The Right2Water Initiative: the human right to water in the EU among social sustainability, vulnerable groups and exclusion of management benefits

JUAN JOSÉ RUIZ RUIZ

1. The European citizens initiative

The Lisbon Treaty introduced the innovative institution of European Citizens' Initiative (ECI), as an instrument to strengthen participatory democracy in the Union. The rules and procedures concerning this mechanism were set out in the Regulation 211/2011, which is applicable from 1 April 2012.

The only initiative, registered on 10 May 2012, which received the necessary number of signatures (by the closing date of the collection set for 1 November 2013) to be submitted to the European Commission was the initiative entitled Right2Water: "Drinking water and sanitation: a universal human right! Water is a common good, not a commodity!" (registered on 10 May 2012 and submitted after the signatures collection process on 20 December 2013), which was followed by the initiatives "One of us" and "Stop vivisection". According to AquaFed Press release «it is significant to note that close to 80% of signatories (1.3 million) are from Germany, while citizens from other parts of Europe that are the most-exposed to private management of public water services, i.e. England, Spain, France and the Czech Republic have never been very interested in this Initiative and the number of signatures in these countries is still very small. Therefore, this Citizens' Initiative is obviously filed by German lobbies. It cannot be considered

as representative of European citizens and not justify the exclusion of water from the Concessions directive». As Parks notes, a decisive boost was given in January 2013 when «a German comedian and satirist featured material about the right to water and the privatisation of water supplies on his television programme, ending the piece with information about the ECI and how it could contribute to safeguard publicly-owned water supplies in the country. This led to a significant jump in the numbers of signatures from Germany and Austria, with 84% of signatures coming from Germany by early February» (Parks 2014: 10).

The Right2Water Initiative aimed to propose to the European legislative institutions (the Council and the European Parliament) legislation that establishes the universal human right to drinking water and sanitation and promotes the provision of water and sanitation services as essential public services for all. In particular, the initiative recalls the obligations imposed by the respect of the human right to water, as outlined in the General Comment no. 15 of the Economic and Social Committee of the United Nations, distinguishable in the three categories of obligations "to respect", "to protect" and "to fulfil", in order to demonstrate the incompatibility with respect to them of the liberalisation practices of water services implemented by the States. Nevertheless, this is very far from being the case because, as Williams recalls, General Comment no. 15 «contemplates and accounts for the eventuality that water services may be provided by private companies or other third parties. Thus, it is difficult to contend that privatization of water systems and supplies in itself violates human rights» (Williams 2007 : 486). It is true that General Comment no. 15 defines a universal entitlement to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use. According to Tully, «most notable among the several omissions from General Comment no. 15 is the increasingly prominent role and responsibilities of the private sector. It is argued that unreflective resort to the General Comment template for addressing individual interests will render such instruments, outdated or unhelpful as normative guides» (Tully 2005).

The legislative initiative underlines how the liberalisation of *de facto* water services represents a limitation to this equal access (as some scholars argue, «at stake, therefore, with a neo-liberal water governance regime is the disproportionate influence and control that corporations and associated institutions can hold, potentially producing scenarios where water and wastewater services are based on financial capability rather than need»; see Melo Zurita M.L. *et al*. 2015: 173). According to the citizens' initiative, the obligation to protect requires that States prevent third parties (individuals, groups, companies and other entities, as well as agents operating under their authority) from interfering in any way with the enjoyment of the right to water. The initiative urges the European institutions to

ensure that the European water policy includes the following claims: a) «To use the Human Right to Water and Sanitation in all communications on Water and/or Sanitation»; b) «To refrain from turning water services into commercial services by excluding water from internal market rules», as stated by the European Parliament in a resolution of 2004; and therefore «not to liberalise water and sanitation services»; c) « To enshrine the "water is not a commodity" principle of the Water Framework Directive in all EU water and water-related policies»; d) Additional objectives have to do with EU competences in international development cooperation: «to increase access to water and sanitation worldwide, by making the achievement of universal access to water and sanitation part of EU development policy; to promote Public-public partnerships (Water Operator Partnerships) based on not-for-profit principles and solidarity between water operators and workers in different countries».

As noted by Melo Zurita M.L. *et al*. (2015: 173) «the defining of water subsequently became a key issue with the Commission rejecting the Council's amendment to the EU Water Framework Directive, that stated "water is not a commercial product like any other but instead is a part of Europe's heritage which belongs to the peoples of the EU and ought, therefore to be protected"». However, the European Commission claimed that the amendment was purely rhetorical and added nothing to a legal text. According to Kaita and Page (2006: 320), the European Commission position was «indicative of the shift within the Commission towards giving high priority to the idea of water as an economic good, and subsequently to water pricing as a key tool for environmental protection». Accordingly, the ultimate goal of the ECI was «to shift the European Commission's from their market orientation to a rights-based, people-oriented water-policy approach» (Van den Berge, Boelens and Vos 2018: 226).

