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## **ODGOVORNO UPRAVLJANJE VODAMA\*\*** **Međunarodni i nacionalni pravni i strateški okvir**

**SAŽETAK:** Predmet ovog rada je međunarodni pravni i politički okvir prava na vodu i relevantna regulativa u Republici Srbiji, a fokus je na odgovornosti države za upravljanje vodama u skladu sa ostvarivanjem opšteg dobra. Polazište rada je stav da je pristup vodi ljudsko pravo, te da vodama može da upravlja jedino država i isključivo u opštem interesu.

Prvi odeljak razmatra rizike marketizacije, privatizacije i komodifikacije voda po ostvarenje prava na vodu i zaštitu ovog vitalnog prirodnog i strateškog bogatstva. U drugom delu se sumiraju aktivnosti Ujedinjenih nacija vezane za priznavanje prava na vodu kao osnovnog ljudskog prava i obaveze država u ovoj oblasti. U trećem odeljku se normativni i strateški okvir Republike Srbije u ovoj oblasti analizira iz perspektive prava na vodu i odgovornog upravljanja države. Ukazuje se na nedostatke u pogledu usaglašenosti sa međunarodnim standardima ljudskih prava i rizike koje sadašnja regulativa može da proizvede na stanovništvo, vodne resurse i državu. Nisu predviđeni efikasni instrumenti za zaštitu voda od zagađivanja, kao i od njene komodifikacije i marketizacije, a privatizacija voda i javnih preduzeća u ovoj oblasti ugrožava suverenost države nad svojim prirodnim bogatstvima. Cilj rada je da ukaže

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na značaj uspostavljanja nacionalne regulative koja će obezbediti suvereno i odgovorno upravljanje nad vodnim resursima i zaštiti prava na vodu.

**Ključne reči:** ljudsko pravo na vodu, marketizacija vode, komodifikacija vode, privatizacija javnih preduzeća, ekocid, trgovanje vodom, fjučersi, javno-privatno vlasništvo, koncesije

## UVOD

Bez vode, kao ni bez vazduha, nema života. Uprkos ovoj nepobitnoj činjenici, sve države sveta, bez obzira na stepen ekonomske razvijenosti, suočavaju se sa problemima zbog zagađivanja izvorišta, vodotokova, mora, reka i drugih vodnih resursa, što neposredno ugrožava ekosisteme i zdravlje i živote ljudi i drugih živih bića. Prema podacima Ujedinjenih nacija (UN) iz 2020. godine o realizaciji Cilja održivog razvoja br. 6 koji se odnosi na održivo upravljanje vodnim resursima, četvrtina svetske populacije nema pristupa bezbednoj pijaćoj vodi, a skoro polovina nije u mogućnosti da koristi sanitarni sistem.<sup>1</sup> U Evropi milion ljudi nema pristup vodi, a osam miliona nema sanitarije.<sup>2</sup> Od ukupnog broja vodnih tela koja se nadziru, 28 % nemaju dobar kvalitet vode, a svega 56 % otpadnih voda iz domaćinstva i industrije se bezbedno prečišćava.<sup>3</sup> Nivo eksploatacije vode, odnosno udeo ukupno zahvaćenih vodnih resursa u ukupno raspoloživim vodnim resursima na globalnom nivou iznosi 17 %, a udeo integrisanog upravljanja vodnim resursima iznosi 54 %.<sup>4</sup>

Kvalitet vode se kontinuirano pogoršava zbog neodgovornog odnosa vlada i industrije prema ovom prirodnom bogatstvu zbog čega je ugrožena dostupnost vode u budućnosti. Podaci ukazuju na udaljavanje od cilja koji se odnosi na obezbeđivanje održive eksploatacije vode i snabdevanje slatkim vodom kao odgovor na nestašicu vode i povećanje populacije širom sveta koja se suočava sa ovim problemom. Nestašica vode ugrožava ne samo ekonomski i socijalni razvoj, već može da bude katalizator oružanih konflikata i ratova.<sup>5</sup>

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<sup>1</sup> United Nations. UN Water SDG 6 Dana Portal. Sustainable Development Goal 6 on water and sanitation. Global Status. Preuzeto 15. 10. 2021. sa <https://www.sdg6data.org/>

<sup>2</sup> Right2Water. Preuzeto 10. 10. 2021. sa <https://right2water.eu>

<sup>3</sup> United Nations. *Op. cit.*

<sup>4</sup> *Ibid.*

<sup>5</sup> United Nations University (2011). *Former National Leaders: Water a Global Security Issue*. Preuzeto 10. 9. 2022. sa <https://unu.edu/media-relations/releases/water-called-a-global-security-issue.html>

U poslednjih pedeset godina zabeleženo je 507 međunarodnih sukoba vezanih za vodu, od čega su 20 bili oružani konflikti.<sup>6</sup>

Voda je postala strateški resurs XXI veka, kao što je to bila nafta u prethodnom veku. Nestajica ovog vitalnog prirodnog resursa pokrenula je i trgovanje vodom na berzi (eng. water futures market). Opštu dostupnost ovog vitalno važnog resursa ugrožavaju i sistematska krađa, eksploatacija, privatizacija i marketizacija voda od strane multinacionalnih korporacija. Ova problematika je u fokusu mnogih međunarodnih instrumenata ljudskih prava, uključujući Rezoluciju Saveta Ujedinjenih nacija za ljudska prava 7/22. Generalna skupština UN je Rezolucijom od 26. jula 2022. godine proglasila pristup čistoj, zdravoj i održivoj životnoj sredini ljudskim pravom.

Republika Srbija je bogata vodnim resursima, no izveštaj Republičke agencije za zaštitu životne sredine o statusu površinskih voda zabrinjava u pogledu njihovih kvaliteta.<sup>7</sup> Monitoring površinskih voda je pokazao da se svega 3 % nalazi u dobrom ekološkom statusu; najveći broj tela ima umeren ekološki status (20 %), slab status je utvrđen kod 19 %, a loš ekološki status kod 10 % vodnih tela.<sup>8</sup> Rezultati hemijskog statusa su pokazali da 16 % vodnih tela nema dobar hemijski status. Skoro 20 % stanovništva u Srbiji nije priključeno na javne sisteme vodosnabdevanja.<sup>9</sup> Pokazatelji kvaliteta kontrole vode za piće su ukazali na fizičko-hemijsku i mikrobiološku neispravnost na polovini kontrolisanih centralnih vodovodnih sistema. U 2021. godini bilo je svega 69,1 % ispravnih javnih vodovoda gradskih naselja.<sup>10</sup> Jedna od najosetljivijih društvenih grupa, stanovništvo u romskim naseljima, koristi poboljšane izvore vode za piće (98 %), 78 % koristi vodu iz vodovoda koja je dovedena do stana ili kuće, a 86 % koristi osnovne sanitarne usluge.<sup>11</sup> Prema rezultatima

<sup>6</sup> Kouzminov, A. (2018). *Water as a Strategic Resource and Political Influence in the Modern World*. The 26th International Forum 'Laying the Foundation for a More Humane Future – Mut zur Ethik'. Zurich/Sirmach, Switzerland, 31 August – 2 September 2018, 2.

<sup>7</sup> Čađo, S. et al. (2021). *Status površinskih voda Srbije – period 2017–2019*. Beograd: Agencija za zaštitu životne sredine, Ministarstvo zaštite životne sredine Republike Srbije. Preuzeto 10. 9. 2022. sa [http://www.sepa.gov.rs/download/VodeSrbije/StatusPovrsinskihVoda2017\\_2019.pdf](http://www.sepa.gov.rs/download/VodeSrbije/StatusPovrsinskihVoda2017_2019.pdf)

<sup>8</sup> *Ibid.*, 95.

<sup>9</sup> Strategija upravljanja vodama na teritoriji Republike Srbije do 2034. godine (*Službeni glasnik RS*, br. 3/2017), 48.

<sup>10</sup> Кнежевић, Т. (2022). *Извештај о здравственој исправности воде за пиће јавних водовода и водних објеката у Републици Србији за 2021. годину*. Београд: Институт за јавно здравље Србије „Др Милан Јовановић Батут“, 22.

<sup>11</sup> Kuzmanov, L., Marković, J. (2021). *Položaj osetljivih grupa u procesu pristupanja Republike Srbije Evropskoj uniji*. Beograd: Tim za socijalno uključivanje i smanjenje siromaštva Vlade Republike Srbije, 6.

istraživanja u civilnom sektoru iz 2022. godine procenjuje se da oko milion ljudi trajno ili privremeno nema pristup vodi za piće.<sup>12</sup>

Predmet ovog rada je međunarodni pravni i politički okvir prava na vodu i relevantna regulativa u Republici Srbiji, a fokus je na odgovornosti države za upravljanje vodama u skladu sa ostvarivanjem opšteg dobra. Polazište rada je stav da je pristup vodi ljudsko pravo, te da vodama može da upravlja jedino država i isključivo u opštem interesu. Rad se sastoji od tri dela. Prvi odeljak razmatra problematiku tretiranja vode kao robe, što je postala učestala praksa korporacija i vlada širom sveta, kao i odgovor pojedinih država na marketizaciju i privatizaciju vode. U drugom delu se predstavljaju ključni instrumenti Ujedinjenih nacija i Evropske unije u ovoj oblasti. U trećem odeljku se normativni i strateški okvir Republike Srbije u ovoj oblasti analizira iz perspektive prava na vodu i odgovornog upravljanja države ovim prirodnim bogatstvom. U završnim razmatranjima se sumiraju sporna pitanja i zaključuje da država ima primarnu obavezu da obezbedi svojim građanima progresivnu i punu realizaciju prava na vodu. U ovom delu se predstavljaju i konkretne preporuke za unapređenje relevantnog pravnog okvira u Republici Srbiji. Cilj rada je da ukaže na značaj uspostavljanja nacionalne regulative koja će obezbediti suverenost i odgovorno upravljanje nad vodnim resursima radi zdravlja i života ljudi i zaštite životne sredine.

## VODA – PRAVO ILI ROBA?

Berzansko poslovanje na Wall Street-u u decembru 2020. godine obeležilo je prvo trgovanje vodom (eng. water futures market) na berzi. Najveća svetska berza derivata pokrenula je trgovanje u vezi sa kalifornijskim tržištem vode vredno više od milijardu dolara.<sup>13</sup> Voda se našla na berzi kao roba u vidu finansijskog instrumenta nazvanog fjučers (eng. futures), a njena cena varira poput cene zlata, nafte ili pšenice. Ideja o trgovini vodom nastala je zbog njene nestašice u Kaliforniji, uz obrazloženje da će služiti kao zaštita najvećih potrošača vode od porasta cena i kao pokazatelj za investitore širom sveta, te da će se zahvaljujući fjučersima smanjiti rizik za poljoprivrednike

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<sup>12</sup> Todorović, I. (2022). Ko u Srbiji prvi dograbi vodu, taj ima primat u njenom korišćenju. *Balkan Green Energy News*, 5. septembar. Preuzeto 15. 9. 2022. sa <https://balkangreenenergynews.com/rs/ko-u-srbiji-prvi-dograbi-vodu-taj-ima-primat-u-njenom-korisćenju/>

<sup>13</sup> Chipman, K. (2020). California Water Futures Begin Trading Amid Fear of Scarcity. *Bloomberg*. December 6. Preuzeto 1. 11. 2021. sa <https://www.bloomberg.com/news/articles/2020-12-06/water-futures-to-start-trading-amid-growing-fears-of-scarcity>

i gradove u slučaju nestašice vode.<sup>14</sup> Ovo je predstavljeno kao pilot projekat koji će pokazati šta je trend, no vrlo je moguće da će se vodom redovno trgovati u budućnosti. Specijalni izvestilac za vodu i ljudska prava reagovao je izražavanjem zabrinutosti, jer će pojava vode na berzi povući berzanske i finansijske spekulacije finansijera da počnu da trguju vodom kao bilo kojom drugom robom, poput zlata i nafte.<sup>15</sup> Za razliku od ovih proizvoda, voda se ne može tretirati kao roba, jer je javno dobro i pripada svakome. Pored toga, za razliku od nafte za koju se mogu naći alternativni izvori (prirodni gas, nuklearna, solarna energija i dr.), voda nema zamenu.

Dok korporacije i drugi zagovornici trgovine vodom fjučersima smatraju da je ekonomski opravdana, mnogi autori upozoravaju da je marketizacija vode opasna trgovina našom budućnošću.<sup>16</sup> Treba imati u vidu da je trgovanje na berzi samo prividno slobodno, jer sagledavanje šireg konteksta u kojem se ono dešava izbacuje na površinu preovlađujući uticaj transnacionalnog finansijskog kapitala, međunarodnih finansijskih institucija, korporacija i najmoćnijih vlada. Ogroman uticaj korporacija u ovom sektoru ogleda se i u zakonima u mnogim državama koji favorizuju interese privatnih investitora, dozvoljavaju zagađivanje vodotokova i vodnih resursa i ugrožavaju njen kvalitet. Nalazi istraživanja ukazuju da se mnoge vlade neodgovorno odnose prema ovom vitalnom prirodnom dobru ne samo zbog neznanja, nekompetentnosti ili koruptivnosti, već i zbog toga što ga tretiraju kao ekonomski resurs kojim žele privući strane investitore i kreditore radi podsticanja ekonomskog rasta.<sup>17</sup> Zanimljivo da kratkoročni pozitivni efekti na privredu mogu imati nesagledive dugoročne štetne posledice po ljude i životnu sredinu. Ovu tvrdnju su argumentovali mnogi istraživači, uključujući Mod Barlou (Maude Barlow),<sup>18</sup> Patrika Bonda (Patrick

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<sup>14</sup> SEEBiz (2020). Na Wall Streetu počelo trgovanje vodom. *SEEBiz*, 9. decembar. Preuzeto 1. 11. 2021. sa <https://www.seebiz.eu/trzista/na-wall-streetu-pocelo-trgovanje-vodom/247054>

<sup>15</sup> United Nations Human Rights Office of the High Commissioner (2020). *Water: Futures market invites speculators, challenges basic human rights – UN expert*. December 11. Preuzeto 1. 11. 2021. sa <https://www.ohchr.org/en/press-releases/2020/12/water-futures-market-invites-speculators-challenges-basic-human-rights-un>

<sup>16</sup> Igra reči, s obzirom da *future* u prevodu znači budućnost. Brisman, A. et al. (2020). The politics of water rights: Scarcity, sovereignty and security. *Water, Governance, and Crime Issues*. Springer, Cham, 17–29.

