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## **The Right to Water and Sanitation – is it still a Great Challenge to the European Union?**

### **Abstract:**

Drinking a glass of clean water when we are thirsty is one of the most usual everyday action in our life. If we are one of those lucky people who have access to clean water and who could afford it because accessing to safely managed drinking water services is still not granted to everyone. In this light, it is not surprising that ensuring access to water and sanitation for all is one of the Sustainable Development Goals (SDGs) which agenda aspires to transform our world till 2030. I assume that we can agree that we cannot fulfil our intergenerational obligations properly as long as there are serious intragenerational problems to be solved, like the issue of the right to water and sanitation.

This is a global ethical problem but most people identify this as the problem of developing countries; however the Member States of the European Union are also involved. The ‘Right2Water’ initiative, the first European Citizens’ Initiative (ECI), which can be regarded as successful, highlights the problem of the water services’ liberalization which can cause the exclusion of poor people of enjoying these significant human rights.

**Key words:** Sustainable Developments Goals, right to water and sanitation, European Citizens’ Initiative

### **1. Introduction**

At first sight, the questions raised by the examination of the right to water and sanitation might not seem to be really urgent in the states of the European Union. However,

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the first successful European Citizens' Initiative, the so-called 'Right2Water' initiative<sup>2</sup> addressed this problem and focused on this issue. In my paper I will examine this European Citizens' Initiative and its follow-up, in order to generate a better understanding of its reflections and proposals. First of all, I will briefly review the right to water and sanitation in the context of the generations of human rights and examine the international legal environment. Subsequently, I will analyse the 'Right2Water' European Citizens' Initiative's chronology and the relevant related documents.

I think that this new European tool of direct democracy could be an opportunity to put environmental and human right issues to the European legal and political agenda. Moreover, I consider that this certain European Citizens' Initiative is a real success as it led to the start of the legislative process and, after its campaign and success, the European Union addressed the issue, which is one of the main achievements of the Initiative.

## 2. Development

### 2.1. The right to water and sanitation in the international dimension of human rights

According to the widespread conception of Karel Vasak we can distinguish three generations of human rights. The first generation is based on the negative obligations of the states, therefore they are often called 'liberty rights', while the second generation requires positive actions and contains economic, social and cultural rights. The third generation of human rights includes the so-called solidarity rights<sup>3</sup>.

In agreement with Amy Hardberger we can ascertain that in the literature it is not unanimous in which generation of rights can we classify the right to water and sanitation<sup>4</sup>. John Scanlon, Angela Cassar and Noémi Nemes share this view too as they state that on the one hand this right is one of the most essential elements of other rights<sup>5</sup>, but on the other hand, the clear classification is missing from the international documents<sup>6</sup>.

There is no direct mention of the right to water and sanitation in the International Bill of Human Rights but according to Scanlon, Cassar and Nemes the Universal Declaration of Human Rights<sup>7</sup> may include implicitly the right as it is essential to satisfy standards of other rights, such as the right to life<sup>8</sup>. However, the International Covenant

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<sup>2</sup> Water and sanitation are a human right! Water is a public good, not a commodity! Commission registration number: ECI(2012)000003.

<sup>3</sup> K. Vasak, *A 30-year struggle. The sustained efforts to give force of law to the universal Declaration of Human Rights*, The Unesco Courier: A window open on the world 11/1977, p. 29.

<sup>4</sup> A. Herdberger, *Life, Liberty, and the Pursuit of Water: Evaluating Water as a Human Right and the Duties and Obligations it Creates*, Northwestern Journal of International Human Rights 2/2005, p. 331–333.

<sup>5</sup> E.g. the right to life or the right to dignity.

<sup>6</sup> J. Scanlon, A. Cassar, N. Nemes, *Water as a Human Right?*, IUCN Environmental Policy and Law Paper 51/2004, p. 3–12.

<sup>7</sup> G.A. Res. 217A (III) UN Doc. A/810, at 71 (1948).