Other measures proposed by the initiative are the promotion of public-public partnerships; the affirmation in all European policies concerning water resources of the principle «water is not a commodity» stated in the 2000 Water Framework Directive (WFD); to specify that the protection of our waters will prevail over trade policies; and to activate support programs for those who are not able to pay the bills for water supply, with the aim to prevent disconnections of users. Critics have suggested that «partnerships with only two partners (private and public) should be abandoned, and replaced by modes of negotiation, decision-making, management and multi-actor control by integrating users, investment funds, experts and excluded from water» (see Hugon 2005: 31). As highlighted by Williams (2007: 495), «no formal contradiction between the human right to water and privatization exists, since human rights documents do not specify the mechanisms for water delivery. Indeed, General Comment 15 and the Special Rapporteur's Report on the Right to Water explicitly recognize the

possibility of privatisation, and General Comment 15 lays out particular state obligations that must be met under privatization».

2. The reply of the European Commission

The Communication of the European Commission of 19 March 2014 is divided into several parts, opened by an introduction that preludes to a conclusion of «not full acceptance» (in the sense of not proposing a legislative act). The second part of the Communication opens with the recognition of the "indissoluble" link between access to drinking water and sanitation and the right to life and human dignity. The relevant provisions of the Charter of Fundamental Rights are also referred to, which, as the Commission points out, applies to Member States only when they implement EU legislation. In the absence of an express mention of the right to water within the Charter of Fundamental Rights, the (indirect) guarantee of the right is derived from articles protecting such as right to life (art. 2), right to human health (art. 35) and right to environment (art. 37) (see Bluemel 2004: 963). On 22 March 2013, AquaFed proposed to the EU Commission and Parliament to amend the European Charter on Fundamental Rights «in order that this human right is included in EU legislation».

The European Commission «is committed to ensuring that the human rights dimension of access to safe drinking water and sanitation, which must be of high quality available, physically accessible, and affordable, will continue to guide its future action». The European Economic and Social Committee's (EESC) opinion of 11th June 2014 recalls that «the Community approach is based on two views of an affordable price: one with a universal dimension, the other restricted to groups that have low incomes, are disadvantaged or vulnerable, such as people with disabilities or specific social needs. The second is meaningless unless it seeks, in keeping with Protocol No 26, "the promotion of universal access"». See EESC 2014: C 177/26). On the other hand, there is no room for a legislative proposal on one of the crucial points of the Right2Water legislative initiative, namely the aim of excluding water and sanitation from the "logic of the single market" and, also, water services from any form of liberalisation (see Sen 2005). Indeed, the Commission stresses that «water prices are set nationally and the EU has no say in the matter». Therefore, from this point of view, the Commission does not consider the proposition of a legislative act at European level, because «the EU has no role in the setting of water prices, which are determined at national level». Despite this, the European Commission notes that European legislation already partially fulfil the ECI claims, because in pursuing the objective of encouraging the sustainable use of limited water resources, the Water Framework

Directive (WFD) «requires Member States to ensure that the price charged to water consumers reflects the true costs of water use». It should be noted that Art. 10 of Regulation 211/2011 establishes that the European Commission only has an obligation «to set out in a communication its legal and political conclusions on the citizens' initiative, the action it intends to take, if any, and its reasons for taking or not taking that action».

The European Commission recalls that «Article 345 of the Treaty on the Functioning of the EU clearly establishes a principle of neutrality in relation to the rules governing the system of property ownership in the Member States. The EU cannot, therefore, adopt legal acts affecting the rules governing the system of property ownership, including those affecting the ownership of undertakings providing a public service, such as the provision of water». Therefore, also from this point of view, the Right2Water initiative cannot translate into the proposition of an act, given that the Commission must respect the rules of the treaty.

In identifying concretely the services that fall into the various categories, the European Commission believes that in the context of «services of general economic interest» both large network industries (transport, postal services, energy, telecommunications) and all those economic activities subject to public service obligations, not yet (entirely) harmonised, other than network services, including water services (Gallo 2006: 246). In 2012 the European Commission established an blueprint for water founded on an economic and market-based vision that water should be used in sectors where it provides higher economic value (i.e. in agriculture, industries and for electricity production (Van den Berge, Boelens and Vos, 2018: 228).

The European Union «respects this diversity and the role of national, regional and local authorities» in ensuring the well-being of their citizens and the democratic choices concerning, among other things, the level of service quality. On the basis of this approach, the attribution to a service of the quality of «service of general interest» does not imply the automatic censorship of liberalisation systems; moreover, although the application of the principle of accessibility of tariffs contributes to economic and social cohesion in the Member States, the accessibility criteria are left to the Member States and not included in the competences of the Union (the EESC notes that «the Union recognises and respects access to services of general economic interest […] in accordance with the Treaties, as specified in the Charter of Fundamental Rights attached to the Treaty of Lisbon, which expressly refers to national laws and practices as the basis. Many Member States associate this right of access with the requirement to provide a service under conditions economically acceptable to all and, for this purpose, apply individual and collective social assistance programs, to different degrees. In practice however, many citizens in the EU experience severe difficulty in accessing essential

services, especially in the fields of housing, energy, electronic communications, transport, water, health care and social services»; see EESC 2014: C 177/25).

The result was the commitment by the Commission to set «its own future action by continuing to consider drinking water and sanitation in their human right dimension», and therefore universally accessible on the EU territory, of high quality and at affordable prices.