<sup>17</sup> Ascher, W. (2000). Understanding Why Governments in Developing Countries Waste Natural Resources. *Environment*, 42 (2): 8.

<sup>18</sup> Barlow, M. (2002). Commodification of water-the wrong prescription. *Water Science and Technology*, 43 (4), 79–84; Barlow, M., Clarke, T. (2002). Who owns water?. *The Nation*, 2 (9), 11–14.

Bond),<sup>19</sup> Karen Baker (Karen Bakker),<sup>20</sup> Danijela Džafija (Daniel Jaffee),<sup>21</sup> Bilera (Bieler) i Džordana (Jordan),<sup>22</sup> Veljkovića,<sup>23</sup> Kia (Keough) i Jangsteda (Youngstedt).<sup>24</sup> Mnogi autori zagovaraju da se pristup vodi definiše i štiti kao osnovno ljudsko pravo.<sup>25</sup> Značaj zaštite ljudskog prava na vodu se mora posmatrati kroz prizmu činjenice da je voda nezamenljivo dobro nužno za ljudski život, te je stoga i nužan preduslov ostvarivanja drugih ljudskih prava.<sup>26</sup>

Pojedini autori smatraju da se neodgovorno upravljanje vodama može definisati kao vid ekocida i zelene kriminologije.<sup>27</sup> Kriminolozi su počeli da ispituju vezu između genocida i ekocida, odnosno međupovezanost uništavanja ekosistema i ljudi i ustanovili da ova pojava odražava karakteristike

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<sup>19</sup> Bond, P. (2010). Water, health, and the commodification debate. *Review of Radical Political Economics*, 42.4, 445–464; Bond, P. (2008). Macrodynamics of globalisation, uneven urban development and the commodification of water. *Law, Social Justice and Global Development Journal*, 1–14; Bond, P. (2004). Water commodification and decommodification narratives: pricing and policy debates from Johannesburg to Kyoto to Cancun and back. *Capitalism Nature Socialism*, 15 (1), 7–25.

<sup>20</sup> Bakker, K. (2014). The business of water: Market environmentalism in the water sector. *Annual Review of Environment and Resources*, 39, 469–494.

<sup>21</sup> Jaffee, D. (2020). Enclosing Water: Privatization, Commodification, and Access. U: Legun, K., Keller, J., Bell, M. and Carolan M. (eds.) (2020). *The Cambridge Handbook of Environmental Sociology*, (vol. 2). Cambridge: Cambridge University Press, 303–323.

<sup>22</sup> Bieler, A., Jordan, J. (2018). Commodification and 'the commons': The politics of privatising public water in Greece and Portugal during the Eurozone crisis. *European Journal of International Relations*, 24 (4), 934–957.

<sup>23</sup> Veljković, N. (2018). Voda za piće i ljudsko pravo: javno dobro ili roba?. *Zbornik radova Međunarodna konferencija Vodovodni i kanalizacioni sistemi*. Pale, 1–18.

<sup>24</sup> Keough, S. B., Youngstedt, S. M. (2019). *Water, life, and profit: fluid economies and cultures of Niamey, Niger*. New York: Berghahn Books.

<sup>25</sup> Sarvan, D. (2017). Ljudsko pravo na vodu u hrvatskom zakonodavstvu – *de lege lata* i *de lege ferenda*. Fondacija Centar za javno pravo, 1–15; Veljković, N., Petrović, Z., Šotić, A., Hero-Gon, M. (2018). Voda za piće i ljudsko pravo: dezinformacije i poverenje potrošača. *Voda i sanitarna tehnika*, 48 (3–4), 37–48; Mc Adam, K. C. (2003). The Human Right to Water – Market Allocations and Subsistence in a World of Scarcity. *The Interdisciplinary Journal of Study Abroad*, 59–85; Fiechter-Widemann, E. (2017). *The Human Right to Water: Justice... Or Sham? : The Legal, Philosophical, and Theological Background of the New Human Right to Water*. Eugene, Oregon: Pickwick Publications; Bogdanović, S., Jovović, A. (2013). Ljudsko pravo na vodu i sanitaciju. *Pravo – teorija i praksa*, 1–3, 14–27.

<sup>26</sup> Mladenov, M., Milojević, G. (2019). Ljudsko pravo na vodu sa posebnim osvrtnom na praksu Evropskog suda za ljudska prava. *Strani pravni život*, 63 (2), 117.

<sup>27</sup> Lorenzo, N. (2014). Green Criminology, Victimització Mediambiental i Social Harm. El Cas d'Huelva (Espanya). Crítica penal y poder: una publicación del Observatorio del Sistema Penal y los Derechos Humanos; no. 7, 5–34; Johnson, H., South, N., Walters, R. (2016). The Commodification and Exploitation of Fresh Water: Property, Human Rights and Green Criminology. *International Journal of Law, Crime and Justice*, 44 (March), 146–62.

državno-korporativnog kriminala.<sup>28</sup> Prema ovim autorima, brojni savremeni genocidi su sprovedeni putem ekocida i naporima korporacija da obezbede sirovine neophodne za nezaustavljivu kapitalističku proizvodnu traku. Otuda se pojavila inicijativa koju podržavaju društveni pokreti širom sveta da ekocid bude uključen kao međunarodni zločin u Rimskom statutu Međunarodnog krivičnog suda.<sup>29</sup> Time bi se omogućilo uspostavljanje lične i krivične odgovornosti pojedinaca za uništavanje prirode ili donošenje odluka kojima se nanosi ozbiljna šteta životnoj okolini. Zagovornici ove ideje smatraju da bi krivična odgovornost imala više uticaja na smanjivanje zagađenja prirode od podnošenja tužbi protiv korporacija, koje po pravilu već unapred imaju predviđene budžete za pokriće sudskih troškova.

Pored marketizacije i zagađivanja voda, poguban uticaj na stanje voda u svetu posledica je privatizacije vodozahvata, javnih službi i vodno-komunalnih usluga. U većini slučajeva privatizacija u ovoj oblasti se predstavlja i uvodi kao deo paketa oštih mera štednje budžeta zbog zaduženosti države i opravdava obrazloženjem da će se time ostvariti dodatni prihodi kojima se može otplaćivati dug, povećati kvalitet pijaće vode i unaprediti usluge vodonabavevanja. U praksi, svuda gde je sprovedena, privatizacija u ovoj oblasti je rezultirala porastom cena, smanjivanjem kvaliteta usluga i voda, daljom komercijalizacijom usluga i isključivanjem građana u participaciji u odlučivanju o svojim nacionalnim prirodnim bogatstvima i resursima.<sup>30</sup> Komodifikacija vode dovodi do toga da pristup vodi za piće imaju samo oni koji mogu da je

<sup>28</sup> Lynch, M. J., Fegadel, A., Long, M. A. (2021). Green Criminology and State-Corporate Crime: The Ecocide-Genocide Nexus with Examples from Nigeria. *Journal of Genocide Research*, 23 (2), 236–56.

<sup>29</sup> Stop Ecocide International. *Making Ecocide a Crime*. Preuzeto 2. 9. 2022. sa [https://www.stopecocide\\_earth/making-ecocide-a-crime](https://www.stopecocide_earth/making-ecocide-a-crime)

<sup>30</sup> Hermann, Ch. (2014). Komodifikacija: posledice i alternative – Pouke iz privatizacije javnih službi u Evropi. *Pravo na grad*. Preuzeto 15. 10. 2021. sa <http://pravona-grad.org/komodifikacija-posljedice-i-alternative>; Gaffney, M. (2016). Nature, Economy, and Equity: Sacred Water, Profane Markets. *American Journal of Economics & Sociology*, 75 (5), 1064–1231; Gudelj, I., Runko Luttenberber, L., Senta Marić, A. (2015). Posljedice kojima rezultira privatizacija vodno-komunalnih usluga, 6. *Hrvatska konferencija o vodama s međunarodnim sudjelovanjem, Hrvatske vode na investicijskom valu*. Preuzeto 10. 10. 2021. sa [https://www.researchgate.net/publication/279528754\\_Consequences\\_resulting\\_from\\_privatization\\_of\\_water-utility\\_services\\_Posljedice\\_kojima\\_rezultira\\_privatizacija\\_vodno-komunalnih\\_usluga](https://www.researchgate.net/publication/279528754_Consequences_resulting_from_privatization_of_water-utility_services_Posljedice_kojima_rezultira_privatizacija_vodno-komunalnih_usluga); Jaffee, D. (2020). Enclosing Water: Privatization, Commodification, and Access., 303–323, u: Legun, K., Keller, J., Bell, M., Carolan, M. (eds.), *The Cambridge Handbook of Environmental Sociology*, vol. 2. Cambridge: Cambridge University Press; Bond, P. (2008). Macrodynamics of Globalisation, Uneven Urban Development and the Commodification of Water. *Law, Social Justice & Global Development Journal*, 1–14; Gleick, P. H., Wolf, G., Chalecki, E. L., Reyes, R. (2002). *New Economy of Water – The Risks and Benefits of Globalization and Privatization of Fresh Water*. Oakland: Pacific Institute for Studies in Development, Environment, and Security; McAdam, K. C. (2003).



plate, što je etički neodrživo s obzirom da je u pitanju resurs bez kojeg nema života. U cilju zaštite od korporativnog uticaja i sprečavanja komodifikacije voda, sve je više država koje su svojim ustavom zajemčile zaštitu voda kao ljudskog prava i kojima može da upravlja jedino država i isključivo u opštem interesu (Ekvador, Egipat, Bolivija, Južnoafrička Republika, Urugvaj i dr.).

U svom izveštaju o ljudskim pravima i privatizaciji voda i sanitetskih usluga od 20. jula 2020. godine, Leo Heler (Léo Heller), Specijalni izvestilac o ljudskom pravu na pijaću vodu i sanitarije, identifikovao je tri ključna faktora vezana za privatizaciju ovih usluga: maksimalizacija profita, uspostavljanje monopola nad uslugama i neravnoteža moći.<sup>31</sup> Identifikovao je i različite rizike koje proizvodi privatizacija voda i usluga, koje uključuju pogoršanje usluga, nepristupačnost i nemogućnost pristupa uslugama, zanemarivanje održivosti, nedostatak odgovornosti i rast neravnopravnosti. Ovakve štetne prakse su podstakle napore Ujedinjenih nacija da razrade instrumente radi zaštite prava ljudi na vodu.

## MEĐUNARODNI PRAVNI I POLITIČKI OKVIR PRAVA NA VODU

### Regulativa na nivou Ujedinjenih nacija

Ujedinjene nacije (UN) su prvi put priznale vodu kao pravo na posebnoj konferenciji o ovoj temi 1977. godine. Konferencija je zaključena usvajanjem Akcionog plana u kome je naglašeno da

„...svi ljudi, bez obzira na razlike u ekonomskim i socijalnim uslovima u kojima žive, imaju pravo na pristup pijaćoj vodi u kvantitetu i kvalitetu koji odgovara njihovim osnovnim potrebama.“<sup>32</sup>

Ovaj stav je dopunjen antidiskriminacionom odredbom koja je uključena u Konvenciju o eliminaciji svih oblika diskriminacije žena koja se pripremala u to vreme i koja je usvojena 1979. godine. Prema čl. 14(2)(h) ove Konvencije, države potpisnice imaju obavezu da preduzimaju mere radi obezbeđenja

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The Human Right to Water – Market Allocations and Subsistence in a World of Scarcity. *The Interdisciplinary Journal of Study Abroad*, 59–85.

<sup>31</sup> United Nations General Assembly. Human rights and the privatization of water and sanitation services, Report of the Special Rapporteur on the human rights to safe drinking water and sanitation, Léo Heller, of 21 July 2020, A/75/208.

<sup>32</sup> United Nations Department of Economic and Social Affairs. The Human Right to Water and Sanitation. Preuzeto 10. 10. 2021. sa [https://www.un.org/waterforlifedecade/pdf/human\\_right\\_to\\_water\\_and\\_sanitation\\_milestones.pdf](https://www.un.org/waterforlifedecade/pdf/human_right_to_water_and_sanitation_milestones.pdf)



da žene i muškarci imaju ravnopravan pristup i pijaćoj vodi i sanitarnoj infrastrukturi.<sup>33</sup> Slična odredba je uključena i u Konvenciju o pravima deteta.<sup>34</sup>

Na Međunarodnoj konferenciji o vodi i održivom razvoju održanoj januara 1992. godine u Dublinu (Irska) države učesnice su usvojile osnovne principe kojima bi trebalo da se rukovode radi obezbeđenja prava na vodu.<sup>35</sup> Ti principi su sledeći:

1. sveža voda je ključni i ranjivi resurs neophodan za održavanje života, razvoja i životne okoline. Stoga efikasno upravljanje vodenim resursima zahteva holistički pristup uz povezivanje društvenog i ekonomskog razvoja sa zaštitom prirodnih ekosistema;

2. upravljanje vodama treba da bude zasnovano na participativnom principu i da uključi korisnike, planere i donosiocima odluka na svim nivoima. Ovo podrazumeva podizanje svesti o značaju vode među donosiocima odluka i u javnosti. Odluke se donose uz javne konsultacije i uključenje svih korisnika u planiranje i primenu projekata vezanih za vode;

3. žene imaju centralnu ulogu u obezbeđivanju, upravljanju i očuvanju voda. Njihova specifična uloga kao korisnica voda i zaštitnica zdrave životne sredine se retko odražava u institucionalnim aranžmanima o razvoju i upravljanju vodenim resursima, te je potrebno da se uključe u donošenje odluka u ovoj oblasti;

4. s obzirom da voda ima ekonomsku vrednost, bitno je da se pristup čistoj i zdravoj vodi i sanitarnoj infrastrukturi obezbedi uz priuštivu cenu.

Navedeni principi usvojeni na Dablinskoj konferenciji potvrđeni su i na Rio samitu UN o životnoj okolini i razvoju<sup>36</sup> koja je održana iste godine, na Međunarodnoj konferenciji o stanovništvu i razvoju 1994. godine<sup>37</sup> i Svetskom samitu o održivom razvoju 2002. godine.<sup>38</sup> Generalna skupština UN je u svojoj Rezoluciji 54/175 o pravu na razvoj potvrdila da puna realizacija ovog prava

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<sup>33</sup> UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, 13.

<sup>34</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, 3, Article 24 (2).

