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THE UNIVERSAL AND FAIR ACCESS TO PUBLIC WATER SUPPLY SERVICE

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Abstract

This paper focuses on one of the most important issues of our time, namely access to water. Currently, in relation to climate change, on a global level we can talk about a water crisis, to which public authorities on all continents must find solutions. The reason for our analysis is a news story from August 2024 that appeared in the mass media, according to which almost 600 localities have restrictions in the supply of drinking water. Therefore, this worrying information made us curious to document this topic.

The scope of the paper is to investigate, from an interdisciplinary point of view, the way in which the legislator deals with the issue of access to public water supply services, from a national perspective but also from a comparative law perspective. The research can contribute to enriching the literature and developing the state of the art on the issue, supporting authorities to identify new solutions for access to water services for the whole society. By way of law-specific research methods, the conclusion of the paper will be that on the one hand, the state must guarantee access to water for citizens and on the other hand, people must respect the law and be more responsible towards water. The result of the research shows that the administration is at the service of the citizen so that water services provided to the population must be carried out effectively in order to make sure that water is available for as many people as possible.

Key words: *public authorities, sustainable development, public water supply service, public interest, ECHR.*

INTRODUCTION

Water, food and shelter are among man's primary physiological needs for survival, as identified by the American psychologist Abraham Maslow, who

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prioritized the specific human needs in the well-known Maslow's Pyramid. Who would have imagined that a renewable resource such as water is becoming of paramount importance for all life on the planet, nowadays? A specialized author pointed out that: *“more and more problems are becoming global issues in the 21st century and the making their legislative framework requires global solution, as well”* (Petrasovszky, 2019, p.193). We believe that nowadays, given the unpredictable events occurring in nature (global warming, falling of groundwater, pandemics, etc.), there is a need for a sense of rigor in society, a growing sense of responsibility, respect for others and the environment. In this regard, we consider that the authorities are obliged by virtue of the social contract to protect all people in a fair and non-discriminatory manner, taking into account the specific nature of administrative activity, which is dominated by the public law regime, namely the priority of public interest over private interest.

This summer, as in case of other summers in recent years, we have seen media reports according to which entire localities are suffering from water shortages. And not only in Romania but also in other countries¹ Public authorities call on people not to waste water and to use it responsibly. For example, it is approximated that almost 600 localities have drinking water supply restrictions. At the same time, mankind is also facing new challenges: drying up riverbeds and the danger of flooding, which, at least in summer, means less water consumption. For us, researchers and ordinary people, this can be a wake-up call to reflect on our own behavior.

At international level, authorities have designed measures to eradicate poverty, social exclusion and discrimination so that all people have equal access to opportunities and resources². But no matter how generous the European proposals are, we believe that without responsibility on the part of all actors involved, be they states, authorities or individuals, whatever action is taken, it cannot fully achieve its goal. Furthermore *“from the historical point of view, states have been concerned to incorporate the issue of human responsibility in their constitutions and common acts under different terminologies”* (Ștefan 2013, pag.12). Therefore, states have legal instruments to fall back on if people do not realize that water should be protected and not wasted.

A review of the specialized literature reveals that the topic of water is at the forefront of the scientific community's attention. According to one author: *“The fresh water of our earth is in constant decline, and the water crisis poses a huge challenge to the whole world”* (Erdos, 2019, 39). According to another author: *“Between 2000 and 2022, the world has experienced remarkable progress*

¹ <https://www.euronews.ro/articole/criza-apei-in-eufnguearopa-care-sunt-cauzele-si-cat-de-grava-este-situatia>

² <https://www.europarl.europa.eu/factsheets/ro/sheet/60/combatearea-saraciei-a-excluziunii-sociale-si-a-discriminarii>

in drinking water and sanitation” (Nguea, 2024). The right to water in conjunction with economic rights and proposed solutions to reduce water consumption is also analyzed: “Water protection and consumption can be influenced through regulation of environmental charges and regulation of other payment obligations” (Nagy, 2019, p.162). In this context of the globalization of the water issue, the topic analyzed is topical and of general importance, arousing the interest of the authorities but also of the population. The aim of the present study is an interdisciplinary analysis of drinking water issues in order to grasp the state of legislation and trends in access to water.