According to the Commission reply, «concerning affordability of water, it is important to recall that, when setting water tariffs in accordance with the principle of recovery of costs set out in Directive 2000/60/EC, Member States may have regard to the variation in the economic and social conditions of the population and may therefore adopt social tariffs or take measures safeguarding populations at a socio-economic disadvantage» (according to the EESC «there is no single, EU-level definition of or uniform approach to the affordability or economic accessibility of SGEIs, just as there is no instrument with which to measure it. Affordability often depends on the subjective perception of the user of what it costs and what it provides in terms of the individual's well-being. In general terms, an affordable service is one which citizens "can readily afford" (Green Paper on the Development of the Single Market for Postal Services). A service is entirely affordable if it is provided free of charge to citizens, as in the example of certain cities or regions that provide free urban public transport»; EESC 2014: C 177/26).

3. The reply of the Parliament

The European Parliament in its Resolution of 2015 has regretted the Commission communication accepting the initiative, in which it did not announce any new legal proposal, stressing that «the response given by the commission to the Right2Water ECI is insufficient, as it does not make any fresh contribution and does not introduce all the measures that might help to achieve the goals» (Resolution of 8 September 2015 on the follow-up to the European Citizens' Initiative Right2Water (2014/2239(INI)), para. 6). This poor outcome has raised considerable criticism, as Espaliú remarks in stressing that «this result is of course very poor and says little in favor of the scope of the European citizen's initiative in the European law making» (Espaliú Berdud 2016: 201).

In fact, in the view of the European Parliament the recognition of water as a fundamental right of the human person, entails «that, as stated in the Water Framework Directive (WFD), water is not a commodity but a public good that is vital to human life and dignity» and the exclusion of water supply from liberalisation processes to the qualification of water as a common good of humanity,

arguing that require the EU to remain neutral in relation to national decisions governing the ownership regime of water undertakings, therefore it should by no means promote the privatisation of water undertakings in the context of an economic adjustment program or any other EU procedure of economic policy coordination[1].

In the Resolution on the Green Paper on services of general interest of 14 January 2004, Parliament declared that «the supply of water [...] should not be subject to liberalisation» (para. 47). In a subsequent Resolution of 15 March 2006, the European Parliament stated «that water is a shared resource of mankind and that, as such, access to water constitutes a fundamental human right» (European Parliament Resolution on the Fourth World Water Forum in Mexico City, 16-22 March 2006). The latter Resolution standardises water into the category of "global commons", which entails intrinsic difficulty of protecting it, since as Stern notes «the appropriators of global commons come from all cultures, all countries, all political-economic systems, all political ideologies, and so forth, this fact makes it difficult to arrive at common understandings, either of the resource system or of the options for managing» (Stern 2011: 217).

European Parliament in Resolution of 8 September 2015 notes that countries across the EU, including Spain, Portugal, Greece, Ireland, Germany and Italy, have seen the potential or actual loss of public ownership of water services become a major issue of concern to citizens; recalls that the choice of method of water management is based on the subsidiarity principle, as laid down in Article 14 TFUE and in Protocol (no. 26) on services of general interest, which highlights the special importance of public services for social and territorial cohesion in the Union; recalls that water supply and sewerage enterprises are services of general interest and have the general mission of ensuring that the entire population is provided with high quality water at socially acceptable prices and minimising the negative environmental impacts of waste water.

---

[1] In its Resolution of 8 September 2015 on the follow-up to the European citizens' initiative Right2Water (2014/2239(INI)), the European Parliament recognises «the importance of the human right to water and sanitation and of water as a public good and a fundamental value for all EU citizens and not as a commodity; expresses its concern that since 2008, due to the financial and economic crisis and to the austerity policies which have increased poverty in Europe and the number of low-income households, an increasing number of people have been facing difficulties in paying their water bills and that affordability is becoming a matter of growing concern; rejects water cut-offs and the enforced switching-off of the water supply, and asks Member States to put an immediate end to these situations when they are due to socioeconomic factors in low-income households» (para. 18). However, under claims of a fundamental right to water lies a number of legal layers very different in nature. As Thielbörger argues, right to water is a hybrid right: «often, the right to water has been considered either the one or the other: either socio-economic or civil-political. However, the truth lies somewhat in the middle: it is a bit of both»; see Thielbörger 2014: 115.

Nevertheless European Parliament stresses that, in line with the principle of subsidiarity, the Commission should remain neutral regarding Member States' decisions relating to the ownership of water services and should not promote the privatisation of water services either through legislation or in any other way (on the resistance to privatise water see Barlow and Clarke 2002).

In addition, European Parliament recalls that the option of re-municipalising water services should continue to be ensured in the future without any restriction, and may be kept under local management if so chosen by the competent public authorities[2]; recalls that water is a basic human right that should be accessible and affordable to all; highlights that Member States have a duty to ensure that water is guaranteed to all regardless of the operator, while making sure that the operators provide safe drinking water and improved sanitation. European Parliament recalls that for this purpose it crucial the role of national regulatory authorities «in ensuring fair and open competition between service suppliers, facilitating faster implementation of innovative solutions and technical progress, promoting efficiency and quality of water services, and ensuring the protection of consumers' interests».