<sup>35</sup> 1992 Dublin Statement on Water And Sustainable Development. Preuzeto 8. 1. 2022. sa: <http://www.cawater-info.net/library/eng/l/dublin.pdf>

<sup>36</sup> United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 3–14 June 1992. Preuzeto 10. 5. 2022. sa <https://www.un.org/en/conferences/environment/rio1992>

<sup>37</sup> United Nations International Conference on Population and Development, Cairo, Egypt, 5 September 1994. Preuzeto 10. 5. 2022. sa <https://www.unfpa.org/events/international-conference-population-and-development-icpd>

<sup>38</sup> World Summit on Sustainable Development, 26 August–4 September 2002, Johannesburg. Preuzeto 10. 5. 2022. sa <https://www.un.org/en/conferences/environment/johannesburg2002>

uključuje, između ostalih, pravo na hranu i čistu vodu kao osnovna ljudska prava čije unapređenje predstavlja moralni imperativ i za nacionalne vlade i za međunarodnu zajednicu.<sup>39</sup>

Ključni značaj za ovu oblast ima Opšta preporuka br. 15 Komiteta UN za ekonomska, socijalna i kulturna prava usvojena januara 2003. godine.<sup>40</sup> Komitet je usvojio stanovište da pravo na odgovarajući standard življenja i pravo na najviši dostupni standard zdravlja, garantovani čl. 11. i 12. Međunarodnog pakta o ekonomskim, socijalnim i kulturnim pravima,<sup>41</sup> uključuju i pravo na vodu, iako ono nije decidno navedeno u odredbama ovog Pakta. S obzirom na to da je voda od osnovnog značaja za preživljavanje, ovo pravo je povezano sa pravom na život i drugim pravima garantovanim Međunarodnom poveljom ljudskih prava, jer je preduslov za realizaciju svih drugih ljudskih prava. Ovo pravo je definisano kao pravo svakog na bezbednu, fizički dostupnu i pristupačnu vodu u dovoljnim količinama za ličnu i domaću upotrebu. Pored korišćenja za ličnu i kućnu upotrebu, voda je neophodna za različite namene, od proizvodnje hrane (što je povezano sa pravom na odgovarajuću hranu) do obezbeđenja lične higijene (što je u vezi sa pravom na zdravlje). Voda je neophodna i za obezbeđenje sredstava za život (veza sa pravom na obezbeđenje sredstava za život putem rada) i ostvarivanje kulturnih praksi (veza sa pravom na učešće u kulturnom životu).

Pozivajući se na svoju Opštu preporuku br. 3,<sup>42</sup> koja potvrđuje da države ugovornice imaju osnovnu obavezu da obezbede zadovoljenje barem minimuma nivoa svakog od prava sadržanog u Međunarodnom paktu o ekonomskim, socijalnim i kulturnim pravima, Komitet je identifikovao sledeće minimalne osnovne obaveze država u pogledu prava na vodu:

- a) obezbeđenje pristupa minimalnoj količini vode neophodne za ličnu i domaću upotrebu radi sprečavanja bolesti,
- b) obezbeđenje prava na pristup vodi i vodnim postrojenjima ili uslugama na nediskriminatornoj osnovi,
- c) obezbeđenje fizičkog pristupa vodnim postrojenjima ili uslugama koji će osigurati dovoljnu količinu bezbedne vode,

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<sup>39</sup> United Nations General Assembly Resolution A/RES/54/175 the Right to Development, Article 12.

<sup>40</sup> United Nations Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), 20 January 2003, E/C.12/2002/1

<sup>41</sup> United Nations General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, 3.

<sup>42</sup> United Nations Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), 14 December 1990, E/1991/23

- d) obezbeđenje da lična sigurnost neće biti ugrožena prilikom fizičkog pristupa vodi,
- e) obezbeđenje pravične distribucije svih raspoloživih resursa i usluga,
- f) usvajanje i primenu nacionalne strategije i akcionog plana u ovoj oblasti,
- g) nadziranje realizacije ovog prava,
- h) usvajanje relativno jeftinih ciljanih programa radi zaštite ranjivih grupa,
- i) sprovođenje mera radi sprečavanja i kontrole bolesti koje su povezane sa vodom, uključujući pristup odgovarajućim sanitarijama.

Opšta preporuka br. 15 ističe da pravo na vodu sadrži određene slobode:

1. pravo na obezbeđenje pristupa raspoloživim vodnim resursima,
2. pravo na nesmetano korišćenje, kao što je pravo da se bude slobodan od proizvoljnih isključenja ili kontaminacije vodnih resursa, i
3. pravo na sistem snabdevanja vodom koji će obezbediti jednake mogućnosti ljudima da uživaju pravo na vodu.

U ovoj Opštoj preporuci Komitet UN za ekonomska, socijalna i kulturna prava je naglasio da voda treba prvenstveno da se tretira kao socijalno i kulturno dobro, a ne kao ekonomska roba. Shodno ovome, države članice UN treba da preduzimaju mere radi obezbeđenja pristupačnosti, dostupnosti i kvaliteta vode, uključujući fizičku i ekonomsku pristupačnost, nediskriminaciju i pristup informacijama o svim pitanjima koja se odnose na vode. Treći odeljak Opšte preporuke br. 15 nabroja dužnosti država. Pravne obaveze uključuju dužnost preduzimanja svih mera radi pune realizacije ovog prava. Kao i u pogledu svakog drugog ljudskog prava, specifične pravne obaveze država uključuju obaveze da poštuju, štiti i realizuje ovo pravo. Konkretno, u vezi sa pravom na vodu te obaveze su sledeće:

1. Obaveza da *poštuje* zahteva od država da se uzdrže od bilo kakve aktivnosti kojom mogu neposredno ili posredno ugroziti uživanje prava na vodu. Ova zabrana se odnosi na zabranu zagađivanja, ograničavanja ravnopravnog pristupa vodi, uništavanja vodnih resursa i infrastrukture itd.

2. Obaveza da *štiti* zahteva od država da se sprečavaju treća lica (pojedinci, grupe i korporacije) da na bilo koji način ugroze uživanje prava na vodu. Tamo gde usluge vezane za vode, kao što su vodozahvati, vodovodne mreže i pristup rekama, kontrolišu ili se vrše od strane trećih lica, države moraju sprečiti uticaje kojima bi se moglo ugroziti pravo na vodu. U tom cilju države treba da usvoje efikasni pravni okvir koji uključuje nezavisna nadzorna tela, učešće javnosti i sankcionisanje kršenja regulative.

3. Obaveza da *realizuje* uključuje obavezu usvajanja odgovarajućih pravnih, administrativnih, strateških, budžetskih i drugih mera neophodnih za

punu realizaciju prava na vodu. Dužnost je država da obezbede pravnu zaštitu ovog prava, da usvajaju i primenjuju strategije i planove za punu realizaciju ovog prava, sa naročitim naglaskom na ruralna područja.

Opšta preporuka br. 15 Komiteta UN za ekonomska, socijalna i kulturna prava uključuje i međunarodne obaveze država članica UN. One moraju poštovati pravo na vodu i van svojih granica i u tom cilju ne smeju dozvoliti da njihovi državljani i kompanije krše ovo pravo u drugim zemljama. Zabranjeno je da se voda koristi kao instrument političkog ili ekonomskog pritiska. Štaviše, istaknuta je obaveza međunarodne saradnje u cilju obezbeđenja prava na vodu. Prilikom sklapanja međunarodnih sporazuma, države ugovornice moraju voditi računa da ti instrumenti neće negativno uticati na realizaciju prava na vodu. Sporazumi o liberalizaciji trgovine ne smeju da ugroze kapacitet države da obezbedi punu realizaciju ovog prava. Ova obaveza se odnosi i na međunarodne finansijske institucije.

Potkomisija Komisije UN za ljudska prava za unapređenje i zaštitu ljudskih prava je 2005. godine usvojila Smernice za realizaciju prava na pijaću vodu koje je pripremio Specijalni izvestilac El Hadi Gise (El Hadji Guissé).<sup>43</sup> Cilj ovih Smernica je da pomognu vladama da formulišu pravni i strateški okvir za implementaciju prava na vodu. Ključne komponente regulative treba da budu sprečavanje diskriminacije u ostvarivanju ovog prava, pristupačna i ravnopravna distribucija voda, poboljšanje pristupa pijaćoj vodi i obezbeđenje njenog kvaliteta. Voda mora biti pristupačna svima, uključujući siromašne i pripadnike drugih marginalizovanih grupa. S obzirom da niko ne može biti uskraćen za minimalnu količinu vode nužnu za piće i pristup sanitetsko-zdravstvenim uslugama, država mora da subvencionise ove usluge ili da preduzme druge mere kako bi svima obezbedila dostupnost vode. Pored toga, Smernice ukazuju na potrebu obezbeđenja prava učešća svih građana o pitanjima koja se tiču voda i sanitetsko-zdravstvenih usluga, uključujući učešće žena i drugih ranjivih grupa. Zajednice imaju pravo da odrede kakve su im usluge vodosnabdevanja i kanalisanja potrebne. Svako ima pravo na ravnopravni pristup potpunim i transparentnim informacijama koje se odnose na vode, sanitarno-zdravstvene usluge i životnu sredinu.

I pored ovih brojnih aktivnosti UN vezanih za primenu i unapređenje prava na vodu, svetska kriza ovog resursa se nije smanjivala, tako da je Generalna skupština UN proglasila period 2005–2015. Međunarodnom dekadom za akciju „Voda za život“.<sup>44</sup> Savet UN za ljudska prava je 2008. godine imenovao

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<sup>43</sup> United Nations Economic and Social Council. Commission on Human Rights. Sub-Commission on the Promotion and Protection of Human Rights. Realization of the right to drinking water and sanitation. Report of the Special Rapporteur, El Hadji Guissé, 11 July 2005, E/CN.4/Sub.2/2005/25

<sup>44</sup> United Nations General Assembly Resolution A/RES/58/2017

nezavisnog eksperta za pitanja obaveza država u pogledu ostvarivanja ovog prava,<sup>45</sup> a 2011. godine ga je preimenovao u Specijalnog izvestioca o ljudskim pravima na bezbednu pijaću vodu i sanitarije.<sup>46</sup> Njegova ovlašćenja uključuju sprovođenje tematskih istraživanja, prikupljanje dobrih praksi i terenske misije državama članicama UN radi sagledavanja stanja prava na vodu.<sup>47</sup>

Prvi međunarodni instrument koji priznaje pravo na bezbednu i čistu pijaću vodu i sanitaciju kao ljudsko pravo nužno za puno uživanje života i drugih ljudskih prava je Rezolucija 64/292 koju je Generalna skupština UN usvojila 2010. godine.<sup>48</sup> Pet godina kasnije, u svojoj Rezoluciji 70/169 Generalna skupština UN je priznala pravo na bezbednu pijaću vodu i pravo na sanitacije kao dva odvojena prava s obzirom da zahtevaju različiti tretman u njihovoj implementaciji.<sup>49</sup> Ova prava su potvrđena kao komponente prava na odgovarajući standard življenja i koji su neophodni za puno uživanje prava na život i drugih ljudskih prava. Ona su uključena i među ciljeve Agende 2030 za održivi razvoj (Cilj br. 6),<sup>50</sup> a formiran je i Nadzorni odbor Inicijative za integrisani monitoring ovog Cilja održivog razvoja.<sup>51</sup> Osnovni cilj je da se obezbedi dostupnost i održivo upravljanje vodom i sanitacijama za svo stanovništvo, a što je u tesnoj vezi sa odgovornim upravljanjem i sprečavanjem zagađivanja ovog prirodnog resursa. Potciljevi uključuju postizanje univerzalnog i jednakog pristupa bezbednoj i priušljivoj vodi za sve, adekvatan i jednak pristup sanitarnim i higijenskim uslovima za sve, unapređenje kvaliteta vode smanjivanjem zagađenja, povećanje efikasnosti korišćenja vode u svim sektorima, integralno upravljanje vodnim resursima na svim nivoima, obnovu vodno povezanih ekosistema, međunarodnu saradnju u ovoj oblasti i jačanje učešća lokalnih zajednica u upravljanju vodosnabdevanjem i sanitacijom. Savet UN

<sup>45</sup> United Nations Human Rights Council Resolution 7/22, Human rights and access to safe drinking water and sanitation, 28 March 2008, A/HRC/RES/7/22

<sup>46</sup> United Nations Human Rights Council Resolution 16/2, The human right to safe drinking water and sanitation, 8 April 2011, A/HRC/RES/16/2

<sup>47</sup> Do 2020. godine na osnovu misija na terenu objavljeni su izveštaji o stanju prava na vodu i sanitarije u 30 država. United Nations Office of High Commissioner for Human Rights. Country visits. Preuzeto 15. 10. 2021. sa <https://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/CountryVisits.aspx>

<sup>48</sup> United Nations General Assembly Resolution 64/292, The human rights to safe drinking water and sanitation, 3 August 2010, A/RES/64/292

<sup>49</sup> United Nations General Assembly Resolution 70/169, The human rights to safe drinking water and sanitation, 22 February 2016, A/RES/70/169

<sup>50</sup> United Nations General Assembly Resolution Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1

<sup>51</sup> United Nations. UN Water – Monitoring SDG on water and sanitation. Preuzeto 15. 6. 2022. sa <https://www.sdg6monitoring.org>

za ljudska prava je u svojoj Rezoluciji 45/8<sup>52</sup> pozvao sve države da sprovede ove međunarodno dogovorene ciljeve u skladu sa svojim obavezama koje proističu iz međunarodnog prava. Ovaj poziv na poštovanje međunarodnog prava i zaustavljanje zagađivanja prirodnih resursa, uključujući vodu, ponovljen je u Rezoluciji Generalne skupštine UN od 26. jula 2022. godine kojom je pristup čistoj, zdravoj i održivoj životnoj sredini proglašen ljudskim pravom.<sup>53</sup>

Kratak pregled rada UN vezanih za pravo na vodu ukazuje na opredeljenost međunarodne zajednice da stvori čvrst normativni i politički okvir radi zaštite voda i prava na bezbednu pijaću vodu.

### **Regulativa na nivou Evropske unije**

Na evropskom nivou pravni okvir za delovanje država u oblasti politike voda uspostavljen je revidiranom Okvirnom direktivom o vodama Evropskog parlamenta i Saveta od 16. decembra 2020. godine o kvalitetu vode namenjene za ljudsku potrošnju.<sup>54</sup> Direktiva je stupila na snagu 12. januara 2021. godine, a države članice Evropske unije su dužne da je prenesu u nacionalno zakonodavstvo u roku od dve godine. Cilj ove Direktive je da zaštiti zdravlje ljudi od negativnih efekata bilo kakvog zagađenja vode namenjene za ljudsku potrošnju putem obezbeđenja njene zdravstvene ispravnosti i čistoće, kao i da poboljša pristup pijaćoj vodi. Prihvaćen pristup za bezbednost vode zasnovan je na riziku kojim se obuhvata celi lanac snabdevanja od područja sliva, zahvatanja, obrade, skladištenja i distribucije vode.