The research questions are the following: “What does the legislation provide on drinking water supply services?”, “Where does our country stand on access to public water services?” “Is there ECHR case law on access to water?”. Methodologically, the paper is divided into three sections, organized chronologically as follows: Section I describes the legal framework applicable to access to public water service at national level. Section II highlights the most important international documents on water in the background of sustainable development. Section III presents a case study on the level of the access to water in our country and the relevant ECHR case law.

I. NATIONAL LEGAL FRAMEWORK APPLICABLE TO ACCESS TO WATER IN THE BACKGROUND OF THE SUSTAINABLE DEVELOPMENT

1.1. National legislation in the field of water supply service

The legal framework applicable to the public water supply service consists of Law no. 51/2006 on community services of public utilities which is the general law on public utilities and Law no. 241/2006 on water supply and sewerage services, which is the special law in this field. The Administrative Code and Government Ordinance no.7/2023 on the quality of water intended for human consumption are added to the aforementioned.

1.1.1. Law no. 51/2006 on community services of public utilities establishes the unitary legal and institutional framework, objectives, competences, powers, duties and specific instruments necessary for the establishment, organization, management, financing, operation, monitoring and control of the regulated provision of community services of public utilities [published in Official Journal no. 254 of 21 March 2006, as further amended and supplemented, art. 1 para. (1)]. In this respect, as the doctrine points out “public services are undoubtedly a pillar of the society” (Cliza, 2023, p.49). In fact, other experts have also been working on a detailed analysis of public services (Negruț, 2020, pp.1-18).

Public utility services are defined by the normative act as: *all the activities regulated by this law and by special laws which ensure the satisfaction of essential needs of general public utility and interest, with social nature of local*

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communities, concerning: water supply, sewerage and wastewater treatment, public lighting, etc. [art. 1 para. (2)]. We note that according to art. 7 para. (1): “The organization and operation of public utilities must ensure the fulfillment of public service obligations as defined in accordance with the basic requirements: *universality*; continuity in terms of quantity and quality; adaptability to user requirements; *equal and non-discriminatory accessibility to public service*; transparency of decision-making and user protection”.

At the same time: “*Public utilities are the responsibility of local public administration authorities, or, where appropriate, intercommunity development associations, the purpose of which being the public utilities (...)*” [art. 3 para. (1)]. We note in this respect that “*public administration includes central public administration bodies and their decentralized services as well as local public administration bodies*” (Cliza, Ulariu, 2023, p. 154). National Authority for Community Services of Public Utilities - ANRSC is the competent regulatory authority for public utility services: water supply and sewerage.

1.1.2. Law no. 241/2006 on water supply and sewerage services (Published in OJ no. 563 of 29 June 2006, as further amended and supplemented) defines in art. 3 a number of basic concepts with which it operates: water supply and sewerage service; public water supply service, public water distribution network etc. For example, public water supply system is: “*all the buildings and related land, technological installations, functional equipment and specific facilities, by means of which the public water supply service is provided. Public water supply systems shall comprise the following components: sewer connections from the point of demarcation and collection; sewerage networks; pumping stations; wastewater treatment plants; outfall collectors to the drainage channels; mouths to the drainage channels; dewatered sludge deposits*” (letter d).

Furthermore, “*The public water supply and sewerage service is part of the community public services of public interest*” [art. 1 para. (3)]. We also note the provisions of art. 29 according to which: “*The right to non-discriminatory access and use of the service is guaranteed to all users, under contractual conditions and in compliance with the provisions of the service regulation and the programs for the rehabilitation, extension and modernization of water supply and sewerage systems*”. In the background of the analysis, art. 11 para. (3) letter b.) is also important: “*Local public administrations' strategies will be focused on the following targets: (...) ensuring non-discriminatory access to water and sanitation services for all members of the community*”. Furthermore, we also emphasize the provisions of art. 37⁶ para. (3): “*The authorities of the local public administration shall have the following obligations towards users: (...) to adopt*

and maintain a balanced, fair and non-discriminatory conduct between operators and users (...)”.