Even more interesting is the explicit reference to the commitment taken under U.N. Sustainable Development Goal 6, contained in Art. 13 of the proposal to modify Directive 98/83/EC, which foresees to «achieve universal and equitable access to safe and affordable drinking water for all». Art. 2 of the proposal amending Directive 98/83/EC enshrines two kinds of obligations. The first obligation for Member States is «to improve access to and promote use of drinking water via a number of measures, some of which are included in the Article (assessing the share of people without access to drinking water, informing them about connection possibilities, encouraging the use of tap water in public buildings and restaurants, ensuring that equipment to freely access tap water is available in most cities, etc.)». The second obligation for Member States is «to take all measures necessary to ensure access to drinking water for vulnerable and marginalised groups. When those groups do not have access to water intended for human consumption in the sense of this Directive, Member States should swiftly inform them of the quality of the water available to them and give the necessary related health advice».

The European Parliament, in its resolution on the follow-up to the initiative of European citizens Right2Water, has noted that «Member States should pay special attention to the needs of vulnerable groups in society and also to ensuring that those in need have access to affordable quality water» (no. 62). Without

[2] As Tornos Mas (2016: 42) recalls for the Spanish case, Article 85.2 of the Spanish Act of Local Entities (after modifications introduced by Act 27/2013), constrains municipalities to have to seek the formula not only the more efficient but also the more financially sustainable.

prejudice to the right of the Member States to define those groups, they should at least include refugees, nomadic communities, homeless people and minority cultures, whether sedentary or not.

Indeed, Art. 9, para. 1, of the EU Water Framework Directive is drafted in a flexible and non-binding way since it stipulates that the Member States must take into account the principle of recovering the costs of services linked to the use of water. The user is required to pay according to the quantity taken, which involves a measurement of the volume consumed, and taking account of the polluter pays principle. A derogation from the principle of cost recovery from the user is possible for social, environmental and economic reasons or to take into account the geographical and climatic conditions of the region. The EESC recalls that «there are no official EU criteria for calculating the economic accessibility of SGEIs. EU texts focus more on principles and harmonised rules for setting "cost-oriented" or "more cost-oriented" prices, or on the "recovery of costs" (as required under the Water Framework Directive), while ensuring the supply of services to the population as a whole. Cost-oriented tariffs, however, even without a profit margin for the supplier, are not the same thing as economic accessibility and nor do they guarantee access for all to services at affordable prices». However, more recently, this issue has been clarified by the CJEU in *European Commission v Federal Republic of Germany*[3] arguing that «it cannot be inferred therefrom that, in any event, the absence of pricing for such activities will necessarily jeopardise the attainment» of WFD objectives (Recital 56). The CJEU stresses that «Article 9(4) of Directive 2000/60 provides that the Member States may, subject to certain conditions, opt not to proceed with the recovery of costs for a given water-use activity, where this does not compromise the purposes and the achievement of the objectives of that directive» (Recital 57) and so «it follows that the objectives pursued by Directive 2000/60 do not necessarily imply that Article 2(38)(a) thereof must be interpreted as meaning that they all subject all activities to which they refer to the principle of recovery of costs, as maintained in essence by the Commission» (Recital 58). Thus, as Delimatsis points out, the CJEU agrees with the European Commission that «the concept of water services is to be interpreted broadly to cover the supply of water (upstream) as well as the treatment of waste water (downstream)», but does not share the Commission's view «that water prices is as pervasive», since as the Commission argued, not all of the water services to which Article 2(38) WFD refers are subject to the principle of the recovery of costs, as CJUE has founded by looking at the WFD drafters' intent (Delimatsis 2017: 280).

[3] Case C-525/12, Judgment of the Court (Second Chamber) of 11 September 2014.

4. The European Economic and Social Committee position

In the opinion of the European Economic and Social Committee, entitled «For better implementation of the European pillar of social rights and the promotion of essential services», issued on 19 June 2019, the Committee argues that «in order to give effect to the stated principle that "everyone has the right to access essential services of good quality", it must be backed up by tangible measures in relation to sustainable development and social cohesion, while also ensuring that: a) the principle is guaranteed through legislative or regulatory provisions that define it and establish how it will be applied in each area; b) it is specified what compensation people can claim if the principle is not respected; c) legal redress, appeals or complaints are possible if the principle is breached».

The EESC asks for the concept of universal access to SGEIs to be clarified, and for legislative measures to be introduced obliging Member States to establish universal access indicators for each SGEI (density of service access points, maximum distance to an access point, service regularity, etc.)

As Committee points out, «given that affordable access is, increasingly, no longer guaranteed by means of a "reasonable" social tariff»[4], but through social assistance which is exclusively reserved for the poorest people, and given that the poorest are not the only ones who have serious financial difficulty in accessing SGEIs, the EESC reiterates its call for affordability to be determined by identifying a basket of services considered essential. The financial contribution of a household for each of these services should be set as an acceptable proportion of the social wage/minimum income, above which prices are deemed to be inflated and require regulatory measures or should confer an entitlement to public aid. After Lisbon Treaty it is clear that accessibility and affordability of certain essential services. In this regard, as Delimatsis (2017: 275) points out, the CJEU has identified in Almelo[5] «the main elements that constitute a SGEI, such as continuity (uninterrupted supply of the service), universality (benefitting the consumers throughout a given territory) and equality (supply with uniform tariffs […] regardless profitability)».