Ovom Direktivom Evropska komisija je delimično usvojila zahtev evropske građanske inicijative Right2Water u čijoj osnovi je zahtev za formulisanje regulative na osnovu prava na vodu i sanitarije kako je to priznato od strane Ujedinjenih nacija.<sup>55</sup> Kao reakcija na ovu građansku inicijativu, Direktiva o vodama je uključila obavezu država članica da preduzimaju potrebne mere za poboljšanje ili održavanje pristupa vodi namenjenoj za ljudsku potrošnju za sve, a posebno za ranjive i marginalizirane društvene grupe (čl. 16).<sup>56</sup>

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<sup>52</sup> United Nations Human Rights Council Resolution, The human rights to safe drinking water and sanitation, 6 October 2020, A/HRC/RES/45/8

<sup>53</sup> United Nations General Assembly Resolution 76/300, The human right to a clean, healthy and sustainable environment, 26 July 2022, A/RES/76/300

<sup>54</sup> Directive (EU) 2020/2184 of the European Parliament and of the Council of 16 December 2020 on the quality of water intended for human consumption. Ovaj instrument se naslanja na prethodnu direktivu u ovoj oblasti, Direktivu o pijaćoj vodi 98/83/EC koja je od donošenja pretrpela nekoliko izmena.

<sup>55</sup> Right2Water. Preuzeto 10. 10. 2021. sa <https://right2water.eu>

<sup>56</sup> European Citizen's Initiative. „Water and sanitation are a human right! Water is a public good, not a commodity!“ Preuzeto 10. 10. 2021. sa [https://europa.eu/citizens-initiative/water-and-sanitation-are-human-right-water-public-good-not-commodity\\_en](https://europa.eu/citizens-initiative/water-and-sanitation-are-human-right-water-public-good-not-commodity_en)

## PRAVNI I STRATEŠKI OKVIR ODGOVORNOG UPRAVLJANJA VODAMA U REPUBLICI SRBIJI

Kao država ugovornica instrumenata ljudskih prava Ujedinjenih nacija, uključujući Međunarodni pakt o ekonomskim, socijalnim i kulturnim pravima, Republika Srbija je dužna da poštuje, štiti i primenjuje obaveze koje se odnose na pravo na vodu, shodno Opštim preporukama br. 3 i 15 Komiteta UN za ekonomska, socijalna i kulturna prava. Kao država kandidatkinja za članstvo u Evropskoj uniji, dužna je da u nacionalno zakonodavstvo implementira Okvirnu direktivu o vodi (EU)2020/2184 i ostale „čerke“ direktive. U ovom odeljku se analizira nacionalni normativni i strateški okvir odgovornog upravljanja vodama iz perspektive ovih prihvaćenih međunarodnih obaveza države.

Ustav Republike Srbije<sup>57</sup> ne sadrži posebnu odredbu koja bi garantovala zaštitu voda kao ljudskog prava i kojima može da upravlja jedino država. Pravo na vodu se može podvesti kao element prava na život (čl. 24) i prava na zdravu životnu sredinu (čl. 74). Prema čl. 87. Ustava, prirodna bogatstva su u državnoj svojini i koriste se pod uslovima i na način predviđen zakonom, no stranci mogu steći pravo koncesije na prirodnim bogatstvima i dobrima od opšteg interesa (čl. 85, st. 2). Preduzetništvo se može ograničiti zakonom radi zaštite zdravlja ljudi, životne sredine i prirodnih bogatstava (čl. 83, st. 2). Vode, vodotoci i njihovi izvori, resursi podzemnih voda, geotermalni i drugi geološki resursi su zakonom određeni kao prirodna bogatstva i u svojini su Republike Srbije.<sup>58</sup>

Osnovni pravni akt u oblasti voda je Zakon o vodama.<sup>59</sup> Pored Zakona o vodama, vodama i sistemima zavisnim od voda bave se i zakoni koji regulišu zaštitu životne sredine, zaštitu prirode, rudarstvo i geološka istraživanja, komunalnu delatnost, lokalnu samoupravu, plovidbu, javna preduzeća, javno zdravlje, vanredne situacije, javnu svojinu i javno-privatno partnerstvo. Zakon o zaštiti životne sredine<sup>60</sup> sadrži posebne odredbe o zaštiti voda (čl. 23), a režimi zaštite voda i vodotokova predviđeni su i Zakonom o zaštiti prirode,<sup>61</sup> Zakonom o integrisanom sprečavanju i kontroli zagađivanja životne sredine,<sup>62</sup> Zakonom o

<sup>57</sup> *Službeni glasnik RS*, br. 98/2006. i 115/2021.

<sup>58</sup> Zakon o javnoj svojini, *Službeni glasnik RS*, br. 72/2011, 88/2013, 105/2014, 104/2016. – dr. zakon, 108/2016, 113/2017, 95/2018. i 153/2020.

<sup>59</sup> *Službeni glasnik RS*, br. 30/2010, 93/2012, 101/2016, 95/2018. i 95/2018. – dr. zakon.

<sup>60</sup> *Službeni glasnik RS*, br. 135/2004, 36/2009, 36/2009. – dr. zakon, 72/2009. – dr. zakon, 43/2011. – odluka US, 14/2016, 76/2018, 95/2018. – dr. zakon i 95/2018. – dr. zakon

<sup>61</sup> *Službeni glasnik RS*, br. 36/2009, 88/2010, 91/2010. – ispr., 14/2016, 95/2018. – dr. zakon i 71/2021.

<sup>62</sup> *Službeni glasnik RS*, br. 135/2004. i 25/2015.



strateškoj proceni uticaja na životnu sredinu,<sup>63</sup> kao i drugim propisima i podzakonskim aktima kojima se uređuje sistem zaštite prirode i životne sredine.

#### Zakon o vodama uređuje

„...pravni status voda, integralno upravljanje vodama, upravljanje vodnim objektima i vodnim zemljištem, izvori i način finansiranja vodne delatnosti, nadzor nad sprovođenjem ovog zakona, kao i druga pitanja značajna za upravljanje vodama“ (čl. 1).

Odredbe ovog zakona odnose se na sve površinske i podzemne vode na teritoriji Republike Srbije, uključujući termalne i mineralne vode, osim podzemnih voda iz kojih se mogu dobiti korisne mineralne sirovine i geotermalna energija, zatim na vodotoke koji čine ili presecaju državnu granicu Republike Srbije i njima pripadajuće podzemne vode, kao i na eksploataciju rečnih nanosa koji ne sadrže primese drugih korisnih mineralnih sirovina (čl. 2). Prema čl. 5. ovog Zakona vode su prirodno bogatstvo u državnoj svojini, javno vodno dobro koje je neotuđivo i koje se koristi na način kojim se ne utiče štetno na vode i priobalni ekosistem i ne ograničavaju prava drugih. Pravo na njihovo korišćenje se može steći pod uslovima utvrđenim ovim Zakonom i posebnim zakonom.

Upravljanje vodama je u nadležnosti države i zasniva se na načelima održivog razvoja, celovitosti, jedinstva vodnog sistema, obezbeđivanja zaštite od štetnog dejstva voda, načela „korisnik plaća“, načela „zagađivač plaća“, uvažavanja najboljih dostupnih tehnika i učešća javnosti i prava na informacije o stanju voda i radu nadležnih organa (čl. 25). Upravljanje vodama mora biti zasnovano na dugoročnoj zaštiti raspoloživih vodnih resursa po količini i kvalitetu. Načelo „korisnik plaća“ podrazumeva da svako ko koristi vodno dobro i vodni objekat, odnosno vodni sistem, kao dobro od opšteg interesa, dužan je da za njegovo korišćenje plati realnu cenu. S druge strane, svako ko svojim aktivnostima prouzrokuje zagađenje vode dužan je da snosi troškove mera za otklanjanje zagađenja. Voda za piće mora ispunjavati uslove u pogledu zdravstvene ispravnosti (čl. 75, st. 1), a javno preduzeće, odnosno drugo pravno lice koje obavlja poslove snabdevanja vodom, dužno je da preduzima mere za obezbeđenje zdravstvene ispravnosti vode za piće (čl. 74).

Zakon o vodama obavezuje i na korišćenje niza mera i aktivnosti radi zaštite voda od zagađivanja radi očuvanja života i zdravlja ljudi, kao i zaštite vodnih i priobalnih ekosistema i postizanja standarda kvaliteta životne sredine (od. 4.3). Odredbe uključuju i zabrane i obaveze zagađivača (čl. 97–104) i sistematsko praćenje statusa voda i zaštićenih oblasti (čl. 107–111), kao i zabrane, ograničavanje prava i obaveza vlasnika i korisnika vodnog zemljišta

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<sup>63</sup> *Službeni glasnik RS*, br. 135/2004. i 88/2010.

i vodnih objekata (čl. 133–139). Pomak u pogledu prava na učešće građana u upravljanju vodama i na informisanje predstavlja uključenje javnosti u procese pripreme i donošenja planova upravljanja vodama i osnivanje Nacionalne konferencije za vode (čl. 142–146). Nacionalnu konferenciju čine predstavnici jedinica lokalne samouprave sa svakog vodnog područja, predstavnici korisnika voda i udruženja građana.<sup>64</sup>

Izmenama i dopunama Zakona o vodama iz 2010. godine usvojenim 2012. godine omogućeno je da se vodno zemljište u javnoj svojini daje u zakup, a ova problematika je dodatno regulisana izmenama i dopunama Zakona 2016. i 2018. godine (čl. 10a, 10b, 10v, 10g, 10d i 10đ).<sup>65</sup>

Prema važećim rešenjima, vodno zemljište u javnoj svojini se može dati u zakup pravnim licima, preduzetnicima i fizičkim licima za namene utvrđene čl. 10. Zakona. Raspon namena vodnog zemljišta je veoma širok i uključuje, pored sporta, rekreacije i turizma, izgradnju, rekonstrukciju i sanaciju vodnih objekata, održavanje korita vodotoka i vodnih objekata, izgradnju i održavanje objekata za proizvodnju električne energije korišćenjem vodnih snaga i vršenja eksploatacije mineralnih sirovina. Rešenje o davanju u zakup i ugovor o zakupu vodnog zemljišta u javnoj svojini donosi, odnosno zaključuje javno vodoprivredno preduzeće. Izuzetak od ovog pravila je slučaj ako se radi o vodnom zemljištu u javnoj svojini na teritoriji grada Beograda za postavljanje plutajućih objekata, u kom slučaju ugovor o zakupu zaključuje nadležni organ grada Beograda (čl. 10a).

Vodno zemljište u javnoj svojini se daje u zakup u postupku javnog nadmetanja ili prikupljanja pismenih ponuda putem javnog oglašavanja (čl. 10b), a postupak se bliže određuje aktom Vlade (čl. 10v, st. 1). Odredbe Zakona o vodama o davanju vodnog zemljišta u zakup ne isključuju davanje vodnog zemljišta na korišćenje po posebnim propisima o javno-privatnom partnerstvu i koncesijama (čl. 10v, st. 5). Rok na koji se vodno zemljište daje u zakup ne može biti duži od 15 godina, izuzev za izgradnju objekata u kom slučaju rok ne može biti duži od 50 godina (čl. 10g, st. 1–5). Zakon omogućuje i ustanovljavanje prava stvarne službenosti na vodnom zemljištu i vodnom objektu u javnoj svojini za izgradnju linijskih infrastrukturnih objekata, postavljanje cevovoda, podzemnih i nadzemnih vodova, optičkih kablova i drugih instalacija, kolektora, vodozahvata/pregrade u koritu vodotoka, kao i pravo službenosti prolaza (čl. 10đ).

<sup>64</sup> Do završetka pisanja ovog rada Nacionalna konferencija za vode nije formirana.

<sup>65</sup> Narodna skupština Republike Srbije je usvojila dodatne Izmene i dopune Zakona o vodama u julu 2021. godine. Predviđene izmene, koje su se odnosile da se vodno zemljište može dati u zakup i neposrednom pogodbom za plutajuće objekte koji su na vodnom zemljištu grada Beograda, izazvale su proteste građana i ekoloških aktivista. Predsednik Republike Srbije je odbio da potpiše zakon i vratio dokument Narodnoj skupštini.

Pravna regulativa omogućava komercijalno korišćenje voda od strane domaćih i stranih pravnih lica. Zakon o javnoj svojini omogućuje da se na prirodnim bogatstvima, pa tako i na vodama, može steći koncesija ili pravo korišćenja, odnosno iskorišćavanja (čl. 9) o čemu odlučuje Vlada (čl. 40). Prema Zakonu o javno-privatnom partnerstvu i koncesijama,<sup>66</sup> koncesija je ugovorno ili institucionalno javno-privatno partnerstvo u kome je javnim ugovorom uređeno komercijalno korišćenje prirodnog bogatstva i dobra u opštoj upotrebi koja su u javnoj svojini,

„...koje javni partner ustupa privatnom partneru, na određeno vreme, pod posebno propisanim uslovima, uz plaćanje koncesione naknade od strane privatnog, odnosno javnog partnera, pri čemu privatni partner snosi rizik vezan za komercijalno korišćenje predmeta koncesije“ (čl. 10, st. 1).

Koncesija radi komercijalnog korišćenja prirodnog bogatstva, uključujući vode, može se dati i za eksploataciju geoloških resursa, pojedine delatnosti unutar zaštićenih područja prirode, kao i za korišćenje drugih zaštićenih prirodnih bogatstava. U slučaju kada privatni partner ne sprovodi mere i radnje neophodne radi zaštite dobra u opštoj upotrebi i radi zaštite prirode, javni partner može jednostrano raskinuti javni ugovor (čl. 54, st. 1, t. 3). Nisu, međutim, predviđene mere da komercijalno korišćenje predmeta koncesije ne ugrožava ostvarivanje ljudskog prava na vodu, zaštitu javnog interesa i obezbeđenje od samovolje privatnog partnera.