1.1.3. The Administrative Code

Another relevant normative act is the **Administrative Code** (published in the Official Journal of Romania, Part I no. 555 of 05.07.2019) which regulates public services in Part VIII. Art. 580 regulates the principles applicable to public services: transparency, equal treatment, continuity, adaptability, accessibility, accountability, provision of public services at a high level of quality. Of all these, we note the principle of equal treatment in the provision of public services [para. (3)] which entails “*removal of any discrimination against beneficiaries of public services, based, as the case may be, on the basis of ethnic or racial origin, religion, age, gender, sexual orientation, disability, and the application of identical rules, requirements and criteria for all public service authorities and bodies, including in the public service delegation process*”. In relation to the topic under consideration, it is important to consider art. 582 on public service obligations. We note only the provision in para. (2) namely, “*public service obligations mainly entail the provision of universal service, continuity and sustainability of the service, as well as measures to protect the beneficiary*”.

1.1.4. Government Ordinance no. 7/2023 on the quality of water intended for human consumption

The last normative act to be mentioned is Government Ordinance no.7/2023 on the quality of water intended for human consumption (published in OJ no. 63 of 25 January 2023). In our opinion, the quality of water intended for human consumption is in the public interest. The scope of the Ordinance is “*to protect human health against the adverse effects of contamination of water intended for human consumption by ensuring that it is safe and clean; to improve access to drinking water*”.

II. LEGAL FRAMEWORK FOR SUSTAINABLE DEVELOPMENT

In line with European legislation, the *National Strategy for Sustainable Development of Romania 2030* was adopted (G.O. no. 877/2018, published in OJ no. 958 of 21 November 2018). According to the Strategy, sustainable development for Romania, means “*the desire to strike a balance between the aspirations of its citizens, the society they depend upon and are defined by, and the context that enables their self-realization. This balance begins with the individual (...) the role of the state is to facilitate the finding of this equilibrium, not just for the citizens of today, but also for future generations*”. Romania’s Sustainable Development Strategy is based on the premise that sustainable development requires a mindset which, once adopted by the citizen, will help create a *more equitable society* defined by: balance and solidarity, and the ability

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to cope with the changes brought about by current global challenges (...). By analyzing the National Strategy, our country aims to reach 6 Targets in 2030, as follows:

Target 1.) Substantially increase the efficiency of water use in industrial, commercial, and agricultural activities; expand the rational reuse of treated and recycled water with a view to meeting the requirements of a circular economy;

Target 2.) Substantially increase the efficiency of water use in all sectors and ensure a sustainable process of abstraction and supply of drinking water in order to address water shortages;

Target 3.) Connect at least 90% of households in towns, communes, and compact villages to the drinking water and sewerage network

Target 4.) Increase access to drinking water among vulnerable and marginalized groups;

Target 5.) Improve water quality by reducing pollution, eliminating waste disposal, and reducing to a minimum the number of chemical products and dangerous substances, thereby reducing the proportion of untreated waste water, and significantly increasing recycling and safe reuse

Target 6.) Provide access to adequate and equitable sanitary and hygienic conditions for all with a special focus on those in vulnerable situations”.

This paper has focused only on the component of access to public drinking water service for the population, although all targets are of public interest. Currently, in terms of administrative-territorial organization, there are 41 counties in Romania, plus the capital, Bucharest municipality. At territorial level, a documentary and computerized research, using alphabetical criteria, revealed that all counties have adopted County Development Strategies, such as: Alba County Development Strategy 2021-2027³, Arad County Development Strategy for the period between 2021-2027⁴, (etc. Local Development Strategies also exist at the city level, i.e. at the level of municipalities, towns, communes, districts of the capital, including Regional Development Strategies and Regional Development Plans.

Romania has adopted the Preliminary Theses of the draft Code on several community services of public utilities (published in OJ no. 858 of 1 September 2022) which dedicates to it a whole part regulating: water supply, sewerage, wastewater treatment, etc.. The future Code is intended to partially repeal a number of legal acts, such as: Law no. 51/2006 on community services of public utilities and Law no. 241/2006 on water supply and sewerage services. The Code

³ <https://judetul-alba.ro/strategia-de-dezvoltare-a-judetului-alba-2021-2027/>

⁴ https://www.cjarad.ro/uploads/files/Info_Cons_Loc/Strategia%20de%20dezvoltare%20a%20jude%20C8%9Bului%20Arad%202021-2027.pdf

on several community services of public utilities is not adopted at the time of writing this paper.