The fundamental principle no. 20 of the European pillar of social rights, concerning «Access to essential services», proclaims that «every person has the right to access essential quality services, including water, sanitation, energy, transpor-

[4] As regards the social tariffs, the EESC recalls that «normally the tariff would involve a fixed fee to cover fixed fee to cover fixed costs and a variable element to account for the volume of water consumed». Although direct subsidies by public authorities are forbidden, social tariffs are envisageable; see Correljé *et al*. 2007: 153.

[5] Municipality of Almelo and Others, 1994, C-393/92, para. 48.

tation, financial services and digital communications. Support for access to these services is available for people in need».

The concept of "essential services" does not appear in the Treaties, which deal only with public services (transport) and services of general interest (economic, not economic). The aforementioned 20th pillar principle offers no definition of what is meant by "essential services", merely listing a series of examples of such services without drawing up an exhaustive list. The concept of "essential services" is currently used in the context of the United Nations sustainable development goals.

In the absence of any definition, and given the examples of services listed in principle no. 20, it is clear that this is the case of "services of general economic interest", subject to universal service obligations or public service obligations referred to in Art. 36 of the EU Charter of Fundamental Rights and Art. 14 TFEU, as well as the Protocol (no. 26) on services of general interest. Simmonds (2003: 6) argues that political uses of terms has caused some confusion beause «in the EU context the concept of universal service was in origin market-related, and no necessarily a result of deliberate social policy».

However, according to the EESC it should be noted that interpretative provisions of Protocol no. 26 on SGIs, annexed to the TFEU, go beyond the framework of a simple guarantee of "quality access" and provide for a high level of quality, safety and affordability, equal treatment and the promotion of universal access and user rights. The EESC (2014: C 177/26) recalls that «according to the 2003 Green Paper on Services of General Interest, the Member States must define certain of the criteria to be applied in determining the affordability of a service. They must ensure that the criteria established uphold a series of consumer and user rights, such as accessibility to SGEIs for people with disabilities, while putting in place a price control mechanism and/or by distributing subsidies to the persons concerned. Such criteria could be linked for example to the price of a basket of basic services, to be defined by the Member States, the maximum price of which (the effort rate) is set as an acceptable proportion of the disposable income of the most vulnerable people».

In the evaluation of the application of Protocol no. 26, the EESC stresses that «No overall assessment has been made of the positive effects (price reduction, diversification of supply) and negative effects (price increases, creation of oligopolies, market skimming, job insecurity, social dumping) of the policy of liberalising SGEIs» while admitting that in the case of some services, the introduction of competition has led to an increase in tariffs and/or a weakening of the tasks of public service. It should be remembered that Protocol no. 26 TFUE calls on the Member States to guarantee a high level of quality of SGEIs, while the pillar is limited to a simple and essential "quality" service.

In the opinion of 21 January 2014, the EESC stressed that «A high level of affordability in respect of services of general economic interest (SGEIs) is nevertheless one of the shared values, i.e. values embraced by all EU Member States, set out in Protocol no. 26 on Services of General Interest (appended to the Treaties) which must be fully taken into account by the EU and the Member States, within their respective competences, when implementing all their relevant policies».

In addition, the EESC proposed in the same opinion that the European Union must firstly clarify the concept of affordability of SGEIs for all and adapt it in line with the requirements of the Treaty of Lisbon (the aforementioned Protocol no. 26) and on the other hand that Member States must adopt legislation based on secondary legislation which obliges them to: a) define indicators to determine the affordability of a service, together with an independent SGEI performance evaluation mechanism, covering compliance with economic accessibility; b) establish a basket of basic services, the household effort rate of which is set as an acceptable proportion of disposable income. An expenditure ceiling for these services should provide an objective basis for quantifying the concept of affordability and determining the overall percentage of household expenditure above which constitutes excessive cost entitling people, where appropriate, to public assistance; c) define the concept of "vulnerable persons" and "disadvantaged groups" more precisely. In this regard, the European Commission should review the way it makes decisions when checking obvious errors in determining State aid.

In the deeds (of soft law) that have specified the Union's competences in the field of general interest services, there are different categories – not expressly foreseen by the Treaties – not easy to distinguish one from the other: for example, Services of General Interest (SGI), Services of General Economic Interest (SGEI), services that constitute activities of overriding general interest, Services of Public Utility, Social Services of General Interest[6].

The Member States have wide discretion to define, organise and finance SGIs that meet users' needs, on the basis of and with reference to social and civic action. As Simmonds (2003: 61) has highlighted, Public services for European Commission «do not necessarily have to be provided by the public sector, nor does the term imply public ownership of the service infrastructure». As for

[6] According to Camenen (1996: 23), although the expression of public service «is used in particular by the continental European countries, where the legal tradition is characterised by a pronounced difference between public and private law. However […] it will be found under other designations, even in legal systems based on the Anglo-Saxon tradition which themselves also have the concept of public interest or general interest, under the name, for example of 'public utility' or public interest'. It can therefore be assumed that this concept exists in all member States». See European Parliament, Directorate-General for Research, *Public undertakings and public services in the European Union*, *Economic Affairs Series*, Working document 21.