Vlada Republike Srbije je 2017. godine usvojila Strategiju upravljanja vodama do 2034. godine, a 2021. Akcioni plan za sprovođenje ove strategije za period od 2021. do 2023. godine.<sup>67</sup> U pogledu korišćenja voda, osnovni strateški cilj je obezbeđenje dovoljnih količina vode odgovarajućeg kvaliteta za različite kategorije stanovništva, pri čemu se ne sme ugroziti životna sredina. Oblast zaštite voda od zagađivanja cilja na zaštitu zdravlja ljudi, očuvanja vodnih ekosistema i zadovoljavanja potreba korisnika voda. U pogledu nastavka pravne reforme u ovoj oblasti, Strategija i Akcioni plan predviđaju usaglašavanje sa regulativom Evropske unije, ali ne i sa ključnim instrumentima i standardima vezanim za pravo na vodu usvojenim na nivou Ujedinjenih nacija. Prema ovim dokumentima planira se porast cene vode i usluga radi dostizanja ekonomske cene snabdevanja vodom i kanalisanja naselja, koje bi trebalo da bude prilagođeno ekonomskoj moći stanovništva i privrede. Pored toga, planira se rekonstruiranje javnih komunalnih preduzeća i smanjivanje broja javnih vodoprivrednih preduzeća, jačanje privatno-javnog partnerstva i podsticanje privatnih investicija u ovoj oblasti. Nacionalna strategija odr-

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<sup>66</sup> *Službeni glasnik RS*, br. 88/2011, 15/2016. i 104/2016.

<sup>67</sup> *Službeni glasnik RS*, br. 79/2021.

životog korišćenja prirodnih resursa i dobara<sup>68</sup> takođe predviđa da se pravo na posebno korišćenje voda stiče po osnovu koncesije.

Ovakve politike, podržane zakonskim ovlašćenjima o javno-privatnom partnerstvu i sticanju koncesija i prava korišćenja nad vodama, izazivaju zabrinutost zbog nesagledivih štetnih posledica po građane i državu. Ova zabrinutost je tim veća što se procenjuje da su do sada već 90 % resursa pijaće vode date pod koncesiju ili privatizovane od strane stranih korporacija.<sup>69</sup> Privatizacije ovog vitalnog prirodnog bogatstva i strateškog resursa su se u svim zemljama u kojima su primenjene prouzrokovale pogubne posledice po stanje voda kao i po zdravlje i živote stanovništva.

Navedene relevantne odredbe Zakona o vodama i drugih zakona i strategija vezanih za odgovorno upravljanje vodama ukazuju da država nije poštovala svoju obavezu usvajanja pravnih i strateških mera neophodnih za punu realizaciju prava na vodu i ravnopravan pristup bezbednoj i priušljivoj vodi za sve. Štaviše, propisi o javno-privatnom partnerstvu ukazuju na jasnu političku odluku da se javni sektor otvori privatnom kapitalu, uključujući u oblasti vodosnabdevanja i sanitacija. Propisi, međutim, ne predviđaju mere da se to desi na način koji ne ugrožava ostvarivanje ljudskog prava na vodu i socijalnih ciljeva, zaštitu javnog interesa, transparentnost procesa i obezbeđenje od samovolje privatnog partnera.

## ZAKLJUČNA RAZMATRANJA

Voda je ključni, nezamenljiv i ranjivi resurs neophodan za održavanje života i preduslov za ostvarivanje svih drugih ljudskih prava. Ujedinjene nacije su priznale pravo na bezbednu pijaću vodu i sanitacije i usvojile niz dokumenata u cilju zaštite ovog prava i obezbeđenja dostupnosti i priušivosti vode svima. Pravne obaveze država u ovom pogledu uključuju obavezu da poštuje, štiti i realizuje pravo na vodu, kao i u pogledu svakog drugog ljudskog prava, što je u tesnoj vezi sa odgovornim upravljanjem i sprečavanjem zagađivanja ovog prirodnog bogatstva. Države su obavezne da se uzdrže od aktivnosti koje mogu neposredno ili posredno ugroziti uživanje prava na vodu, što podrazumeva

<sup>68</sup> *Službeni glasnik RS*, br. 33/2012.

<sup>69</sup> Vidović, N. Voda kao javno dobro svih građana. *Zrenjaninski socijalni forum*. Preuzeto 15. 10. 2021. sa <http://www.zsf.rs/analize/voda-kao-javno-dobro-svih-gradana/>; Pudar, M. i Stevanović, M. N. (2016). Srbija je u tišini prodala izvorišta. *Danas*, 3. jun. Preuzeto 10. 10. 2021. sa <https://www.danas.rs/vesti/ekonomija/srbija-je-u-tisini-prodala-i-zvorista/>; Zrenjanin danas (2019). Strane kompanije poseduju skoro 80 % izvora čiste vode u Srbiji. *Zrenjanin danas*, 25. mart. Preuzeto 10. 10. 2021. sa <https://www.zrenjanindanas.rs/strane-kompanije-poseduju-skoro-80-izvora-ciste-vode-u-srbiji/>

zagađivanje, marketizaciju i komodifikaciju voda i usluga povezanih s njom. Obaveze države uključuju zaštitu od neposrednih ili posrednih uticaja trećih lica koja mogu ugroziti ovo pravo i obavezu usvajanja odgovarajućih pravnih, strateških i drugih mera neophodnih za punu realizaciju ovog prava.

Analiza normativnog i strateškog okvira Republike Srbije za odgovorno upravljanje vodama ukazuje na mnoge nedostatke u pogledu usaglašenosti sa međunarodnim standardima ljudskih prava u ovoj oblasti. Rešenja u ovoj oblasti imaju potencijal da proizvedu negativne efekte na stanovništvo, vodne resurse i državu. Voda nije prepoznata i definisana kao ljudsko pravo. Nisu predviđeni instrumenti za zaštitu i potpunu primenu ovog prava, posebno za osetljive društvene grupe. Propisi o koncesijama i javno-privatnom partnerstvu otvaraju put privatizaciji voda i javnog sektora u ovoj oblasti, uprkos činjenici da je privatizacija ovog vitalnog prirodnog resursa prouzrokovala negativne efekte po stanje voda i stanovništvo u svim zemljama u kojima je primenjena. Ovakva regulativa direktno ugrožava suverenost države nad svojim prirodnim bogatstvima i dobrima u opštoj upotrebi. Nisu predviđeni efikasni instrumenti za zaštitu voda od zagađivanja, kao i od njene komodifikacije i marketizacije.

S obzirom da se radi o vitalnom dobru bez kojeg nema života, neophodno je što pre unaprediti pravni i strateški okvir radi sprečavanja negativnih efekata na uživanje prava na vodu i stanje ovog prirodnog bogatstva. Ove mere bi trebalo da uključe, između ostalih:

- uvođenje instituta ljudsko pravo na vodu i odgovornosti države za savesno, etičko i odgovorno upravljanje i zaštitu voda u skladu sa ostvarivanjem opšteg dobra u Ustav Republike Srbije;

- uvođenje insituta lične odgovornosti javnih funkcionera (od razrešenja do krivične odgovornosti) za činjenje i nečinjenje kojima se ugrožava pravo na vodu;

- zamenjivanje koncepta „zagađivač plaća“ konceptom zabrane i sankcionisanja zagađivanja;

- pooštavanje kaznene politike prema zagađivačima;

- zabrana privatizacije i davanja u zakup izvorišta, vodozahvata, jezera, reka, priobalja itd. stranim i privatnim domaćim kompanijama;

- zabranu privatizacije javnih vodoprivrednih i javnih komunalnih preduzeća;

- zabrana privrednih aktivnosti kojima se ugrožavaju podzemne i nadzemne vode;

- zabrana delatnosti multinacionalnih korporacija koje su u bilo kakvoj vezi sa vodama i drugim prirodnim bogatstvima;

- zabrana trgovine vodom na berzi;

- revizija zakona kojim se reguliše pitanje korišćenja voda, koncesija za korišćenje voda i koncesija za korišćenje vode radi stavljanja na tržište

u izvornom obliku ili u prerađenom obliku, u bocama ili u ambalaži iz perspektive obezbeđenja i zaštite vode kao ljudskog prava i zaštite opšteg dobra, uključivši zabranu davanja koncesija stranim fizičkim i pravnim licima.

Za Republiku Srbiju i njene građane je od vitalne važnosti da uspostavi regulativu koja će obezbediti suverenost nad vodama i zaštitu ostvarivanja ljudskog prava na vodu.

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## **RESPONSIBLE WATER MANAGEMENT\*\***

### **International and national legal and strategic frameworks**

**ABSTRACT:** The subject of this paper is the international legal and political framework of the right to water and relevant regulations in the Republic of Serbia, and the focus is on the state's responsibility for water management in accordance with the realization of the common good. The starting point of the paper is the position that access to water is a human right and that water can be managed only by the state and exclusively in the general interest.

The first part of the paper discusses the risks of marketization, privatization and commodification of water for the realization of the right to water and the protection of this vital natural and strategic resource. The second part summarizes the activities of the United Nations related to the recognition of the right to water as a basic human right and the obligations of states in this sense. The third part analyses the normative and strategic framework of the Republic of Serbia in this area from the perspective of the right to water and responsible state management. Deficiencies in terms of the compli-

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ance with international human rights standards and the risks that the current regulation can produce for the population, water resources and the state are pointed out. No effective instruments have been envisaged for the protection of water from pollution, nor against commodification and marketization, while the privatization of water and public companies in this area threatens the sovereignty of the state over its natural resources. The goal of the paper is to point out the importance of establishing national regulations that will ensure sovereign and responsible management of water resources and protection of the right to water.

**Keywords:** human right to water, marketization of water, commodification of water, privatization of public companies, ecocide, water trading, water futures, public-private partnership, concessions

## INTRODUCTION

Without water, like without air, there is no life. Despite this undeniable fact, all countries of the world, regardless of the level of economic development, face problems due to the pollution of springs, watercourses, seas, rivers and other water resources, which directly threatens ecosystems and the health and lives of people and other living beings. According to United Nations' (UN) data from 2020 on the implementation of Sustainable Development Goal number 6, which refers to the sustainable management of water resources, a quarter of the world's population does not have access to safe drinking water, and almost half are unable to use a sanitary system.<sup>1</sup> In Europe, one million people do not have access to water, and eight million do not have sanitary ware.<sup>2</sup> Of the total number of monitored water bodies, the water quality in 28 % of them is not good and only 56 % of household and industrial waste water is safely treated.<sup>3</sup> The level of water exploitation, i.e., the share of the total affected water resources out of the total available global water resources is 17 %, and the share of integrated water resources management is 54 %.<sup>4</sup>

The quality of water is continuously deteriorating due to the irresponsible attitude of governments and industry towards this natural resource, which

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<sup>1</sup> United Nations. UN Water SDG 6 Dana Portal. Sustainable Development Goal 6 on water and sanitation. Global Status. Available at: <https://www.sdg6data.org/>, accessed on 15 October, 2021.

<sup>2</sup> Right2Water. Available at: <https://right2water.eu>, accessed on 10 October, 2021.

<sup>3</sup> United Nations. UN Water SDG 6 Dana Portal. Sustainable Development Goal 6 on water and sanitation. Global Status. Available at: <https://www.sdg6data.org/>, accessed on 15 October, 2021.

<sup>4</sup> *Ibid.*

threatens the availability of water in the future. The data indicates that we have been drifting away from the goal of ensuring sustainable water exploitation and fresh water supply in response to water scarcity and an increasing population around the world that is facing this problem. Water shortage threatens not only economic and social development, but can be a catalyst for armed conflicts and wars.<sup>5</sup> In the last fifty years, 507 international conflicts related to water have been recorded, 20 of which were armed conflicts.<sup>6</sup>

Water has become a strategic resource of the 21st century, as oil was in the previous century. The shortage of this vital natural resource has triggered water trading on the stock exchange (*water futures market*). The general availability of this vitally important resource is threatened by the systematic theft, exploitation, privatization and marketization of water by multinational corporations. This problem is the focus of many international human rights instruments, including United Nations Human Rights Council Resolution 7/22. The UN General Assembly declared access to a clean, healthy and sustainable environment a human right by the Resolution of July 26, 2022.

The Republic of Serbia is rich in water resources, but the report of the Republic Environmental Protection Agency on the status of surface waters shows that the quality of the water is worrisome.<sup>7</sup> Surface water monitoring showed that only 3% is of a good ecological status; the largest number of bodies has a moderate ecological status (20%), a weak status was determined in 19%, and a poor ecological status in 10% of water bodies.<sup>8</sup> The results of the chemical status showed that 16% of water bodies do not have a good chemical status. Almost 20% of the population in Serbia is not connected to public water supply systems.<sup>9</sup> Indicators of drinking water quality control indicated physico-chemical and microbiological defects in half of the controlled central water supply systems. In 2021, there were only 69.1% of

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<sup>5</sup> United Nations University (2011). *Former National Leaders: Water a Global Security Issue*. Available at: <https://unu.edu/media-relations/releases/water-called-a-global-security-issue.html>, accessed on 10 September, 2022.

<sup>6</sup> Kouzminov, A. (2018). *Water as a Strategic Resource and Political Influence in the Modern World*. The 26th International Forum 'Laying the Foundation for a More Humane Future – Mut zur Ethik', Zurich/Sirnach, Switzerland, 31 August – 2 September 2018, 2.

<sup>7</sup> Čađo, S. et al. (2021). *Status površinskih voda Srbije – period 2017–2019*. Belgrade: Environmental Protection Agency, Ministry of Environmental Protection of the Republic of Serbia. Available at: [http://www.sepa.gov.rs/download/VodeSrbije/StatusPovrsinskihVoda2017\\_2019.pdf](http://www.sepa.gov.rs/download/VodeSrbije/StatusPovrsinskihVoda2017_2019.pdf), accessed on 10 September, 2022.

<sup>8</sup> *Ibid.*, 95.

<sup>9</sup> Water management strategy on the territory of the Republic of Serbia until 2034 (*Official Gazette of the RS*, no. 3/2017), 48.

working public water supply systems in urban areas.<sup>10</sup> One of the most sensitive social groups, the population in Roma settlements, uses improved sources of drinking water (98%), 78% use tap water that is delivered to the apartment or house and 86% use basic sanitation services.<sup>11</sup> According to the results of research in the civil sector from 2022, it is estimated that around one million people permanently or temporarily do not have access to drinking water.<sup>12</sup>

The subject of this paper is the international legal and political framework of the right to water and relevant regulations in the Republic of Serbia, and the focus is on the state's responsibility for water management in accordance with the realization of the common good. The starting point of the paper is the position that access to water is a human right, and that water can be managed only by the state and only in the general interest. The paper consists of three parts. The first part deals with the problem of treating water as a commodity, which has become a frequent practice of corporations and governments around the world, as well as the response of individual countries to the marketization and privatization of water. The second part presents the key instruments of the United Nations and the European Union in this area. The normative and strategic framework of the Republic of Serbia in this area is analysed in the third part of the paper, from the perspective of the right to water and the responsible state management of this natural resource. The final considerations summarize the relevant issues and conclude that the state has a primary obligation to provide its citizens with a progressive and full realization of the right to water. This part also presents specific recommendations for improving the relevant legal framework in the Republic of Serbia. The goal of the paper is to point out the importance of establishing national regulations that will ensure sovereignty and responsible management of water resources to protect the health and lives of people, as well as the environment.