<sup>8</sup> J. Scanlon, A. Cassar, N. Nemes, *op.cit.*, p. 3–4.

on Economic, Social and Cultural Rights<sup>9</sup> neither mentions the right to water and sanitation, although it plays an important role in the interpretation of the right's content as we will see below. We need to mention that two of the Geneva Conventions of 1949<sup>10</sup> have reference to the issue but they are not classical human rights documents as they contain the State's obligations but not the individuals' entitlements.

Two conventions focusing on vulnerable groups of people consider the right to water and sanitation too. The Convention on the Elimination of All Forms of Discrimination against Women associates it with the right to adequate standard of living<sup>11</sup>, while the Convention on the Rights of the Child states that the States Parties shall take appropriate measures to combat disease and malnutrition, among other things with providing safe drinking water<sup>12</sup>.

Let us turn our attention to the non-legally binding instruments of international law. We can observe the greater recognition of the right to water and sanitation as an individual human right – for example, the Dublin Statement on Water and Sustainable Development declares that it is 'vital' to recognize that the access to clean water and sanitation is a basic human right for all<sup>13</sup>. Further on, we will glance at two other significant non-legally binding instruments.

I think that despite the fact of the classification problem mentioned above, we can and we need to classify the right in the generations of rights. I consider that we can ascertain that it is not only a component of another right, mostly the right to life or dignity. In this case, the States' negative obligations would dominate, so they shall just refrain from interfering the exercise of the right. This is also supported by the United Nation's General Assembly's resolution<sup>14</sup> in which they clearly expressed that the right to water and sanitation is an individual human right.

Thus, we can state that it is an individual human right but we need to decide whether is it a second or a third generation right. I think we can claim that the latter option is the answer to the question. According to Gyula Bándi, the third generation of rights – which are significant in the environmental law – expect states' active obligations, just like the second generation rights, but it also indicates the duty of cooperation between states<sup>15</sup>. This obligation of cooperation appears in the Committee on Economic, Social and Cultural Rights' General Comment No. 15. in which the Committee also de-

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<sup>9</sup> International Covenant on Economic, Social and Cultural Rights, adopted 16<sup>th</sup> December 1966, G.A. Res. 2200A (XXI), UN Doc. A/6316 (1966).

<sup>10</sup> Convention (III) relative to the Treatment of Prisoners of War, Geneva, 12<sup>th</sup> August 1949, Art. 20 and Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12<sup>th</sup> August 1949, Art. 85.

<sup>11</sup> Convention on the Elimination of All Forms of Discrimination against Women, adopted 18<sup>th</sup> December 1979, G.A. Res. 34/180, Art. 14 h).

<sup>12</sup> Convention on the Rights of the Child, adopted 20<sup>th</sup> November 1989, G.A. Res. 44/25, Art 24, para. 2 c).

<sup>13</sup> Principle 4 of the Dublin Conference on Water and Sustainable Development, 31<sup>st</sup> January 1992, Dublin.

<sup>14</sup> UN G.A. Resolution (A/RES/64/292).

<sup>15</sup> Gy. Bándi, *Környezetjog*, Budapest 2011, p. 62–63.

clared that even there is no explicit mention to the right in the International Covenant, it is implicitly part of it because the enumeration of the elements of the adequate standard of living is not exhaustive<sup>16</sup>. According to the Comment: „the realization of the right to an adequate standard of living ‘including adequate food, clothing and housing’. The use of the word ‘including’ indicates that this catalogue of rights was not intended to be exhaustive”<sup>17</sup>. In the field of international cooperation, the Committee states that the State parties shall recognize the importance of cooperation and take joint and separated actions to the full realization<sup>18</sup>. Moreover, this obligation to cooperate is consistent with Edith Brown Weiss conception of intragenerational equity – the equity among those who are living today – which is complementary to the intergenerational equity<sup>19</sup>.

The General Comment mentioned above is really determining because the Committee defined the elements of the right’s content. According to the Comment<sup>20</sup> the following factors must be applied in all circumstances. The water supply must be sufficiently and continuously *available* for each person’s personal and domestic use. Of course, there are *quality* requirements too, for examples the water must have acceptable colour, odour and taste, it must be free from contamination such as micro-organisms or chemical substances. The Comment also allocates the dimensions of the required *accessibility*, which are the physical, economic, information accessibility and the non-discrimination in this field.