SGEIs, they follow a commercial approach and subject to EU competition and single market rules, unless such rules prevent them from carrying out their missions. Non-economic services of general interest are by definition not bound by a market-based approach and are the exclusive competence of the Member States, on the basis of Art. 2 of Protocol no. 26.

Protocol no. 26 to the Lisbon Treaty, although it does not outline a single and all-encompassing notion of service of general interest, states that the "common values" referred to in Art. 14 TFEU include in particular «a high level of quality, safety and accessibility economic, equal treatment and the promotion of universal access and user rights» (Art. 1, para. c, Protocol).

5. Confusions regarding water as a right

Has water become "a commodity", instead of a gift that we receive gratuitously from nature? Water seems to have a double nature, it is seen either as a good of social interest, sometimes or an economic good. European law embraces the first facet, retaining that the water resource should not be understood as a commercial product but as a common good.

Because of this, most of national legislations establish that drinking water supply is a "service of general interest", therefore removed from the logic of the market[7], provided by companies subject to public regulation, which determines tariffs, investments, performance levels, with the aim to guarantee the service offered to citizens. As Berg (2013: 11) argues «on the one hand higher prices are politically unpopular, but on the other hand government transfers to the utility enable it to make investments that improve service delivery, although government funds have substantial opportunity costs». But often it is said that "public water" implies "free water", which is a colossal misunderstanding, suggesting that tariffs increase to allow private companies to make a profit from the supply of essential goods. Therefore, it is argued that from the common good of the water service supply follows the duty to finance other than through tariffs, through general taxation, but there is a strong criticism about this choice. Berg (2013: 9) in fact argues that «excessive political involvement in utility operations is almost certain to lead to inefficiencies: excessively low tariffs that starve the utility for cash needed for maintenance and network expansion. Furthermore, political objectives for the water and sanitation sector are seldom prioritised: low tariffs,

[7] See Rastello and Sipalla 2007: 77. According to Subramaniam (2018: 49), the neoliberal agenda promoted by WTO has pushed for privatisation pressures which both has woken the role of State in allocating water and has created a framework of rules that promote the mobilisation of water as a marketable commodity.

network expansion, and service quality are reasonable objectives, but they are mutually inconsistent».

It must be observed that in the name of an alleged «ontological inclination towards benefits» (Massarutto 2019: 3) of private companies[8], a sort of financial franchise that claims to turn them into public entities is usually invoked for future new municipalisation[9], but even if what is intended is that these municipalised societies must not be subject to the limits of public financing and therefore not subject to the rules of the economic-financial balance, it would imply that private companies will be barred from obtain benefits but not from incurring losses, which usually results in a financial black hole (Massarutto 2019: 3). In some countries much more effective measures have already been activated such as the social water bonus[10]: this is a measure that can be improved, although it has already given good results in terms of containing water poverty.

But really water as a human right means free water? Water, as a good, has characteristics such as liquidity, fluidity and an ability to renew itself, thus it is impossible to determine borders and therefore its appropriability. Because of this «the problem of the lack of appropriability is especially pertinent to water resources, since water is a publicly held resource. Although private firms and individuals may enjoy the right to use water, they rarely have title to the corpus or body of the resource» (National Research Council 2004: 23). Some scholars have pointed out that the problem of the lack of appropriability of water results in the lack of tradable property rights to water and thus in the impossibility of considering water as a tradable commodity[11].

Nevertheless, as Cullet (2001: 238) has highlighted, reforms over the past decades «have tended to strengthen individual appropriation of water resources», to the extent that «one of the landmark developments in water law in recent years has been the development of tradable water rights».

---

[8] For some scholars water privatisation clashes with fundamental rights, see Naegele (2004).

[9] As Barlow and Clarke (2005: 185) point out, «one of the more significant kinds of water fightback [...] taking place in recent years has to do with communities that have struggled to regain public control of their municipal water services after they have been privatized».

[10] Indeed, as a report of Aqua Publica Europea (2016: 5) points out, «it is now widely acknowledged that low tariffs are not an appropriate response to affordability issues: under-financed water utilities will provide low quality services, which will hamper their capacity to ensure universal access, thus ultimately harming lower-income households and marginalized groups».

[11] Nevertheless, there are two schools of thought on the interpretation of water as an economic good due to a considerable misunderstanding of Dublin Principles (ICWE, 1992). The first one «maintains that water should be priced through the market». The second one interprets economic value of water as «the allocation of scarce resources, which does not necessarily involve financial transactions»; see van der Zaag and Savenije (2006: 7).

Conversely, the approach focused largely on right to water interpreted as a fundamental right[12], aims to consider water as a non-tradable good, and therefore not subject to rules relating to contractual services (formal dimension of the effective recognition of the right to water)[13], as well as the right to access to water for primary needs related to healthy living and eating aims to exclude the logic of profit (i.e. right to access the drinking water in economically acceptable conditions by all[14], and effective dimension allowing the right to be guaranteed), (see Lucarelli 2010: 91).