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<sup>10</sup> Knežević, T. (2022). *Izveštaj o zdravstvenoj ispravnosti vode za piće javnih vodovoda i vodnih objekata u Republici Srbiji za 2021. godinu*. Belgrade: Institute of Public Health of Serbia "Dr Milan Jovanovic Batut", 22.

<sup>11</sup> Kuzmanov, L., Marković, J. (2021). *Položaj osetljivih grupa u procesu pristupanja Republike Srbije Evropskoj uniji*. Belgrade: Social Inclusion and Poverty Reduction Unit of the Republic of Serbia, 6.

<sup>12</sup> Todorović, I. (2022). *Ko u Srbiji prvi dograbi vodu, taj ima primat u njenom korišćenju*. *Balkan Green Energy News*, 5 September. Available at: <https://balkangreenenergynews.com/rs/ko-u-srbiji-prvi-dograbi-vodu-taj-ima-primat-u-njenom-korisćenju/>, accessed on 15 September, 2022.



## WATER – RIGHT OR COMMODITY?

The stock exchange business on Wall Street in December 2020 marked the first water trading (*water futures market*) on the stock exchange. The world's largest derivatives exchange has launched the California water market trading worth more than \$1 billion.<sup>13</sup> Water has appeared on the stock market as a commodity in the form of a financial instrument called futures and its price varies like the price of gold, oil or wheat. The idea of water trading arose because of the water shortage in California, with the rationale that it would serve as a hedge for the largest water consumers against rising prices and as an indicator for investors around the world, and that futures would reduce the risk to farmers and cities in the event of water shortages.<sup>14</sup> This is presented as a pilot project to show what the trend is, but it is very possible that water will be regularly traded in the future. The Special Rapporteur on Water and Human Rights reacted by expressing concern, since the appearance of water on the stock market will lead stock market and financial speculation financiers to start trading water like any other commodity, such as gold and oil.<sup>15</sup> Unlike these products, water cannot be treated as a commodity, because it is a public good and belongs to everyone. In addition, unlike oil, for which alternatives can be found (natural gas, nuclear, solar energy, etc.), water has no substitute.

While corporations and other proponents of water futures trading consider it economically justified, many authors warn that water marketization is a dangerous trade of our future.<sup>16</sup> One should keep in mind that trading on the stock market is only apparently free, because looking at the wider context in which it takes place reveals the prevailing influence of transnational financial capital, international financial institutions, corporations and the most powerful governments. The enormous influence of corporations in this sector is also reflected in laws in many countries that favour the interests of private inves-

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<sup>13</sup> Chipman, K. (2020). California Water Futures Begin Trading Amid Fear of Scarcity. *Bloomberg*, 6 December. Available at: <https://www.bloomberg.com/news/articles/2020-12-06/water-futures-to-start-trading-amid-growing-fears-of-scarcity>, accessed on 1 November, 2021.

<sup>14</sup> SEEBiz (2020). Na Wall Streetu počelo trgovanje vodom. *SEEBiz*, 9 December. Available at: <https://www.seebiz.eu/trzista/na-wall-streetu-pocelo-trgovanje-vodom/247054>, accessed on 1 November, 2021.

<sup>15</sup> United Nations Human Rights Office of the High Commissioner (2020). *Water: Futures market invites speculators, challenges basic human rights – UN expert*. December 11. Available at: <https://www.ohchr.org/en/press-releases/2020/12/water-futures-market-invites-speculators-challenges-basic-human-rights-un>, accessed on 1 November, 2021.

<sup>16</sup> A word game, since *future* also indicates the time ahead of us. Brisman, A. et al. (2020). The politics of water rights: Scarcity, sovereignty and security. *Water, Governance, and Crime Issues*. Springer, Cham, 17–29.

tors, allow the pollution of watercourses and water resources and endanger its quality. Research findings indicate that many governments treat this vital natural asset irresponsibly not only because of ignorance, incompetence, or corruption, but also because they treat it as an economic resource to attract foreign investors and creditors to stimulate economic growth of their countries.<sup>17</sup> They ignore that short-term positive effects on the economy can have incalculable long-term adverse effects on people and the environment. This claim has been argued by many researchers, including Maude Barlow,<sup>18</sup> Patrick Bonda,<sup>19</sup> Karen Bakker,<sup>20</sup> Daniel Jaffee,<sup>21</sup> Bieler and Jordan,<sup>22</sup> Veljković,<sup>23</sup> Keough and Youngstedt.<sup>24</sup> Many authors advocate that access to water be defined and protected as a basic human right.<sup>25</sup> The importance of protecting the human right to water must be considered through the prism of the fact that water is an

<sup>17</sup> Ascher, W. (2000). Understanding Why Governments in Developing Countries Waste Natural Resources. *Environment* 42 (2): 8.

<sup>18</sup> Barlow, M. (2002). Commodification of water – the wrong prescription. *Water Science and Technology*, 43 (4), 79–84; Barlow, M., Clarke, T. (2002). Who owns water?. *The Nation*, 2 (9), 11–14.

<sup>19</sup> Bond, (2010). Water, health, and the commodification debate. *Review of Radical Political Economics*, 42.4, 445–464; Bond, (2008). Macrodynamics of globalization, uneven urban development and the commodification of water. *Law, Social Justice and Global Development Journal*, 1–14; Bond, (2004). Water commodification and de-commodification narratives: pricing and policy debates from Johannesburg to Kyoto to Cancun and back. *Capitalism Nature Socialism*, 15 (1), 7–25.

<sup>20</sup> Bakker, K. (2014). The business of water: Market environmentalism in the water sector. *Annual Review of Environment and Resources*, 39, 469–494.

<sup>21</sup> Jaffee, D. (2020). Enclosing Water: Privatization, Commodification, and Access. 303–323. In Legun, K., Keller, J., Bell, M., Carolan, M. (eds.). *The Cambridge Handbook of Environmental Sociology* (Vol. 2). Cambridge: Cambridge University Press.

<sup>22</sup> Bieler, A. and Jordan, J. (2018). Commodification and ‘the commons’: The politics of privatizing public water in Greece and Portugal during the Eurozone crisis. *European Journal of International Relations*, 24 (4), 934–957.

<sup>23</sup> Veljković, N. (2018). Voda za piće i ljudsko pravo: javno dobro ili roba? Collection of papers, *International Conference for Plumbing and Sewage Systems*, Pale, 1–18.

<sup>24</sup> Keough, S. B., Youngstedt, S. M. (2019). *Water, life, and profit: fluid economies and cultures of Niamey, Niger*. New York: Berghahn Books.

<sup>25</sup> Sarvan, D. (2017). Ljudsko pravo na vodu u hrvatskom zakonodavstvu – *de lege lata* i *de lege ferenda*. Foundation Public Law Centre, 1–15; Veljković, N., Petrović, Z., Šotić, A., Hero-Gon, M. (2018). Voda za piće i ljudsko pravo: dezinformacije i poverenje potrošača. *Voda i sanitarna tehnika*, 48 (3–4), 37–48; McAdam, K. C. (2003). The Human Right to Water – Market Allocations and Subsistence in a World of Scarcity. *The Interdisciplinary Journal of Study Abroad*, 59–85; Fiechter-Widemann, E. (2017). *The Human Right to Water: Justice... Or Sham?: The Legal, Philosophical, and Theological Background of the New Human Right to Water*. Eugene, Oregon: Pickwick Publications; Bognanović, S., Jovović, A. (2013). Ljudsko pravo na vodu i sanitaciju. *Pravo – teorija i praksa*, 1–3, 14–27.

irreplaceable good necessary for human life, and is therefore a necessary precondition for the realization of other human rights.<sup>26</sup>

Certain authors believe that irresponsible water management can be defined as a form of ecocide and green crime.<sup>27</sup> Criminologists began to examine the connection between genocide and ecocide, i.e., the interconnectedness of the destruction of ecosystems and people, and found that this phenomenon reflects the characteristics of state-corporate crime.<sup>28</sup> According to these authors, numerous modern genocides have been carried out through ecocide and corporate efforts to ensure the raw materials necessary for the unstoppable capitalist production line. Hence the initiative, supported by social movements around the world, to include ecocide as an international crime in the Rome Statute of the International Criminal Court.<sup>29</sup> This would enable establishing personal and criminal responsibility of individuals for destroying nature or making decisions that cause serious damage to the environment. Proponents of this idea believe that criminal liability would have a greater impact on reducing environmental pollution than filing lawsuits against corporations, which as a rule already have budgets planned in advance to cover court costs.

In addition to marketization and water pollution, the disastrous impact on the state of water in the world is a consequence of the privatization of water intakes, public services and water utilities. In the majority of cases, privatization in this area is presented and introduced as part of a package of drastic budget saving measures due to the indebtedness of the state and justified by the explanation that this will generate additional revenues that can be used to pay off the debt, increase the quality of drinking water and improve water supply services. In practice, wherever it has been carried out, privatization in this area has resulted in rising prices, decreasing the quality of services and water, further commercialization of services and exclusion of citizens from participation in

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<sup>26</sup> Mladenov, M., Milojević, G. (2019). Ljudsko pravo na vodu sa posebnim osvrtnom na praksu Evropskog suda za ljudska prava. *Strani pravni život*, 63 (2), 117.

<sup>27</sup> Lorenzo, N. (2014). Green Criminology, Victimització Mediambiental i Social Harm. El Cas d'Huelva (Espanya). *Crítica penal y poder: una publicación del Observatorio del Sistema Penal y los Derechos Humanos*; No. 7, 5–34; Johnson, H., South, N., Walters, R. (2016). The Commodification and Exploitation of Fresh Water: Property, Human Rights and Green Criminology. *International Journal of Law, Crime and Justice*, 44 (March), 146–62.

<sup>28</sup> Lynch, M. J., Fegadel, A., Long, M. A. (2021). Green Criminology and State-Corporate Crime: The Ecocide-Genocide Nexus with Examples from Nigeria. *Journal of Genocide Research*, 23 (2), 236–56.

<sup>29</sup> Stop Ecocide International. "Making Ecocide a Crime". Available at: <https://www.stopecocide.earth/making-ecocide-a-crime>, accessed on 2 September, 2022.

decision-making about their national natural wealth and resources.<sup>30</sup> The commodification of water leads to the situation in which only those who can pay for it have access to drinking water, which is ethically unsustainable considering that it is a resource without which life is not possible. In order to protect against corporate influence and prevent the commodification of water, there are more and more countries whose constitutions guarantee the protection of water as a human right that can only be managed by the state and exclusively in the general interest (Ecuador, Egypt, Bolivia, South Africa, Uruguay, etc.).

In his report on human rights and the privatization of water and sanitation services of 20 July 2020, Léo Heller, Special Rapporteur on the human right to safe drinking water and sanitation, identified three key factors related to the privatization of these services: profit maximization, the establishment of monopolies over services and power imbalance.<sup>31</sup> Also, he identified various risks caused by privatization of water and services, which include deterioration of services, inaccessibility and unaffordability of access to services, neglect of sustainability, lack of accountability and growth of inequality. Such harmful practices have fuelled efforts by the United Nations to develop instruments to protect people's rights to water.

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<sup>30</sup> Hermann, Ch. (2014). Komodifikacija: posljedice i alternative – Pouke iz privatizacije javnih službi u Evropi. *Pravo na grad*. Available at: <http://pravonagrad.org/komodifikacija-posljedice-i-alternative>, accessed on 15 October, 2021; Gaffney, M. (2016). Nature, Economy, and Equity: Sacred Water, Profane Markets. *American Journal of Economics & Sociology*, 75 (5), 1064–1231; Gudelj, I., Runko Luttenberber, L., Senta Marić, A. (2015). Posljedice kojima rezultira privatizacija vodno-komunalnih usluga. 6. *Croatian water conference with international participation, Hrvatske vode na investicijskom valu*. Available at: [https://www.researchgate.net/publication/279528754\\_Consequences\\_resulting\\_from\\_privatization\\_of\\_water-utility\\_services\\_Posljedice\\_kojima\\_rezultira\\_privatizacija\\_vodno-komunalnih\\_usluga](https://www.researchgate.net/publication/279528754_Consequences_resulting_from_privatization_of_water-utility_services_Posljedice_kojima_rezultira_privatizacija_vodno-komunalnih_usluga), accessed on 10 October, 2021; Jaffee, D. (2020). Enclosing Water: Privatization, Commodification, and Access, 303–323. In: Legun, K., Keller, J., Bell, M., Carolan, M. (eds.). *The Cambridge Handbook of Environmental Sociology* (Vol. 2). Cambridge: Cambridge University Press; Bond, (2008). Macrodynamics of Globalisation, Uneven Urban Development and the Commodification of Water. *Law, Social Justice & Global Development Journal*, 1–14; Gleick, H., Wolf, G., Chalecki, E. L., Reyes, R. (2002). *New Economy of Water – The Risks and Benefits of Globalization and Privatization of Fresh Water*. Oakland: Pacific Institute for Studies in Development, Environment, and Security; McAdam, K. C. (2003). The Human Right to Water – Market Allocations and Subsistence in a World of Scarcity. *The Interdisciplinary Journal of Study Abroad*, 59–85.

<sup>31</sup> United Nations General Assembly. Human rights and the privatization of water and sanitation services, Report of the Special Rapporteur on the human rights to safe drinking water and sanitation, Léo Heller, of 21 July 2020, A/75/208

## **THE INTERNATIONAL LEGAL AND POLITICAL FRAMEWORK OF THE RIGHT TO WATER**

### **Regulation at the level of the United Nations**

The United Nations (UN) first recognized water as a right at a special conference on this topic in 1977. The conference concluded by adopting the Action Plan, which emphasized that

“...all people, regardless of the differences in the economic and social conditions in which they live, have the right to access drinking water in the quantity and quality that meets their basic needs.”<sup>32</sup>

This position was supplemented by an anti-discrimination provision that was included in the Convention on the Elimination of All Forms of Discrimination Against Women, which was being prepared at that time and was adopted in 1979. According to Article 14(2)(h) of this Convention, the signatory states must take measures to ensure that women and men have equal access to drinking water and sanitary infrastructure.<sup>33</sup> A similar provision is included in the Convention on the Rights of the Child.<sup>34</sup>

At the International Conference on Water and Sustainable Development held in Dublin (Ireland) in January 1992, the participating states adopted the basic principles to follow in order to ensure the right to water.<sup>35</sup> Those principles are as follows:

1. Fresh water is the crucial and vulnerable resource necessary for sustaining life, development and the environment. Therefore, effective management of water resources requires a holistic approach, linking social and economic development with the protection of natural ecosystems.

