the state's behalf, and monitoring the performance of concession contracts.

The primary legislative instrument governing this area is the Decree on the Provision of Obligatory State Services of General Economic Interest for Water Management and on Concessions and Public Services.[38] Under this Decree, the Republic of Slovenia is territorially divided into eight concession zones, with a concession granted for the provision of the public utility service within each respective zone. The overarching objective is to ensure the preservation and regulation of water volumes in Slovenia, monitor water conditions, protect against harmful effects of water (including emergency measures during heightened risk periods), maintain water infrastructure, oversee water and coastal lands, manage water protection, and maintain the water regime. Financing is provided by the state from its budget, in accordance with the prices and scope defined within each concession contract. The concession agreement establishes the overall volume of works and services to be provided, with more detailed annual contracts concluded on this basis. Concessions are awarded for a seven-year term.

36 | See, in more details, Sancin & Juhart 2023, 120.
37 | https://www.gov.si/drzavni-organi/organi-v-sestavi/direkcija-za-vode
38 | Official Gazette of the Republic of Slovenia, Nos. 109/10, 98/11, 102/12, 89/14 and 47/17.

A concession is granted through a public-private partnership (PPP) arrangement under the Public-Private Partnership Act (*Zakon o javno-zasebnem partnerstvu* – ZJZP).[39] This entails following a public procurement procedure in accordance with the relevant regulations. A concessionaire is selected and a concession contract concluded on that basis. Selection criteria include not only the lowest initial prices for mechanical services, but also transport resources, transport distances, and wage bases, alongside the concessionaire's technical equipment, availability of depots or other storage facilities, and staffing capacity.

Throughout the term of the concession, the Water Directorate retains supervisory authority over the implementation of the contract. To this end, it may require the concessionaire to provide all necessary documentation and permit the inspection of its business records. A breach of the concessionaire's obligations can result in early termination of the concession. Revocation is effected by a decision of the Government of the Republic of Slovenia.

3.2.5 Special Water Use

The Water Act (ZV-1) draws a clear distinction between general and special water use. Natural water and water and coastal lands, which hold the legal status of public property, may be used by anyone as long as such use does not adversely affect the water itself, disrupt the water regime, or disturb the natural balance of water and riparian ecosystems, or infringe upon the equivalent rights of others (Art. 21 (1) ZV-1). Any form of economic exploitation of water is classified as a special use of water as a public good. Obtaining a water right—through either a water permit or a concession—is mandatory for such use. Water rights have a pecuniary dimension: the beneficiary is obliged to remit a fee determined by law for the granted right, with the method and degree of water exploitation serving as the principal criteria for calculating the requisite compensation.

In the case of simpler, direct forms of water use, a water permit is sufficient. This applies, inter alia, to the supply of drinking water for personal use, bathing, heat generation, irrigation of agricultural or other land, recreational fishing in commercial ponds, operation of watermills or sawmills, the farming of freshwater or marine organisms, operation of ports or entry-exit checkpoints in accordance with inland navigation regulations, artificial snow production for ski slopes, and the generation of electricity in hydroelectric plants with an installed capacity under 10 MW (Art. 125 (1) ZV-1). A water permit is issued by the competent ministry upon application by the interested party, provided the proposed use conforms to the relevant criteria for granting water rights, is consistent with approved water management plans, and does not infringe upon pre-existing rights or general water use (Art. 127 (1) ZV-1). Where such use is linked to the construction of a facility,

39 | Official Gazette of the Republic of Slovenia, No. 127/06.

the permit must be obtained prior to the issuance of any land-use or construction permits. The permit itself specifies the substance of the water right, including the source, the method of extraction, and any conditions arising nature conservation law. Water permits are issued for a finite term, not exceeding 30 years, and may be extended if current legal conditions are met. Refusals may be challenged through judicial review in administrative proceedings.

More intensive forms of special water use require obtaining water rights by concession. A concession must be secured for water used in producing beverages, for swimming pools, heating and similar purposes, if mineral, thermal or thermomineral water is involved, for generating electricity in hydroelectric plants of 10 MW or more, or for the extraction of sediment not covered by a public service mandate (Art. 136 (1) ZV-1). A concession may be granted to any party satisfying the statutory conditions and is awarded by the Government of the Republic of Slovenia for a fixed period not exceeding 50 years, with the possibility of renewal if the relevant criteria continue to be met.