On the one hand, as we have seen above, the United Nation addressed the right to water and sanitation as an individual right, for example 2003 was the International Year Of Freshwater<sup>21</sup>. On the other hand, the Millennium Development Goals (MDGs), which agenda determined the period between 2000 and 2015, did not contain an individual goal related to this issue. We need to mention that this did not mean that the agenda did not consider the problem. According to the Millennium Declaration, the State parties resolved that they will ‘halve the proportion of people who are unable to reach or to afford safe drinking water’<sup>22</sup>. Moreover, it set other obligations for the States, for example the need to improve water management strategies in order to stop unsustainable water exploitation<sup>23</sup>.

Comparing the Sustainable Development Goals (SDGs) to the MDGs, we can find out that there is an individual goal – Goal 6: Clean water and sanitation – related to the issue but there is connection with other goals, for examples Goal 1: No poverty,

<sup>16</sup> General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant) adopted at the Twenty-ninth Session of the Committee on Economic, Social and Cultural Rights, on 20<sup>th</sup> January 2003 (contained in Document E/C.12/2002/11.), Chapter I, para. 3.

<sup>17</sup> *Ibidem*.

<sup>18</sup> *Ibidem*, Chapter I, para. 3, Chapter III, para. 30.

<sup>19</sup> E. Brown Weiss, *In Fairness To Future Generations and Sustainable Development*, American University International Law Review 1/1992, p. 21–22.

<sup>20</sup> General Comment No. 15, Chapter II. Normative content of the right to water, para. 12.

<sup>21</sup> UN G.A. Resolution A/55/582/Add.8, 27<sup>th</sup> November 2000.

<sup>22</sup> United Nations Millennium Declaration UN G.A., Resolution A/RES/55/2, 18<sup>th</sup> September 2000, p. 5.

<sup>23</sup> *Ibidem*, p. 5–6.

Goal 2: Zero hunger, Goal 11: Sustainable cities and communities. The scope of Goal 6, among other things, extends to the universal and equitable access to safe and affordable drinking water and sanitation for all, to the improvement of the water quality and sustainable water-use efficiency, to the implementation of integrated water resources management and to the protection and restoration of water-related ecosystems.

All in all, we can state that the right to water and sanitation is a relatively new element of the international human right law but thanks to the United Nation it becomes addressed as an individual and a significant human right, while its content begins to crystallise too. I think this approach had a considerable impact on the European Union.

## 2.2. The European Union and the right to water – before the ECI

We can distinguish three main periods of the relevant secondary law legislation in the European Union. The first era was between 1975 and 1986, in this period the EU reflected to diverse topics, for example the quality of surface water<sup>24</sup> or the protection of groundwater<sup>25</sup>. The second era, which can be dated between 1991 and 2000, is relevant in the light of the ‘Right2Water’ ECI as the so-called ‘Drinking Water Directive’<sup>26</sup> was adopted in this period. We can state that the ‘Right2Water’ ECI’s main achievement – as we shall see below – was a legislative proposal on this directive. Currently, we are in the third era, in which we can classify the ‘Marine Strategy Framework Directive’<sup>27</sup> and so-called ‘Water Framework Directive’<sup>28</sup>, which was also a target of the ECI, but the Commission did not consider this Directive’s legislative revision<sup>29</sup>.

We also need to examine the primary law, in which the Articles 191 – 193 of the Treaty on the Functioning of the European Union (TFEU)<sup>30</sup> determine generally the environmental policy. Article 192 (2) describes a derogation from the ordinary legislative procedure set in Article 192 (1). This derogation means that in certain cases, after the consultation with the European Parliament, the Economic and Social Committee, and the Committee of the Regions, the Council shall adopt – with a special legislative procedure – measures affecting quantitative management of water resources or measures affecting, directly or indirectly, the availability of these resources<sup>31</sup>. According

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<sup>24</sup> Council Directive 75/440/EEC of 16<sup>th</sup> June 1975 concerning the quality required of surface water intended for the abstraction of drinking water in the Member States.