2. Water management should be based on the participatory principle and involve users, planners and decision-makers at all levels. This includes raising awareness of the importance of water among decision makers and the public. Decisions are made with public consultations and the involvement of all users in the planning and implementation of water-related projects.

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<sup>32</sup> United Nations Department of Economic and Social Affairs. *The Human Right to Water and Sanitation*. Available at: [https://www.un.org/waterforlifedecade/pdf/human\\_right\\_to\\_water\\_and\\_sanitation\\_milestones.pdf](https://www.un.org/waterforlifedecade/pdf/human_right_to_water_and_sanitation_milestones.pdf), accessed on 10 October, 2021.

<sup>33</sup> UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, 13.

<sup>34</sup> UN General Assembly. *Convention on the Rights of the Child*. 20 November 1989, United Nations, Treaty Series, vol. 1577, 3, Article 24 (2).

<sup>35</sup> 1992 Dublin Statement on Water and Sustainable Development. Available at: <http://www.cawater-info.net/library/eng/l/dublin.pdf>, accessed on 8 January, 2022.

3. Women play a central role in the providing, managing and preserving water. Their specific role as users of water and protectors of the environment is rarely reflected in institutional arrangements for the development and management of water resources, and they need to be involved in decision-making in this area.

4. Given that water has an economic value, it is important that access to clean and healthy water and sanitation infrastructure is provided at an affordable price.

The aforementioned principles adopted at the Dublin Conference were also confirmed at the UN Rio Summit on Environment and Development<sup>36</sup> held in the same year, at the International Conference on Population and Development in 1994<sup>37</sup> and the World Summit on Sustainable Development in 2002.<sup>38</sup> In its Resolution 54/175 on the right to development, the UN General Assembly confirmed that the full realization of this right includes, among others, the right to food and clean water as basic human rights, and that improving them represents a moral imperative for both national governments and the international community.<sup>39</sup>

General Recommendation no. 15 of the UN Committee on Economic, Social and Cultural Rights adopted in January 2003<sup>40</sup> is of crucial importance for this area. The Committee adopted the position that the right to an adequate standard of living and the right to the highest available standard of health, guaranteed by Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights,<sup>41</sup> include the right to water, although it is not clearly stated in the provisions of this Covenant. Given that water is of fundamental importance for survival, this right is linked to the right to life and other rights guaranteed by the Universal Declaration of Human Rights,

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<sup>36</sup> United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 3–14 June 1992. Available at: <https://www.un.org/en/conferences/environment/rio1992>, accessed on 10 May, 2022.

<sup>37</sup> United Nations International Conference on Population and Development, Cairo, Egypt, 5 September 1994. Available at: <https://www.unfpa.org/events/international-conference-population-and-development-icpd>, accessed on 10 May, 2022.

<sup>38</sup> World Summit on Sustainable Development, 26 August– 4 September 2002, Johannesburg. Available at: <https://www.un.org/en/conferences/environment/johannesburg2002>, accessed on 10 May, 2022.

<sup>39</sup> United Nations General Assembly Resolution A/RES/54/175 The Right to Development, Article 12.

<sup>40</sup> United Nations Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), 20 January 2003, E/C.12/2002/1.

<sup>41</sup> United Nations General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, 3.

as it is a prerequisite for the realization of all other human rights. This right is defined as the right of everyone to safe, physically available and affordable water in sufficient quantities for personal and domestic use. In addition to personal and domestic use, water is necessary for a variety of purposes, from food production (which is related to the right to adequate food) to maintaining personal hygiene (which is related to the right to health). Water is also necessary for the provision of means of livelihood (connection with the right to provision of means of livelihood through work) and the realization of cultural practices (connected to the right to participate in cultural life).

Referring to its General Recommendation no. 3<sup>42</sup> which confirms that the contracting states have a basic obligation to ensure the satisfaction of at least the minimum level of each of the rights contained in the International Covenant on Economic, Social and Cultural Rights, the Committee has identified the following minimum basic obligations of the states with regard to the right to water:

- a) ensuring access to the minimum amount of water necessary for personal and domestic use in order to prevent disease,
- b) ensuring the right to access water and water facilities or services on a non-discriminatory basis,
- c) ensuring physical access to water facilities or services that will ensure a sufficient amount of water safe for usage,
- d) ensuring that personal safety will not be compromised during physical access to water,
- e) ensuring fair distribution of all available resources and services,
- f) adoption and implementation of the national strategy and action plan in this area,
- g) monitoring the realization of this right,
- h) adoption of relatively inexpensive targeted programs to protect vulnerable groups,
- i) implementation of measures to prevent and control water-related diseases, including access to adequate sanitation.

General recommendation no. 15 points out that the right to water entails certain freedoms:

1. the right to ensure access to available water resources,
2. the right to unimpeded use, such as the right to be free from arbitrary exclusion or contamination of water resources, and
3. the right to a water supply system that will ensure equal opportunities for people to enjoy the right to water.

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<sup>42</sup> United Nations Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), 14 December 1990, E/1991/23.



In this General Recommendation, the UN Committee for Economic, Social and Cultural Rights emphasized that water should primarily be treated as a social and cultural asset, not as an economic commodity. Accordingly, UN member states should take measures to ensure accessibility, availability and quality of water, including physical and economic accessibility, non-discrimination and access to information on all water-related issues. The third section of General Recommendation no. 15 lists the duties of states. Legal obligations include the duty to take all measures for the full realization of this right. As with any other human right, the specific legal obligations of states include obligations to respect, protect and realize this right. Specifically, in relation to the right to water, these obligations are as follows:

1. The obligation to *respect* requests from states to refrain from any activity that may directly or indirectly threaten the realization of the right to water. This prohibition refers to the prohibition on pollution, restriction on equal access to water, destruction of water resources and infrastructure, etc.

2. The obligation to *protect* requires states to prevent third parties (individuals, groups and corporations) from jeopardizing the realization of the right to water in any way. Where water-related services, such as water intakes, water networks and access to rivers, are controlled or provided by third parties, the state must prevent impacts that could threaten the right to water. With that aim, states should adopt an effective legal framework that includes independent oversight bodies, participation of the public, and sanctions for regulatory violations.

3. The obligation to *implement* includes the obligation to adopt appropriate legal, administrative, strategic, budgetary and other measures necessary for the full realization of the right to water. It is the duty of states to ensure legal protection of this right, to adopt and implement strategies and plans for the full realization of this right, with a special emphasis on rural areas.

General Recommendation no. 15 of the UN Committee on Economic, Social and Cultural Rights includes international obligations of UN member states. They must respect the right to water beyond their borders and, to that end, must not allow their citizens and companies to violate this right in other countries. It is forbidden to use water as an instrument of political or economic pressure. What is more, the obligation of international cooperation in order to ensure the right to water was emphasized. When concluding international agreements, the contracting states must take care that these instruments will not negatively affect the realization of the right to water. Agreements on trade liberalization must not jeopardize the state's capacity to ensure the full realization of this right. This obligation also applies to international financial institutions.

In 2005, the Sub-Commission of the UN Human Rights Commission's for the Promotion and Protection of Human Rights adopted the Guidelines for

the Implementation of the Right to Drinking Water prepared by Special Rapporteur El Hadji Guissé.<sup>43</sup> The aim of these Guidelines is to help governments create a legal and strategic framework for the implementation of the right to water. The key components of the regulation should be the prevention of discrimination in the exercise of this right, accessible and equal distribution of water, improving access to drinking water and ensuring its quality. Water must be accessible to all, including the poor and members of other marginalized groups. Since no one can be denied the minimum amount of water necessary for drinking and access to sanitary and health services, the state must subsidize these services or take other measures to ensure that water is available to all. In addition, the Guidelines indicate the need to ensure the right of participation of all citizens when it comes to issues related to water and sanitation services, including the participation of women and other vulnerable groups. Communities have the right to determine what water and sewerage services they need. Everyone has the right to equal access to complete and transparent information related to water, sanitation and health services and the environment.

Despite these numerous UN activities related to the implementation and promotion of the right to water, the world crisis in terms of this resource has not become less serious, so the UN General Assembly declared the period 2005-2015 as the International Decade for the action “Water for Life”.<sup>44</sup> In 2008, the UN Human Rights Council appointed an independent expert on issues of states’ obligations regarding the realization of this right,<sup>45</sup> and in 2011, the expert was renamed into Special Rapporteur on human rights to safe drinking water and sanitation.<sup>46</sup> The Special Rapporteur is authorized to conduct thematic research, collect good practices and conduct field missions to UN member states to assess the state of the right to water.<sup>47</sup>

The first international instrument that recognizes the right to safe and clean drinking water and sanitation as a human right necessary for fully exercising the right to life and other human rights is Resolution 64/292, adopted by the

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<sup>43</sup> United Nations Economic and Social Council. Commission on Human Rights. Sub-Commission on the Promotion and Protection of Human Rights. Realization of the right to drinking water and sanitation. Report of the Special Rapporteur, El Hadji Guissé, 11 July 2005, E/CN.4/Sub.2/2005/25.

<sup>44</sup> United Nations General Assembly Resolution A/RES/58/2017.

<sup>45</sup> United Nations Human Rights Council Resolution 7/22, Human rights and access to safe drinking water and sanitation, 28 March 2008, A/HRC/RES/7/22.

<sup>46</sup> United Nations Human Rights Council Resolution 16/2, The human right to safe drinking water and sanitation, 8 April 2011, A/HRC/RES/16/2.

<sup>47</sup> By 2020, based on field missions, reports on the state of the right to water and sanitation in 30 countries have been published. United Nations Office of High Commissioner for Human Rights. Country visits. Available at: <https://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/CountryVisits.aspx>, accessed on 15 October, 2021.

UN General Assembly in 2010.<sup>48</sup> Five years later, in its Resolution 70/169, the UN General Assembly recognized the right to safe drinking water and the right to sanitation as two separate rights, taking into consideration that they require different treatment in their implementation.<sup>49</sup> These rights are confirmed as components of the right to an adequate standard of living and as necessary for fully exercising the right to life and other human rights. They are also included among the goals of the 2030 Agenda for Sustainable Development (Goal No. 6),<sup>50</sup> and the Supervisory Board of the Initiative for Integrated Monitoring of this Sustainable Development Goal was formed.<sup>51</sup> The main goal is to ensure the availability and sustainable management of water and sanitation for the entire population, which is closely related to the responsible management and prevention of pollution of this natural resource. The sub-goals include achieving universal and equal access to safe and affordable water for all, adequate and equal access to sanitary and hygienic conditions for all, improving water quality by reducing pollution, increasing the efficiency of water usage in all sectors, integral management of water resources at all levels, restoration of water-related ecosystems, international cooperation in this area and strengthening the participation of local communities in the management of water supply and sanitation. In its Resolution 45/8,<sup>52</sup> the UN Human Rights Council called on all states to implement these internationally agreed goals in accordance with their obligations arising from international law. This call to respect international law and stop the pollution of natural resources, including water, was reiterated in the UN General Assembly Resolution of July 26, 2022, which declared access to a clean, healthy and sustainable environment as a human right.<sup>53</sup>

A brief overview of the work of the UN related to the right to water indicates the determination of the international community to create a solid normative and political framework for the protection of water and the right to safe drinking water.

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<sup>48</sup> United Nations General Assembly Resolution 64/292, The human rights to safe drinking water and sanitation, 3 August 2010, A/RES/64/292.

<sup>49</sup> United Nations General Assembly Resolution 70/169, The human rights to safe drinking water and sanitation, 22 February 2016, A/RES/70/169.

<sup>50</sup> United Nations General Assembly Resolution Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1.

<sup>51</sup> United Nations. UN Water – Monitoring SDG on water and sanitation. Available at: <https://www.sdg6monitoring.org>, accessed on 15 June, 2022.

<sup>52</sup> United Nations Human Rights Council Resolution, The human rights to safe drinking water and sanitation, 6 October 2020, A/HRC/RES/45/8.

<sup>53</sup> United Nations General Assembly Resolution 76/300, The human right to a clean, healthy and sustainable environment, 26 July 2022, A/RES/76/300.

## **Regulation at the level of the European Union**

At the European level, the legal framework for the action of states in the field of water policy was established by the revised Water Framework Directive of the European Parliament and the Council of December 16, 2020 on the quality of water intended for human consumption.<sup>54</sup> The Directive entered into force on January 12, 2021, and the member states of the European Union are required to transpose it into national legislation within two years. The aim of this Directive is to protect human health from the negative effects of any pollution of water intended for human consumption by ensuring its healthiness and cleanliness, as well as to improve access to drinking water. The accepted approach to water security is based on risk, which covers the entire supply chain from the catchment area, abstraction, treatment, storage and distribution of water.

With this Directive, the European Commission partially adopted the request of the European citizen initiative Right2Water, which is based on the request for creating regulations based on the right to water and sanitation as recognized by the United Nations.<sup>55</sup> As a reaction to this citizens' initiative, the Water Directive included the obligation of Member States to take the necessary measures to improve or maintain access to water intended for human consumption for all, and especially for vulnerable and marginalized social groups (Article 16).<sup>56</sup>

## **THE LEGAL AND STRATEGIC FRAMEWORK FOR RESPONSIBLE WATER MANAGEMENT IN THE REPUBLIC OF SERBIA**

As a contracting state of the human rights instruments of the United Nations, including the International Covenant on Economic, Social and Cultural Rights, the Republic of Serbia is obliged to respect, protect and implement obligations related to the right to water, in accordance with General

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<sup>54</sup> Directive (EU) 2020/2184 of the European Parliament and of the Council of 16 December 2020 on the quality of water intended for human consumption. This instrument builds on the previous directive in this area, the Drinking Water Directive 98/83/EC, which has undergone several changes since its adoption.

<sup>55</sup> Right2Water. Available at: <https://right2water.eu>, accessed on 10 October, 2021.