The concession procedure commences with the Government adopting a concession act, on the proposal of the competent ministry. In so doing, the Government must consider the national water management plan and the principle of sustainable water use. Any interested party may submit an initiative for the Government to adopt a concession act; the Government is required to respond within three months, indicating whether it will initiate the process. A pertinent example is the Decree of the Government of the Republic of Slovenia on the Concession for the Use of Thermal Water from the Mt-2/61 Well for Heating and Swimming Pool Needs in Rimska Čarda.[40] The Decree first defines the subject and scope of the concession—namely, the use of thermal water for swimming pool heating—and then sets out eligibility criteria, which broadly exclude only those entities in arrears on public obligations, those convicted by final judgment, or those barred by binding judicial or administrative decisions from undertaking the relevant activity. Additional conditions address the method of water use and, in particular, compliance with environmental protection standards. The concessionaire's specific obligations include maintaining separate accounts and monitoring the quantity of thermal water extracted and its effects. The method for calculating the concession fee is elaborately prescribed, taking into account both the volume and the qualitative characteristics of the water. The Decree further lays down the procedure for the public tender and the criteria for selecting of the concessionaire.

Upon the adoption of the concession act, the process of awarding the concession is initiated. The concession is granted through a public tender procedure, culminating in a selection decision issued by the Government, which must be rendered with due regard to all criteria and conditions specified in the concession act. The concession act may provide that preference be afforded to a bidder

40 | Official Gazette of the Republic of Slovenia, No. 77/23.

proposing a higher concession fee or otherwise offering terms more advantageous to the grantor.

Following the selection process, the Government, acting on behalf of the State of the Republic of Slovenia, concludes a concession agreement with the successful tenderer. This contract must be fully aligned with the concession act and must in particular regulate the purpose of the concession, any special conditions for the concessionaire, the amount and payment terms of the concession fee, the duration of the concession, and the rights and obligations of both parties. The grantor may unilaterally terminate the agreement for a breach by the concessionaire, in accordance with the principles of general contract law, or alternatively, may initiate administrative procedures for revoking the concession under the rules of administrative law. Both avenues lead to the premature termination of the concession contract and extinguish the water right. The law lists various grounds upon which a concession may be withdrawn, notably non-payment of the concession fee, unauthorised modifications to water infrastructure, and violations of conditions pertaining to the purpose, scope, or standards of water use, which the holder of the water right is obliged to observe (Art. 145 (1) and 146 (1) ZV-1).

4. Ownership Relationships

The concept of a 'public good' is crucial for understanding the ownership structure of water and of immovable property associated with water management. In the Slovenian legal system, a public good occupies a special place and, as in some other areas, it involves a combination of public and private elements. Notably, Slovenian law draws no formal distinction between "public" and private property: property rights are regulated uniformly, and the same rules apply irrespective of the owner's legal status. Simultaneously, certain things are deemed of such essential public significance that they must remain accessible to all in order to secure the conditions necessary for a dignified and functional life.

A public good is defined as an object which, by its very nature, is available for use by anyone under equal conditions—this is referred to as general use (*usus publicum*). Although the term 'public good' appears in Art. 70 of the Constitution, that provision merely alludes to the conditions under which such goods may be used, without supplying a precise legal definition. The substantive characteristics of a public good are, instead, articulated in Article 19 of the Law of Property Code (*Stvarnopravni zakonik* – SPZ),[41] which stipulates that a public good is an object that may be used freely, in accordance with its designated function, and under identical conditions by all. The defining attribute of a public good is thus its general use. Substantively, this means that anyone may use an object with public good status

41 | Official Gazette of the RS, Nos. 87/02, 91/13 and 23/20.