<sup>25</sup> Council Directive 80/68/EEC of 17<sup>th</sup> December 1979 on the protection of groundwater against pollution caused by certain dangerous substances.

<sup>26</sup> Council Directive 98/83/EC of 3<sup>rd</sup> November 1998 on the quality of water intended for human consumption.

<sup>27</sup> Directive 2008/56/EC of the European Parliament and of the Council of 17<sup>th</sup> June 2008 establishing a framework for community action in the field of marine environmental policy.

<sup>28</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23<sup>rd</sup> October 2000 establishing a framework for community action in the field of water policy.

<sup>29</sup> P. Thieffry, *General Framework of EU Water Law*, [https://www.era-comm.eu/EU\\_water\\_law/part\\_2/index.html](https://www.era-comm.eu/EU_water_law/part_2/index.html), 18.05.2019.

<sup>30</sup> Treaty on the Functioning of the European Union (TFEU) signed on 13<sup>th</sup> December 2007, Official Journal C 326, 26/10/2012 P. 0001 – 0390.

<sup>31</sup> TFEU Art. 192 (2) b).

to Pierre Thielbörger, this derogation provides the possibility to the Member States to keep their dominant role in the field of water resource management. He points out the fact that it is problematic because the Member States refrain of losing their rights in this sensitive and important area. He also mentions that the European Union's approach is not right-oriented as on the one hand, most of the acts demonstrated above belong to the field of the European environmental law or consumer protection law, and on the other hand, the Charter of Fundamental Rights of the European Union<sup>32</sup> does not contain the right to water and sanitation. In his opinion, this non-right-based approach may result in the resolution of the European Parliament in which the EP emphasized the human right character of the issue<sup>33</sup> and the 'Right2Water' European Citizens' Initiative itself<sup>34</sup>.

### 2.3. The success story (?) of the 'Right2Water' European citizens' initiative

#### 2.3.1. Briefly about the instrument itself

The European Citizens' Initiative is a unique tool of direct democracy which allows the European citizens to put issues on the European agenda. It is technically an agenda initiative and disadvantage of this tool is the lack of legislative obligation. It is based on the European citizenship, which was introduced by the Maastricht Treaty<sup>35</sup> and which bears, among others, political rights such as the right to participate in European Citizens' Initiative<sup>36</sup>. These political rights – besides the European Citizens' Initiative, the right to vote and to stand as a candidate at municipal elections in the Member State in which they reside<sup>37</sup>, the right to vote and be a candidate in the European elections<sup>38</sup>, the right to petition to the European Parliament<sup>39</sup> and the right to submit a complaint to the European Ombudsman<sup>40</sup> – can be identified as supranational rights as the Court of Justice of the European Union stated in the *Delvigne Case*<sup>41</sup>. This means that these rights can be exercised directly at the European level and this also involves the fact that the Member States shall respect them<sup>42</sup>.

<sup>32</sup> Charter of Fundamental Rights of the European Union (2000/C 364/01).

<sup>33</sup> Resolution of 4<sup>th</sup> September 2003 on water management in developing countries, art. W, para. 1.

<sup>34</sup> P. Thielbörger, *The Right(s) to Water: The Multi-Level Governance of a Unique Human Right*, Berlin 2013, p. 32–36.

<sup>35</sup> Treaty on European Union, signed in Maastricht on 7<sup>th</sup> February 1992.

<sup>36</sup> Treaty on European Union (TEU), signed in Lisbon on 13<sup>th</sup> December 2007, Art. 11, para. 4, Official Journal C 326, 26/10/2012 P. 0001 – 0390 and TFEU Art. 24. (1).

<sup>37</sup> TFEU Art. 22 (1).

<sup>38</sup> TFEU Art. 22 (2).

<sup>39</sup> TFEU Art. 24 (2).

<sup>40</sup> TFEU Art. 24 (3).

<sup>41</sup> Judgment of the Court (Grand Chamber) of 6<sup>th</sup> October 2015, *Thierry Delvigne v Commune de Lesparre Médoc and Préfet de la Gironde*, C-650/13, ECLI:EU:C:2015:648.