In line with this conception, the human right to water, as recognised by the United Nations, is modelled around sufficiency, wholesome, acceptable, physically accessible and convenient. Precisely as regards this last feature, the United Nations stated that water and access services and facilities must be available to everyone, so the United Nations Development Program (UNDP) suggested that the water cost should not exceed 3% of family income.

Nevertheless, it is important to underline at this point that in no case the fact of being recognised as a human right implies the free supply of water. The United Nations itself in June 2011 corrected the misconception of free water and sanitation in a press briefing stating that "water and sanitation services need to be affordable for all. People are expected to contribute financially or otherwise to the extent that they can do so». The only two constraints applicable on water costs imposed by General Comment 15 are affordability and equity. Under Covenant on Economic, Social and Cultural Rights (CESCR) General Comment 15 «equity demands that poorer households should not be disproportionately burdened with water expenses as compared to richer households». As Hugon (2005: 32) notes, «taxation can target efficiency, equity and sustainability objectives. It must not have negative redistributive effects. Thus, in poor countries, the mea-

[12] Neverheless, as Cullet (2001: 238) has pointed out, «human rights cannot provide the specific content of a right in its implementation on the ground and thus require the existence of more specific laws to ensure the realization of such rights. On the other hand, water laws need to be integrated into constitutional frameworks», otherwise «water law run the risk of remaining simply a set of technical and economic prescriptions».

[13] However some authors makes a strong criticism of the tendency of most legal framework in the modern era to emphasise sovereign and individual access to and control over water because this emphasis «has neither fostered equitable access to water nor sustainable use of water»; Cullet (2001: 242).

[14] In the view of some scholars, «water is a special good for which there is no substitute, that therefore its allocation is a societal question that cannot be left to market forces alone and hence that the price of water should not be determined by the market, and finally that, notwithstanding the foregoing, water should have a price in order to achieve two objectives, namely recovering the cost of providing the particular water service and giving a clear signal to the users that water is indeed a scarce good that should be used wisely»; van der Zaag and Savenije (2006: 7).

sures favoring well-served consumers are in fact effects of worsening inequalities among low-income or unserved section of the population». In para. 12.c, ii) of General Comment no. 15, affordability is understood in the following sense: «direct and indirect costs of water must not compromise or threaten the realization of other Covenant rights» (thus, equity relates to the comparative burden of a pricing structure on economic classes, while affordability relates to the price of water in relation to individuals' ability to afford the other necessities of life). This second requirement implies that the state must protect the most vulnerable members of society. In terms of para. 15 of the General Comment, «states parties have a special obligation to provide those who do not have sufficient means with the necessary water and water facilities». It is interesting to note that this right of vulnerable population «appears to be linked to, but somewhat distinct from the concept of non-discrimination», because «the full text of paragraph 15 juxtaposes provision of water for the poorest members of society with non-discrimination»; Williams 2007: 499).

The evidence of several studies is the lack of relevance of the ownership of public undertaking: both private and public sectors have advantages and disadvantages. As Bakker (2010: 6) has pointed out, it is wrong categorically «refute private sector involvement in water supply, nor simplistically defend government provision» given that there are well run public and private water supply as well as poorly run public and private supply. Public ownership of goods does not necessarily imply the public management of services, nor their public financing through general taxation, while the ability to invest and ensure an efficient industrial management of the service is essential (critics blame private operators for tariff increases but according to some scholars in this case causes and effects are confounded). According to Smith (2003: 212), regulatory agencies must prioritise service expansion and cost minimisation in order to be sensitive to the affordability of the poorest. The investment levels necessary in the long term must be guaranteed to ensure the proper functioning of the water system, avoiding the risks of opportunistic over-investment by private or under-investment by the public for reasons of political consensus (containment of tariffs) and resource / debt limits. Not surprisingly, the vast majority of OECD countries present water sector regulators with considerable independence from the government.

Another issue is to confuse public financial and full cost recovery mechanisms. Financial sustainability for water utilities depends less on public finance than on user tariffs. As noted by Baietti and Curiel (2005: 2), financial sustainability should thus entail: «a) lessening the dependence on governmental subsidy transfers, b) increasing reliance on user tariffs as the main source of internally generated financing, and c) gaining financial independence to source external private financing based on the enterprise's own creditworthiness». As pointed

out by Correljé *et al.* (2007: 153), «in principle, delegated contracts plus strong regulation will reduce pressures upon the public budget, through private funding and the principle of cost recovery»).

6. The road of right to water as a fundamental right

In light of the European Social Pillar, which defines the right to access water in the framework of social protection and social inclusion[15], in order to ensure the right to water as a fundamental right, national legislation should pay a strong attention to the social sustainability of tariffs paid by end users; and should induce operators to make progressive improvements with a view to the financial sustainability of the utilities managed.

In some countries minimum requirement per capita is a light expense, entirely covered by general taxation. As Aqua Publica Europea (2016: 23) reports, «the city of Paris decided to give away, free of charge, a certain amount of water, equal to the amount considered necessary to satisfy the basic needs, as defined by the World Health Organization (that is to say, 20l/capita/day of drinking water). Only the drinking water part of the invoice (that is, around 1/3 of the invoice) is targeted».