As a legal novelty, the legislator adopted G.O. no.1.117/2023 on the approval of the Methodology for Sustainability Reporting - *Romanian Sustainability Code* ((OJ 1052 of 21 November 2023). Essentially, certain entities⁵ report several indicators for free on one platform. The Romanian Sustainability Code is addressed to entities that on the balance sheet date exceed an average number of 500 employees during the financial year, which are bound to prepare a non-financial statement containing the following information: environmental, social and personnel issues, respect for human rights combating corruption and bribery.

III. INTERNATIONAL PLAN ON WATER AND SUSTAINABLE DEVELOPMENT – SEVERAL MILESTONES

Specialized literature captures a legislative gap on water: *“The European Union fell short of introducing an independent provision in the TFEU or in the 2000 EU Charter of Fundamental Rights explicitly recognizing the right to water. While the Charter contains several provisions that may imply such a right, it does not directly mention the right to water as an autonomous fundamental right”* (Benohr, I., 2023, pp.53-77). Another study noted that: *“Since the ‘Earth Summit’ in 1992 in Rio de Janeiro, the concept of sustainable development has been widely discussed and implemented globally”* (Lozowicka, 2020).

The first international instrument that we mention is: *“Transforming our World: The 2030 Agenda for Sustainable Development”*. It sets 17 Sustainable Development Goals (SDGs). In terms of international efforts, it is stated that *“The 2030 UN Sustainable Development Agenda aims at ‘transforming our world’ to protect universally agreed sustainable development goals - that – due to globalization – can no longer be secured by any state without international law and multilevel governance of global public goods (PGs) (Petersmann, 2023).* According to public information, Romania joined the 192 UN member states at the September 2015 UN Development Summit by adopting the 2030 Agenda for Sustainable Development, a global development agenda of universal character that promotes a balance between the three dimensions of sustainable development: economic, social and environmental⁶. The topic analyzed by us in this study falls under SDG 6 which refers to *Clean water and sanitation – Ensure availability and management of water and sanitation for all*. The New Agenda is guided by the purpose and principles of the United Nations Charter, including full respect for international law⁷ It is grounded in the Universal Declaration of Human

⁵ <https://codsustenabilitate.gov.ro/>

⁶ <https://www.mae.ro/node/35919>

⁷ <https://sdgs.un.org/2030agenda>

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Rights, international human rights treaties, the Millennium Declaration and the 2005 World Summit Outcome Document (Idem, item 10).

“SDG” concept appeared during the United Nations Conference on Sustainable Development (RIO+20) in 2012 (<https://anes.gov.ro/wp-content/uploads/2018/07/Agenda-2030-pentru-dezvoltare-durabila.pdf>). The SDGs replace the 8 Millennium Development Goals (MDGs) contained in the text of the UN Millennium Declaration adopted in September 2000 (These are: 1. End poverty and hunger; 2. Achieve universal primary education; 3. Promote gender equality and empower women; 4. Reduce child mortality; 5. Improve maternal health; 6. Combat HIV/AIDS, malaria and other diseases; 7. Ensure environmental sustainability; 8. Global partnership for development.) (Idem). Public information shows that the Millennium Declaration was the only Global Development Agenda agreed at the highest level between 2000-2015 (Idem).

Furthermore, legal frameworks also includes *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* (published in Official Journal of the European Union L 435/23.12.2020) with the following purpose: “to protect human health from the adverse effects of any contamination of water intended for human consumption by ensuring that it is wholesome and clean, and improve access to water intended for human consumption”. Doctrine states that the European normative act lays down quality standards for water, i.e. water intended for human consumption is “wholesome and clean” (Ștefan, 2023, p. 214.)

We also recall *Recommendation Rec(2001)14 of the Committees of Ministers to member states on the European Charter on Water Resources*⁸ The Preamble provides as follows: “Fresh water resources must be used in keeping with the objectives of sustainable development, with due regard for the needs of present and future generation. (...) Humanity uses more than half of the planet’s water reserves: the quantity of water available per capita is now no more than 7 000 m³, as against 17 000 m³ as recently as 1950 (Idem). Furthermore, “Everyone has the right to a sufficient quantity of water for his or her basic needs.” (Idem, par. 5). Finally, we note one last relevant international document with a 10-year impact, namely International Decade for Action, Water for Sustainable Development, 2018–2028” proclaimed by the United Nations General Assembly in 25.11.2016 (A/RES/71/222, <https://sdgs.un.org/documents/ares71222-international-decade-action-wa-23198>).