<sup>42</sup> M. Szabó, K. Debisso, L. Gyeney, A. Püskösty, *Az Európai Unió jogának alapjai*, Budapest 2018, p. 296–297.

Besides the primary law, the European Citizens' Initiative's details are regulated in the Regulation no. 211/2011 of the European Parliament and Council<sup>43</sup>. The first step to a successful initiative is to set up a citizens' committee with at least seven natural persons – who are European Citizens – from at least seven different Member States<sup>44</sup> and after that, registration of the proposed initiative by European Commission is also needed. This step requires the initiative to meet several conditions, such as – among other requirements – the citizens' committee must be made according to the Regulation, the initiative must not manifestly fall outside the framework of the Commission's powers<sup>45</sup>, it should not be abusive, frivolous or vexatious<sup>46</sup>, cannot be contrary to the values of the Union as set out in Article 2 TEU<sup>47</sup>. If the Commission registers the proposed initiative, the organisers have 12 months to collect at least one million eligible signatories coming from at least one-quarter of all Member States<sup>48</sup> and we need to mention that the number of required valid statements of support is also determined in the Regulation<sup>49</sup>. As I have mentioned before, even if the initiative meets the above-mentioned requirements, the Commission has no legislative obligation, only a communication and a public hearing are required within three months<sup>50</sup>.

In view of the foregoing, the 'Right2Water' initiative's first achievement before the successful collection of signatures and the legislative procedure, was the registration by the Commission, because – according to Anastasia Karatzia – it is difficult to characterize the Commission's admissibility test. It is not unanimous whether the rejection or the submission is motivated by legal or political reasons. She points out the lack of transparency at this level as the decision is made 'behind closed doors' and the real motivation is not obvious from the communication of the Commission<sup>51</sup>. Moreover, the Commission had a really strict approach in that period of time (between 2012 and 2015) in the field of registration, 20 of 51 initiatives were refused registration<sup>52</sup>.

### 2.3.2. The chronology of the 'Right2Water' ECI

The first successful ECI is linked to the European Public Services Union (EPSU), which is a regional organisation considering the water issue since 1990 alongside with groups such as the European Public Health Alliance. The EPSU decided officially

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<sup>43</sup> Regulation no. 211/2011 of the European Parliament and of the Council of 16<sup>th</sup> February 2011 on the citizens' initiative, OJ L 65, 11.3.2011, p. 1–22.

<sup>44</sup> Regulation no. 211/2011, Art. 3, para. 2.

<sup>45</sup> Regulation no. 211/2011, Art. 4, para. 2 (b).

<sup>46</sup> Regulation no. 211/2011, Art. 4, para. 2 (c).

<sup>47</sup> Regulation no. 211/2011, Art. 4, para. 2 (d).

<sup>48</sup> Regulation no. 211/2011, Art. 2, para. 1.

<sup>49</sup> Regulation no. 211/2011, Annex VII.

<sup>50</sup> Regulation no. 211/2011, Art. 10, para. 1 (c) and Art. 11.

<sup>51</sup> Reprinted from A. Karatzia, *The European Citizens' Initiative in Practice: Legal Admissibility Concerns*, *European Law Review* 4/2015, p. 512.

<sup>52</sup> European Commission's report on the application of Regulation (EU) No 211/2011 on the citizens' initiative, COM(2015) 145 final, p. 3.

about the launch of the ECI in 2009 and announced it in a water forum in Marseille in 2012. The ECI was registered by the European Commission<sup>53</sup> in May 2012<sup>54</sup>. We must add that the successful registration was not usual in the practice of the European Commission. According to its report of 2015<sup>55</sup>, between 2012 and 2015 the Commission registered 31 initiatives but refused the submission of 20 initiatives.