<sup>56</sup> European Citizen's Initiative. "Water and sanitation are a human right! Water is a public good, not a commodity!" Available at: [https://europa.eu/citizens-initiative/water-and-sanitation-are-human-right-water-public-good-not-commodity\\_en](https://europa.eu/citizens-initiative/water-and-sanitation-are-human-right-water-public-good-not-commodity_en), accessed on 10 October, 2021.

Recommendations no. 3 and 15 of the UN Committee on Economic, Social and Cultural Rights. As a candidate country for membership in the European Union, Serbia is obliged to implement the Water Framework Directive (EU) 2020/2184 and other “daughter” directives into the national legislation. In this section, the national normative and strategic framework for responsible water management is analysed from the perspective of these accepted international obligations of the state.

The Constitution of the Republic of Serbia<sup>57</sup> does not contain a special provision that would guarantee the protection of water as a human right that can only be managed by the state. The right to water can be subsumed as an element of the right to life (Article 24) and the right to a healthy environment (Article 74). According to Article 87 of the Constitution, natural resources belong to the state and are used under the conditions and in the manner provided by law, but foreigners can acquire the right to concession on natural resources and goods of general interest (Article 85, paragraph 2). Entrepreneurship can be limited by law in order to protect human health, the environment and natural resources (Article 83, paragraph 2). Water, water-courses and their sources, underground water resources, geothermal and other geological resources are defined by law as natural resources and are owned by the Republic of Serbia.<sup>58</sup>

The main legal act in the field of water is the Water Law.<sup>59</sup> In addition to the Water Law, laws that regulate environmental protection, nature protection, mining and geological research, communal activities, local self-government, navigation, public enterprises, public health, emergency situations, public property and public – private partnership also deal with water and water-dependent systems. The Law on Environmental Protection<sup>60</sup> contains special provisions on water protection (Article 23), and water and watercourse protection regimes are provided for in the Law on Nature Protection,<sup>61</sup> the Law on Integrated Prevention and Control of Environmental Pollution,<sup>62</sup> the Law on

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<sup>57</sup> *Official Gazette of the RS*, no. 98/2006 and 115/2021.

<sup>58</sup> Law on Public Property, *Official Gazette of the RS*, no. 72/2011, 88/2013, 105/2014, 104/2016 – other law, 108/2016, 113/2017, 95/2018 and 153/2020.

<sup>59</sup> *Official Gazette of the RS*, no. 30/2010, 93/2012, 101/2016, 95/2018 and 95/2018 – other law.

<sup>60</sup> *Official Gazette of the RS*, no. 135/2004, 36/2009, 36/2009 – other law, 72/2009 – other law, 43/2011 – US decision, 14/2016, 76/2018, 95/2018 – other law and 95/2018 – other law.

<sup>61</sup> *Official Gazette of the RS*, no. 36/2009, 88/2010, 91/2010 – corrected, 14/2016, 95/2018 – other law and 71/2021.

<sup>62</sup> *Official Gazette of the RS*, no. 135/2004 and 25/2015.

Strategic Environmental Impact Assessment,<sup>63</sup> as well as other regulations and by-laws governing the system of nature and environmental protection.

The Water Law regulates

“...the legal status of water, integral water management, management of water facilities and water areas, sources and methods of financing water activities, supervision over the implementation of this law, as well as other issues important for water management” (Article 1).

The provisions of this law refer to all surface and groundwaters on the territory of the Republic of Serbia, including thermal and mineral waters, except for groundwaters from which useful mineral raw materials and geothermal energy can be obtained, then to watercourses that form or cross the state border of the Republic of Serbia and groundwaters belonging to them, as well as the exploitation of river sediments that do not contain admixtures of other useful mineral raw materials (Article 2). According to Article 5 of this law, water is a state-owned natural resource, a public water resource that is inalienable and that is used in a way that does not adversely affect the water and coastal ecosystem and does not limit the rights of others. The right to utilize waters can be acquired under the conditions established by this Law and a separate law.

Water management is the state’s responsibility and is based on the principles of sustainable development, integrity, unity of the water system, ensuring protection against the harmful effects of water, the “user pays” and “polluter pays” principles, considering the best available techniques and public participation and the right to information on the state of waters and the work of competent authorities (Article 25). Water management must be based on the long-term protection of available water resources in terms of quantity and quality. The “user pays” principle implies that anyone who uses a water resource and a water facility, i.e., a water system, as a resource of general interest, is obliged to pay a realistic price for its use. On the other hand, anyone whose activities cause water pollution is obliged to bear the costs of measures to eliminate the pollution. Drinking water must meet appropriate health conditions (Article 75, paragraph 1), and the state-owned company, that is, another legal entity that performs water supply operations, is obliged to take measures to ensure that drinking water meets necessary health conditions (Article 74).

The Water Law makes it mandatory to use a number of measures and activities to protect water from pollution in order to preserve human life and health, as well as to protect aquatic and coastal ecosystems and achieve environmental quality standards (section 4.3). The provisions include prohibitions

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<sup>63</sup> *Official Gazette of the RS*, no. 135/2004 and 88/2010.

and obligations of polluters (Articles 97–104) and systematic monitoring of the status of water and protected areas (Articles 107–111), as well as prohibitions, rights limitations and obligations of owners and users of water areas and water facilities (Articles 133–139). A step forward in terms of the right to information and citizens' participation in water management is the inclusion of the public in the processes of preparation and adoption of water management plans and the establishment of the National Conference on Water (Articles 142–146). The national conference consists of representatives of local self-government units from each water area, water users representatives and citizens' associations.<sup>64</sup>

Amendments to the Water Law from 2010, adopted in 2012, made it possible to lease publicly owned water areas, and this issue was additionally regulated by amendments to the Law in 2016 and 2018 (Articles 10a, 10b, 10v, 10g, 10d and 10dj).<sup>65</sup>

According to valid decisions, water areas in public ownership can be leased to legal entities, entrepreneurs and natural persons for the purposes established in Article 10 of the law. The range of ways in which a water area is used is very wide and includes, in addition to sports, recreation and tourism, the construction, reconstruction and rehabilitation of water facilities, maintenance of watercourse beds and water facilities, construction and maintenance of facilities for the production of electricity using water power and the exploitation of mineral raw materials. The decision on leasing and the contract on the lease of water areas in public ownership is made, that is, concluded by the state-owned water management company. An exception to this rule is the case of water areas in public ownership on the territory of the city of Belgrade for the installation of floating objects, in which case the lease agreement is concluded by the competent authority of the city of Belgrade (Article 10a).

A water area in public ownership is leased in the process of public bidding or collection of written bids through public advertising (Article 10b), and the procedure is determined in more detail by an act of the Government (Article 10 v, paragraph 1). The provisions of the Water Law on the leasing of water areas do not exclude giving water areas for use under special regulations on public-private partnerships and concessions (Article 10c, paragraph 5). The time for which a water area is leased cannot be longer than 15 years, except in

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<sup>64</sup> By the time this paper was finished, the National Conference on Water had not been formed.

<sup>65</sup> The National Assembly of the Republic of Serbia adopted additional amendments to the Water Law in July of 2021. The changes related to the fact that water areas could be leased through a direct contract for floating objects that are on the water area of the city of Belgrade caused protests from citizens and environmental activists. The President of the Republic of Serbia refused to sign the law and returned the document to the National Assembly.



case of building construction, in which case it cannot be leased for more than 50 years (Article 10g, paragraph 1). The law also enables the establishment of the right of easement on water areas and water facilities in public ownership for the construction of linear infrastructure facilities, the installation of pipelines, underground and overhead lines, optical cables and other installations, collectors, water intakes/partitions in the watercourse bed, as well as the right of easement of passage. (Article 10d).

Legal regulation enables the commercial use of water by domestic and foreign legal entities. The Law on Public Property makes it possible to acquire concessions or the right to use or exploit natural resources, including water (Article 9), which is decided by the Government (Article 40). According to the Law on Public-Private Partnership and Concessions<sup>66</sup>, a concession is a contractual or institutional public-private partnership in which a public contract regulates the commercial use of natural wealth and goods in general use that are in public ownership,

“which the public partner cedes to the private partner, for a certain period of time, under specially prescribed conditions, with the payment of the concession fee by the private or public partner, whereby the private partner bears the risk related to the commercial use of the object of the concession” (Article 10, paragraph 1).

A concession for the commercial use of natural resources, including water, can also be granted for the exploitation of geological resources, certain activities within protected nature areas, as well as for the use of other protected natural resources. If a private partner does not implement measures and actions necessary for the protection of goods in general use and for the protection of nature, the public partner can unilaterally terminate the public contract (Article 54, paragraph 1, item 3). However, no measures have been envisaged for ensuring that the commercial use of the concession object does not jeopardize the realization of the human right to water, the protection of the public interest and security against the arbitrariness of the private partner.

In 2017, the Government of the Republic of Serbia adopted the Water Management Strategy until 2034, and the Action Plan for the implementation of this strategy for the period from 2021 to 2023<sup>67</sup> was adopted in 2021. Regarding the use of water, the main strategic goal is to ensure sufficient quantities of water of appropriate quality for different categories of the population, while the environment must not be endangered. Water protection against pollution aims to protect human health, preserve water ecosystems and meet the needs of water users. Regarding the continuation of the legal reform in

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<sup>66</sup> *Official Gazette of the RS*, no. 88/2021.

<sup>67</sup> *Official Gazette of the RS*, no. 79/2021.

this area, the Strategy and the Action Plan envisage harmonization with the regulation of the European Union, but not with the key instruments and standards related to the right to water adopted at the level of the United Nations. According to these documents, an increase in the price of water and services is planned in order to reach the economic price of water supply and for the channelization of settlements, which should be adapted to the economic power of the population and the economy. In addition, it is planned to restructure public utility companies and reduce the number of public water companies, strengthen private-public partnership and encourage private investments in this area. The national strategy for the sustainable use of natural resources and assets<sup>68</sup> also envisages that the right to special use of water is acquired on the basis of a concession.

Such policies, supported by legal authorizations on public-private partnerships and the acquisition of concessions and rights of use over water, cause concern due to unforeseeable adverse consequences for citizens and the state. This concern is all the greater as it is estimated that up to now 90 % of drinking water resources have been consigned or privatized by foreign corporations.<sup>69</sup> Privatization of this vital natural wealth and strategic resource has caused disastrous consequences for the state of water as well as for the health and lives of the population in all the countries where they have been implemented.

The aforementioned relevant provisions of the Water Law and other laws and strategies related to responsible water management indicate that the state did not respect its obligation to adopt legal and strategic measures necessary for the full realization of the right to water and equal access to safe and affordable water for all. What is more, the regulations on public-private partnerships indicate a clear political decision to open up the public sector to private capital, including the areas of water supply and sanitation. The regulations, however, do not envisage measures for this to happen in a way that does not jeopardize the realization of the human right to water and social goals, the protection of the public interest, the transparency of the process and the security against the arbitrariness of the private partner.

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<sup>68</sup> *Official Gazette of the RS*, no. 33/2012.

<sup>69</sup> Vidović, N. Voda kao javno dobro svih građana. *Public Forum in Zrenjanin*. Available at: <http://www.zsf.rs/analize/voda-kao-javno-dobro-svih-gradana/>, accessed on 15 October, 2021; Pudar, M., Stevanović, M. N. (2016). Srbija je u tišini prodala izvorišta. *Danas*, 3 June. Available at: <https://www.danas.rs/vesti/ekonomija/srbija-je-u-tisini-prodala-izvorista/>, accessed on 10 October, 2021; Zrenjanin danas (2019). Strane kompanije poseduju skoro 80 % izvora čiste vode u Srbiji. *Zrenjanin danas*, 25 March. Available at: <https://www.zrenjanindanas.rs/strane-kompanije-poseduju-skoro-80-izvora-ciste-vode-u-srbiji/>, accessed on 10 October, 2021;

## CONCLUSION

Water is a key, irreplaceable and vulnerable resource necessary for sustaining life and a prerequisite for the realization of all other human rights. The United Nations have recognized the right to safe drinking water and sanitation and adopted multiple documents aimed at protecting this right and ensuring the availability and affordability of water for all. The legal obligations of states in this respect include the obligation to respect, protect and realize the right to water, as with any other human right, which is closely related to the responsible management and prevention of pollution of this natural resource. Governments are obliged to refrain from activities that may directly or indirectly threaten practicing the right to water, which implies pollution, marketization and commodification of water and services related to it. The obligations of the state include protection from direct or indirect influences of third parties that may threaten this right and the obligation to adopt appropriate legal, strategic and other measures necessary for the full realization of this right.

The analysis of the normative and strategic framework of the Republic of Serbia for responsible water management indicates many shortcomings in terms of complying with international human rights standards in this area. Solutions in this area have the potential to produce negative effects on the population, water resources and the state. Water is not recognized and defined as a human right. No instruments are provided for the protection and full implementation of this right, especially for marginalized social groups. Regulations on concessions and public-private partnerships pave the way for the privatization of water and the public sector in this area, despite the fact that the privatization of this vital natural resource has caused negative effects on the state of water and the population in all countries where it has been implemented. This type of regulation directly threatens the sovereignty of the state over its natural resources and goods in general use. There are no effective instruments for protecting water from pollution, as well as from its commodification and marketization.

Given that it is a vital asset without which there is no life, it is necessary to improve the legal and strategic framework as soon as possible in order to prevent negative effects on the enjoyment of the right to water and the state of this natural resource. These measures should include, among others:

- introducing the institute of the human right to water and the responsibility of the state for the conscientious, ethical and responsible management and protection of water in accordance with the realization of the common good in the Constitution of the Republic of Serbia;
- introducing the institute of personal responsibility of public officials (from dismissal to criminal liability) for actions and omissions that threaten the right to water;

- replacing the “polluter pays” concept with the concept of banning and sanctioning pollution;
- making the penal policy towards polluters stricter;
- prohibiting the privatization and leasing of springs, water intakes, lakes, rivers, coasts, etc. to foreign and private domestic companies;
- prohibiting the privatization of state-owned water management and utility companies;
- prohibiting economic activities that threaten underground and surface waters;
- prohibiting activities of multinational corporations that have any connection with water and other natural resources;
- prohibiting water trading on the stock exchange;
- revision of laws that regulate the issue of water use, concessions for water use and concessions for the use of water for the purpose of placing it on the market in its original or processed form, in bottles or in packaging, from the perspective of securing and protecting water as a human right and protecting the common good, including the prohibition of granting concessions to foreign individuals and legal entities.

It is vitally important for the Republic of Serbia and its citizens to establish regulations that will ensure sovereignty over waters and protections on practicing the human right to water.

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