for its intended purpose under the same conditions as all others. An individual does not require any legal title to use a public good. The owner of an object that has the status of a public good must permit such use and may not prevent it. Typical instances include roads, water, and coastlines. These are most commonly provided by the state or local community, which—while remaining owner in title—accepts both the presence and activity of others on its land and the imposition of substantial limitations on the exercise of ownership rights. It is not an indispensable requirement, however, that a public good be publicly owned. It is entirely possible for a natural or legal person in private law to hold ownership over a public good. This does not, in and of itself, affect the object's legal status as a public good. What matters is that the exercise of ownership rights over such property must conform to statutory provisions governing the public nature of the asset. These may either define how ownership rights are to be exercised or establish specific limitations thereon in the public interest.[42]

Pursuant to Article 15 of the Waters Act (ZV-1), inland waters, the sea, and water-based land are public property. Inland waters are defined as standing or flowing surface waters on the land surface and groundwater (Art. 7 ZV-1). The management of inland waters falls to the Republic of Slovenia, or—where provided for by law—to the competent local self-governing community. Water lands are tracts of land upon which inland water is permanently or occasionally present and therefore create specific hydrological, geomorphological, and biological conditions (Art. 11 (1) ZV-1). Although all water lands are categorised as public property, Article 11(5) ZV-1 expressly allows that ownership may rest with either a public or private legal person. The sea, for legal purposes, includes internal sea waters and the territorial sea up to the high-tide line. Like inland waters, the sea is designated as public property, subject to management by the State of the Republic of Slovenia. The seabed of internal sea waters and the territorial sea up to the high-tide line constitutes the water land of the sea and is owned by the state (Art. 28 (2) ZV-1).

Coastal land may also be granted the status of a public good , particularly where such land adjoins or directly abuts water lands. In order to facilitate general water use, the local community may designate portions of coastal land as natural water public goods. Notwithstanding such designation, all coastal lands are subject to particular restrictions on the exercise of ownership rights. Thus, even where water or coastal land is held in private ownership, the owner must accept limitations flowing from the principle of general use. Specifically, any owner or lawful possessor of water, coastal, or other adjoining is obliged to permit unhindered access and passage across such land for the purpose of reaching the relevant water or marine resource, and must also allow its general use—save where a facility essential to water management has been lawfully constructed thereupon (Art. 38 ZV-1). In a highly publicised case, a court held that the operator of a natural seaside

42 | Administrative Court, judgment U 2364/2002.

swimming area, which has public good status, may not charge bathers an entrance fee or otherwise prevent them from using the water for bathing.[43]

Distinct legal rules apply to ownership in the context of water exploitation. A holder of water rights for the extraction of water for beverage production becomes the owner of the extracted quantity of water specified in the official act through which they acquired these rights (Art. 119 (2) ZV-1).

5. Experience and Future Directions

In the Republic of Slovenia, issues pertaining to water management elicit acute public and professional sensitivity. It is therefore no coincidence that the Constitution was amended to include a complex regulation concerning the right to drinking water and the provision of supply. A similar depth of public concern was once again manifest during the legislative process surrounding the amendments to ZV-1. On 30 March 2021, at the proposal of the competent ministry and the Government, the Parliament adopted the Act on Amendments to the Water Act. Among its various provisions, the Act permitted the construction of structures classified as simple structures—as defined in the regulations governing building construction—on water and coastal land, as well as in areas of intermittent lakes. Under relevant construction regulations, such "simple structures" include a broad spectrum of non-residential buildings: catering establishments, business, administrative, commercial premises, and ceremonial venues, as well as buildings for service activities, transport and communication facilities, and other service-related or public-use buildings. They also encompass public spaces, including public roads, streets, squares, markets, playgrounds, car parks, cemeteries, parks, green spaces, and recreational areas. This provision substantially widened the legal scope for interventions on water and coastal land. Authority to determine the permissibility of such interventions was vested solely in the Water Directorate of the Republic of Slovenia, which acts as the competent authority for issuing water consents. Although interventions were possible before the law was passed, they were limited to land within settlements. The amendments expanded these options to include all other natural water areas of inland waters and coastal zones that are, under applicable legislation, designated as natural water public goods and are crucial for maintaining, protecting, and enhancing environmental quality.

Under the legislative procedure, the National Council (*Državni svet*—the upper chamber of Parliament in Slovenia[44]) could have imposed a suspensive veto on the newly adopted Act. Despite a strongly critical motion from some members of

43 | Supreme Court of the Republic of Slovenia judgment III U 216/2013.