The main proposals and goals of the ECI moved into two directions. On the one hand, it considered the water and sanitation issue within the EU – e.g. „To guarantee water (safe, clean and affordable) and sanitation services to all of the populations in the EU Member States”, „To refrain from turning water services into commercial services by excluding water from internal market rules. This can be achieved by a commitment of the European Commission”, „Not to liberalise water and sanitation services” etc.; on the other hand, it promoted the universal access to water and sanitation worldwide, related with the EU water policy – „To increase access to water and sanitation worldwide, by making the achievement of universal access to water and sanitation part of EU development policy”<sup>56</sup>. I think that the problem in worldwide relation needs no further explanation but the question arises – why is this issue important within the EU? To give an example, according to the report made by the European Roma Rights Centre, in more than half of the places visited (places within the EU such as in Hungary, Slovakia, France and places in European states that are not Members of the EU such as Montenegro, Macedonia, Albania, Moldova), the nearest water source was more than 150 meters away, sometimes the Roma people need to walk kilometres to access fresh water. The problem is exacerbated by the fact that mostly women and young girls – so a vulnerable group within a marginalised group – must collect water and they are often attacked by animals, such as stray dogs<sup>57</sup>.

The collection ended in September 2013 with nearly 1,9 million signatures, mostly from Germany, Austria and Belgium. After the submission of December 2013, the Commission answered on 19<sup>th</sup> March 2014<sup>58</sup>. If we take a look at this answer we can notice that the Commission mentioned the UN and its approach several times, for example it referred to the Resolution 64/292 in which the General Assembly declared the individual human right character of this right<sup>59</sup>. According to the Commission, there are three crucial elements to secure and improve access

<sup>53</sup> Commission registration number: ECI(2012)000003. Date of registration: 10/05/2012.

<sup>54</sup> L. Parks, *Framing in the Right2Water European Citizens' Initiative*, Paper prepared for presentation at the ECPR general conference, 3–6 September 2014, Glasgow, <http://bit.ly/2YDTa67>, 22.05.2019, p. 8–9.

<sup>55</sup> Report from the Commission to the European Parliament and the Council, Report on the application of Regulation (EU) No 211/2011 on the citizens' initiative, COM (2015) 145 final.

<sup>56</sup> About the campaign, Water is a human right!, <https://www.right2water.eu/about>, 22.05.2019.

<sup>57</sup> *Thirsting for justice*, A report by the European Roma Rights Centre, European Roma Rights Centre, March 2017, <http://bit.ly/2JYhjQy>, 24.05.2019, p. 25–30.

<sup>58</sup> Water and sanitation are a human right! Water is a public good, not a commodity!, European Commission, <http://bit.ly/2Qf2JFz>, 22.05.2019.

<sup>59</sup> Communication from the Commission on the European Citizens' Initiative „Water and sanitation are a human right! Water is a public good, not a commodity!”, COM(2014) 177 final, Brussels, 19<sup>th</sup> March 2014, p. 3.

to water and sanitation. The water quality requirements, which was set in the 1970s, mean one of these elements. The requirements are laid down by the ‘Water Framework Directive’, the ‘Drinking Water Directive’ and the ‘Urban Wastewater Treatment Directive’. The Commission also emphasised the importance of the holistic approach in the field of water management. The second vital element is the obligation to provide access to water and wastewater services, while the third element is the affordability. On the one hand, the Commission declared that in the European Union’s water policy the affordability of water services is critical, but on the other hand, the EU has no role in setting the water prices<sup>60</sup>. The Commission also mentioned the actions in relation to the ECI, such as ensuring better quality in accordance with the 7<sup>th</sup> Environmental Action Programme<sup>61</sup>, taking efforts towards the full implementation of EU water legislation by the Member States, reviewing the EU water legislation, taking measures in the national level in relation with water affordability to safeguard disadvantaged people and providing the minimum water supply to all citizens by the Member States and correctly implementing the Water Framework Directive<sup>62</sup>.

The next step was the legislative proposal of the Commission, which can be considered as a great achievement as the Commission is not legally obliged to this. This step meant the start of the ordinary legislative procedure too.