IV. CASE STUDY

4.1. Degree of achievement of SDG no. 6 - Clean water and sanitation by Romania

⁸ <https://rm.coe.int/1680504d8>

At a general level, our country is facing two situations: on the one hand, it has committed itself to achieving the sustainable development goals set by the 2030 Agenda and, on the other hand, the drought of recent years has led public authorities to introduce water consumption restrictions at certain times of the year. To this end, this section takes a practical snapshot of our country's progress against *Goal no. 6 – Clean water and sanitation*. For this purpose, statistical research was carried out on the basis of publicly available information from the National Institute of Statistics. In relation to the analyzed topic, we are interested in the *Communications on public utilities of local interest*⁹.

Public water supply service in the reference period 2018-2021 was considered, by focusing on the length of the drinking water distribution network as well as the water distributed, measured in thousand cubic meters. By comparison, if at the end of 2018 the simple length of the drinking water distribution network was of 84,504.4 km, in 2021, the network reached 90,352.4 km. In terms of total drinking water distributed, in 2018 the value was of 751,809 thousand cubic meters and in 2021 it was of 797,885 thousand cubic meters (Idem). In terms of the population connected to the water network, according to NIS, in 2022 there were 14,277,262 persons, representing 74.9% of Romania's resident population¹⁰. At the level of development regions, in 2022, the highest share of the population connected to the public water supply system in the total resident population was recorded in the Bucharest-Ilfov Region (94.1%), followed by the South-East Region (89.5%) and the lowest level of connection was recorded in the North-East Region (50.7%), followed by the South-West Oltenia Region (63.4%) (Idem).

Furthermore, in Romania there is a Plan for water restrictions and use of water in periods of shortage in accordance with the Order no. 9/2006 of the Ministry of Environment and Water Management for the approval of the Methodology for the elaboration of plans for water restrictions and use of water in periods of shortage (published in OJ no. 331 of 12 April 2006) and is generally activated in summer. “Apele Române” National Administration continuously monitor the exploitation of water resources. According to the law, “*The plans for water restrictions and use of water in periods of shortage are intended to establish temporary restrictions on the use of water in accordance with Article 14 of the Water Law no. 107/1996 in situations when, for objective reasons, the authorized water flows cannot be ensured for all use*” (art.2 Methodology).

Article 14 of Water Law no. 107/1996 (published in the Official Journal no. 244 of 8 October 1996) lays down the regime of these restriction plans: “*if, due to drought or other natural disasters, the authorized water flows cannot be provided to all authorized users, temporary restrictions on the use of water*

⁹ <https://insse.ro/cms/ro/tags/comunicat-utilitatile-publice-de-interes-local>

¹⁰ Idem

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resources shall apply” [para. (1)]. Even under these conditions, water restrictions have to take into account certain requirements provided for by art. 10 of the Water Law: “*meeting water needs of the population has priority over the use of water for other purposes. Priority over other uses is given to the supply of water for livestock, the replenishment of intangible water reserves after fires, and the flows necessary to maintain the ecological balance of the aquatic habitat* [para. (1)]; “*restricting the use of drinking water by the population for other activities is prohibited* ([para. (2)]). Therefore, “*the legal norm requires acceptance and compliance with the prescribed conduct*” (Hegheş, 2022, p.153).

4.2. ECHR case law on access to public water services

In this section, the paper focuses on the identification of situations where the law applies to the concrete case, bringing the ECHR case law on water up to date. Therefore, in the event of a state-citizen conflict, it is up to the judge to verify the interpretation of the law. In this respect: “*Every application of the law requires interpretation (...)* (Boghirnea & Vâlcu, 2009, p.255). “In the same vein, we note that other specialized authors have also analyzed legal interpretation from the point of view of the general theory of law (Popa et al, 2017, 197-202)”. A relevant case has been selected from ECHR case law which captures the problems faced by local public authorities at the time in relation to access to public water services. We take into consideration case *Hodorovic and Others v. Slovenia* (applications no. 24816/14, 25140/14, judgment of Strasbourg, 10 March 2020¹¹). The case concerns the applicants' complaint about access to drinking water. In fact “*the applicants, members of the Roma community living in illegal settlements, request access to drinking water and sewage services, given that the measures in place so far were insufficient*”¹²(.