44 | The National Council functions as a consultative and supervisory body, distinct from the National Assembly (*Državni zbor*), which is the lower and primary legislative chamber with full law-making powers

the National Council, the veto was not ultimately exercised. In their motion, the proponents emphasised that the adopted law, in effect, equates coastal and water lands with other types of land, thereby removing the special protective function these lands serve in shielding surface water bodies from terrestrial impacts. They further warned that, given the disproportionate influence of private capital in Slovenia, the new law might inaugurate a regime under which the general public's right of access and use would be incrementally curtailed, to the detriment of the concept of water as a public good.

In the absence of a National Council veto, widespread opposition crystallised around the civil movement *Za pitno vodo* (Drinking Water Movement). This coalition of environmental organisations and concerned citizens swiftly mobilised to challenge the law through a referendum initiative, securing in excess of 40,000 voter signatures within the time limits prescribed by law—thereby fulfilling the statutory threshold for initiating a legislative referendum. The referendum was scheduled for 11 July 2021. During the referendum campaign, the Government and some political parties argued that the law primarily facilitated interventions for constructing public facilities. They maintained that any such facilities would be built in accordance with municipal spatial plans and would pose no threat to flood safety or water conditions. By contrast, opponents asserted that its implementation would significantly increase the risk of polluting surface water and related groundwater—Slovenia's main sources of drinking water. They further warned that free and equal access to water and coastal areas—a cornerstone of public use—would be imperilled, potentially becoming restricted to those able to pay for entry. They further criticised the undemocratic nature of the law's adoption process, pointing to the shortened time for public debate and the fact that the law was passed under a fast-track procedure. A broad range of eminent voices joined the opposition—including the Slovenian Academy of Sciences and Arts and the University of Ljubljana.

Voter turnout was 45.89%, ranking among the highest in a referendum in Slovenia's history. The result was unambiguous: a mere 104,312 voters (13.25%) supported the Act, while 682,760 voters (86.75%) opposed it. The remaining ballots were deemed invalid. Consequently, the proposed amendments to the Waters Act (ZV-1) were not enacted and did not enter into force.

6. Conclusion

Water management in the Republic of Slovenia is predominantly vested within the public domain, thereby allowing the public interest to be asserted with relative efficacy. The Slovenian Constitution enshrines not only the right to drinking water as a fundamental human right but also prescribes the institutional means by which this right is to be secured. In particular, it affirms state and local community

ownership of water resources and formally designates them as the main actors in water management. A principal impetus for the constitutional codification of the right to water was the apprehension that certain water management activities might be transferred from the public to the private sector.

That water—sometimes termed "blue gold"—is deeply ingrained in the social consciousness as a universally accessible good is illustrated by events following the enshrinement of the right to drinking water in the Constitution. Slovenians are exceptionally sensitive to any changes or interventions in water management regulations that might undermine the public interest or threaten access to water. Accordingly, legislative amendments passed by Parliament were decisively overturned in a referendum, as many professionals considered the proposed changes a potential threat to the broader public interest. This opposition emerged notwithstanding the fact that the amendments merely conferred broader decision-making powers upon public authorities. The professional community, however, voiced concern that such discretionary latitude could result in state authorities yielding to other interests rather than strictly safeguarding the public interest. Consequently, limiting the scope for interventions in water management is regarded as the strongest safeguard for the public's access to water.

The sole domain within which private interests hold discernible prominence in water management is that of direct water use for economic purposes. Individuals pursuing such objectives must obtain water rights, a special form of right combining elements of both public and private law. These rights do not derive by virtue of ownership of water or coastal land; rather, they are granted following a formal procedure. State authorities, guided by water management plans, are responsible for issuing these rights. In doing so, they must give primacy to the principle of general use, ensure protection against the adverse effects of water, and uphold environmental protection standards.

Slovenia's legal framework for water management thus stands as a compelling example of a legal framework that subordinates individual economic ambitions to the collective interests of present and future generations. Ownership of immovable property associated with water resources does not provide a legal basis for exclusive benefits. Property owners must accept restrictions on their ownership rights so as to preserve water's character as a public good—one which entitles all to its general use.

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