In the Proposal, the Commission addressed the human right character of the right to water and sanitation and referred several times to the UN’s documents, especially to the SDGs and to the Resolution 64/292. It also mentioned the European Council’s Resolution<sup>63</sup> which emphasized the importance of the recognition of the right to water and basic sanitation as a fundamental human right. It also referred to the Declaration<sup>64</sup> by Catherine Ashton who stated on behalf of the EU in 2010, that highlighted the State’s obligations and the requirements of the drinking water, physically accessible, affordable and acceptable<sup>65</sup>. We could draw the conclusion that the EU started to address the right, supposedly because of the UN, before the ‘Right2Water’ and the SDGs, but they ultimately catalysed the process. The Proposal contained new definitions (Article 2) such as the definition of vulnerable and marginalised groups. It would have also introduced a complex assessment system which would have consisted of the overall risk-based approach (Article 7), a hazard assessment (Article 8), domestic distribution risk assessment (Article 10) and monitoring (Article 10). I consider that in the light of the ‘Right2Water’, Article 13 deserves more attention in which we can find an exact reference to the ECI

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<sup>60</sup> *Ibidem*, p. 3–4.

<sup>61</sup> Decision No 1386/2013/EU of the European Parliament and of the Council of 20<sup>th</sup> November 2013 on a General Union Environmental Action Programme to 2020 ‘Living well, within the limits of our planet.’

<sup>62</sup> COM (2014) 177 final, p. 8.

<sup>63</sup> Resolution No 1696/2009 of the Parliamentary Assembly of the Council of Europe.

<sup>64</sup> Declaration by the High Representative. Catherine Ashton, on behalf of the EU to commemorate the World Water Day (Doc 7810/10), 22<sup>nd</sup> March 2010.

<sup>65</sup> Proposal for a Directive of the European Parliament and of the Council on the quality of water intended for human consumption (recast), COM (2017) 753 final, Brussels, 1<sup>st</sup> February 2018, p. 12–13.

and its answer and to Goal 6. The Article foresees two main obligations of the Member States. One is to improve access to drinking water and to promote its use via several measures such as encouraging people to use tap water, which is also beneficial regarding the serious plastic waste problem. Second is a special obligation focusing on the vulnerable and marginalised groups. It distinguishes three dimensions of the concept of equitable access: geographic differences, difficulties faced by vulnerable and marginalised groups (e.g. refugees, nomadic communities, homeless people, minority cultures etc.), financial affordability. Concerning this latter dimension, the Commission expressed that the water pricing policy must pay attention to the principle of recovery of costs and to the principle of polluter pays. We need to add that the Proposal considered the requirements of the Aarhus Convention<sup>66</sup> as it introduced two new articles, Article 14: Information to the public and Article 15: Access to Justice<sup>67</sup>.

After the European Parliament's plenary adopted its amendments on the Proposal<sup>68</sup>, the Council of the European Union adopted its General Approach<sup>69</sup>. If we examine this General Approach, we can draw the conclusion that it contains many modifications of the Proposal described above and these modifications made the General Approach much more restrained, which caused understandably disappointment to the initiators and supporters. I would like to illustrate this point by comparing the new version of Article 13 to the version of the Proposal. This stated that the Member State's obligation is to take all necessary measures to improve access to water for all. To fulfil these obligations the Proposal enumerated the required measures such as identifying people without access to water, free equipment in public spaces for free access to water, promoting water intended for human consumption by campaigns, encouraging the use of water intended for human consumption, providing free water in restaurants and other similar facilities. I find it remarkable that the proposal contained special obligations regarding vulnerable people, so the Member States would have been obliged to take all necessary measures to ensure access to water intended for human consumption and they should have immediately informed these people of the quality of the water they are using and of any action that can be helpful to avoid the negative effects of any kind of contamination of the water<sup>70</sup>. According to the General Approach, the member States are free to choose measures to promote tap water, its terminology is permissive as it states that „Measures to promote tap water intended for human consumption **may**

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<sup>66</sup> Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, done at Aarhus, Denmark, on 25<sup>th</sup> June 1998.

<sup>67</sup> Proposal for a Directive of the European Parliament and of the Council on the quality of water intended for human consumption (recast), COM (2017) 75 final, Brussels, 1<sup>st</sup> February 2018, p. 12–13, 19–24.

<sup>68</sup> Amendments adopted by the European Parliament on 23<sup>rd</sup> October 2018 on the proposal for a directive of the European Parliament and of the Council on the quality of water intended for human consumption (recast), COM (2017)0753 – C8–0019/2018 – 2017/0332 (COD).