In this case, the Court makes clear that “*access to safe drinking water is not, as such, a right protected by Article 8 of the Convention. However, the Court must be mindful of the fact that without water, human beings cannot survive. A persistent and long-standing lack of access to safe drinking water can therefore, by its very nature, have adverse consequences for health and human dignity (...)*” (para.116). The Court observes that “*the municipal authorities of Ribnica and Škocjan also undertook some concrete actions to ensure that the applicants had access to safe drinking water*” (para. 150). Furthermore, “*the applicants' respective buildings could not be legalized because they were erected on land not intended for residential use*” (par. 150). Moreover, „*In the absence of legalization, the buildings could not be connected to water and sanitation services*” (para. 150).

In conclusion, the Court notes that “*while it falls upon the State to address the inequalities in the provision of access to safe drinking water which*

¹¹ <https://hudoc.echr.coe.int/fre?i=001-201646>

¹² https://irdo.ro/pdf/volume/CEDO_Repere_teoretice_si_analiza_jurisprudentiala.pdf, p.175)

disadvantage Roma settlements, this cannot be interpreted as including an obligation to bear the entire burden of providing running water to the applicants' homes". The Court finds that "the measures adopted by the State in order to ensure access to safe drinking water and sanitation for the applicants took account of the applicants' vulnerable position and satisfied the requirements of Article 8 of the Convention" (para. 158).

CONCLUSION

The work revealed that access to public drinking water supply service is of major importance for the population. On the basis of the documentation carried out, we can draw a number of conclusions in response to the research questions set.

With regard to the regulatory framework, it is noted that there is legislation on public utilities, including public water utility. As the topic of access to public water services was intended to be analyzed under the umbrella of sustainable development, the paper presented the legislation applicable to access to water and combined it with an analysis of the concept of sustainable development. At national level, the legislative framework consists of the following: Law no. 51/2006 on community services of public utilities and Law no. 241/2006 on water supply and sewerage services. The legislator has not yet adopted the Code on several community services of public utilities. At the European level, we note EU Directive 2020/2184 of the European Parliament and of the Council of 16 December 2020 on the quality of water intended for human consumption.

Furthermore, Romania, among other UN member states, participates in a global program called the 2030 Agenda for Sustainable Development. Several sustainable development objectives are set by means of this program. The study focused on Sustainable Development Goal - SDG no. 6 Clean water and sanitation - Ensure availability and management of water and sanitation for all. In this respect, in addition to the theoretical component, doctrine and legislation, the research also focused on the applied component of the topic.

The paper presented a case study with two components. On the one hand, in order to find out Romania's progress in the fulfillment of SDG no. 6, a statistical processing was carried out based on official information published by the National Institute of Statistics. The results of the research show that not all of the country's population is currently connected to the national water supply network, in 2022, 14,277,262 people were connected to the national water supply network and the length of the drinking water distribution network at the end of the year was of 90352.4 km. It is also noted that access to the public water service was provided in compliance with the provisions of the law, namely the principle of equal treatment in the provision of public services, which excludes discrimination and no person has been unfairly treated. Access to public water service in

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Romania is therefore fair and non-discriminatory. Moreover, in the summer of 2024 the authorities were faced with the problem of water restriction and use. The documentation shows that there is legislation at national level to draw up plans for water restriction and use in times of scarcity so that all people have equitable and non-discriminatory access to water.

On the other hand, case *Hodorovic and Others v. Slovenia*, settled by ECHR, revealed practical issues in the field of access to public water services and the challenges for local public authorities, so we conclude that there is case law on the topic under analysis.

The final conclusion of the paper is that, in our opinion, although important steps have been taken to achieve equitable and non-discriminatory access to public water supply for the population of our country, the findings show that there are still steps to be taken in this respect to achieve 100% connection rate. The research carried out has not exhausted the issue of access to public water services, so we are drawing lines of future research that will consider extending the analysis to the issue of water access restrictions at international level.

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