<sup>69</sup> Proposal for the Directive of the European Parliament and of the Council on the quality of water intended for human consumption (recast) – General approach, 6876/1/19 REV, Brussels, 27<sup>th</sup> February 2019.

<sup>70</sup> Proposal for a Directive of the European Parliament and of the Council on the quality of water intended for human consumption (recast), COM (2017) 75 final, Brussels, 1<sup>st</sup> February 2018, p. 12–13, 54–55.

include (...)”. It also withdrew the obligation of providing free water equipment in public places. Moreover, the special obligations focusing on the vulnerable and marginalised groups are completely removed<sup>71</sup>.

### 3. Conclusion

Despite the fact that the right to water and sanitation is a relatively ‘young’ member of the family of the human rights, it is a significant right *per se* but it is also an essential element of the realization of other important human rights. It is noteworthy that besides its intergenerational aspect, it is related to the requirements of the intragenerational equity. This equity among those who are living today is related to the objectives of the ‘Right2Water’ ECI, which proposals focused on the universal side of the issue but also considered the question in the European context.

In the light of the foregoing, it is considered that the ‘Right2Water’ European Citizens’ Initiative focused on the non-liberalisation and the issue of the financial affordability, and the European Commission addressed these in its communication but the Commission’s Proposal had narrow spectrum. It put emphasize to the quality and the possible alternative measures but it has also special respect for the vulnerable and marginalised groups. By contrast, the General Approach is quite brief on these issues. Despite these the ECI was successful as it led to the start of the legislative process and it catalysed the recognition of the right to water and sanitation of a fundamental, significant and individual human right, which can be – among others – thanked the United Nation’s approach and its important documents and agendas, especially the Goal 6 of the Sustainable Development Goals.

In summary, the Council and through it, the Member States are still able to obstruct the full realization of ECI. But on the other hand, we can state that this moderated version is a great achievement too, because a unique tool of the Direct Democracy worked in the field of the universal human rights, even the process is long and the pursuing of the human right and environmental interest took years.

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### **Prawo do wody i urządzeń sanitarnych – czy wciąż stanowi duże wyzwanie dla Unii Europejskiej?**

Wypicie szklanki czystej wody, gdy jesteśmy spragnieni, jest jedną z najbardziej typowych codziennych czynności w naszym życiu. Jeśli jesteśmy pośród tych szczęśliwych ludzi, którzy mają dostęp do czystej wody i którzy mogą sobie na nią pozwolić, ponieważ nie wszyscy mają dostęp do bezpiecznie zarządzanych usług związanych z wodą pitną. W tym świetle nie jest zaskakujące, że zapewnienie wszystkim dostępu do wody i infrastruktury sanitarnej

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<sup>71</sup> Proposal for the Directive of the European Parliament and of the Council on the quality of water intended for human consumption (recast) – General approach, 6876/1/19 REV, Brussels, 27<sup>th</sup> February 2019, p. 66–67.

jest jednym z Celów Zrównoważonego Rozwoju, który to program dąży do przekształcenia naszego świata do 2030 r. Zakładam, że możemy się zgodzić, iż nie jesteśmy w stanie wypełnić naszych zobowiązań międzypokoleniowych właściwie, dopóki istnieją poważne problemy wewnątrzpokoleniowe, które wciąż należy rozwiązać, takie jak kwestia prawa do wody i urządzeń sanitarnych.

Jest to globalny problem etyczny, jednak większość ludzi identyfikuje go jako problem krajów rozwijających się, pomimo tego, że dotyczy on również państw członkowskich Unii Europejskiej. Inicjatywa „Right2Water”, pierwsza europejska inicjatywa obywatelska (European Citizens’ Initiative, ECI), którą można uznać za udaną, podkreśla problem liberalizacji usług wodnych, który może powodować wykluczenie osób ubogich z korzystania z tych istotnych praw człowieka

**Słowa kluczowe:** cele zrównoważonego rozwoju, prawo do wody i infrastruktury sanitarnej, europejska inicjatywa obywatelska