In the drinking water sector, in addition to directly investing public funds, the State therefore offers huge sums to guarantee investments in the water sector, thus allowing new resources to be released to improve and enhance the service, but with direct impact on user tariffs. As Baietti and Curiel (2005: 2) argue «the dilemma for policy-makers is that [...] the shift from subsidies to user charges and from donor grants and concessional loans to more commercial financing terms increases the amount that consumers are expected to pay through user tariffs». Policy makers must make a choice, «either adopt cost recovery guidelines for setting tariffs and move up the levels of financial sustainability or keep the utility in the lower thresholds of financial sustainability and perpetually reliant on unpredictable sources of public sector financing».

The fact remains, however, that the trend of increased corporatisation has resulted in the emergence of regulatory oversight at the national level in the sector of water supply (Casullo *et al.* 2019: 9). The need of a regulator is justified in order to achieve the following purposes: i) to advice on tariff regulation or to set tariffs in the case of regulators with statutory powers; ii) to provide high quality water

[15] Moreover, as Jakab and Mélypataki (2019: 20) argue, the Social Pillar aligns the right to water not just as a fundamental right, but a social fundamental right as well, which implies that this right is not directly enforceable in court, but the State must seek the conditions for an effective access to water for all.

service at the lowest possible cost; iii) to ensure the efficient future provision and review of utilities' investment plans to suit the water needs of urban and rural development; however powers to set quality standards for drinking water usually fall within the scope of ministries of health or environment; iv) the enforcement of compliance with quality standars, informing customers and collaborating in educational programs; v) to respond to customer complaints by articulating mediation or arbitrage systems; vi) to monitor compliance with sanitary and environmental regulations. As outlined by the OECD, «water regulators routinely resort to consultation and cost/benefit analysis to ensure the quality of the regulatory process. By contrast, systematic ex post evaluation of regulatory decisions remains the exception». Therefore, most of the regulators prepare an economic assessment on tariff settings, terms and conditions of market access and service standards (see OECD 2014. See also Tamames and Aurín 2015: 35.)

7. Conclusions

It must be observed, first, that nothing in the Directive 2014/24 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, obliges Member States to contract out or externalise the provision of services that they wish to provide themselves or to organise by means other than public contracts. Moreover, Art. 1(4) of that directive provides that it «does not affect the freedom of Member States to define, in conformity with Union law, what they consider to be services of general economic interest, how those services should be organised and financed, in compliance with State aid rules, and which specific obligations they should be subject to».

Having said that, the fact remains that in many countries there is a lack of transparency induced by a decentralised regulation involving thousands of independent municipal agencies, which implies a heterogeneous and highly variable situation, in which the powers in the urban water cycle are very fragmented and without coordination. This lack of transparency is greater in direct management municipal services than in public and private companies. This is why a national regulator could establish the appropriate mechanism in a normative way based on the per capita income of families and their objective water needs to avoid the populist use made of these very few situations[16]. The independence of political

[16] For instance in Ireland parties like Sinn Féin has committed on April 2015 to abolish domestic water charges in Government, and has proclaimed its engagement to not pursue arrears for these same charges. Sinn Féin has published two pieces of legislation to both abolish water charges and enshrine in the Constitution the right of the people to the retention of water services and infrastructure in public ownership. The Water Services Repeal 2014 was ruled out

power in water management avoids populist temptations about tariffs and normalises the financial sustainability of the service.

The concerns expressed by the ECI Right2Water that water supply and management of water resources should not be subject to "internal market rules" and that water services should be excluded from liberalisation, has been upheld in the Directive on the award of concession contracts that provides: «concessions in the water sector are often subject to specific and complex arrangements which require a particular consideration given the importance of water as a public good of fundamental value to all Union citizens. The special features of those arrangements justify exclusions in the field of water from the scope of that Directive» (recital 40, Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts).

Nonetheless, according to an EPSU (European Public Service Union) press release of 8 February 2018, the European Commission commissioned in 2015 the "Study on water services in selected Member States" from the consultancy Ramboll, «with the aim of seeking proof that there are negative economic effects on the internal market of the exclusion of water/wastewater concessions from the directive». However, the study founded that there is no proof that market processes result in extra benefits for consumers. Indeed, as the study stresses, «WFD does not allow governments to profit from water charges, but the directive recommends two policies which will push water charges upward. First, governments are directed to price water at a sufficiently high level so as that users will be motivated to reduce their water usage. Second, governments are encouraged to take a long-term economic view» (Blagoeva and Rossing 2015:35).

From this picture it emerges that it is up to the States and not to the Union to identify services of general economic interest and the decision «on the need to burden them with public service obligations and possibly organize them as a universal service». The attribution to a service of the quality of "service of general interest" does not imply the automatic censorship of liberalisation systems.

In addition, the accentuated national diversity that the European Union is committed to respecting, as well as the "neutrality" that the European Union deserves to national decisions governing the ownership regime of services suppliers (Palladino 2014: 31), remains an obstacle for improving the quality of life of all citizens and for overcoming social exclusion. A positive signal can be found in the provision of an *ad excludendum* clause contained in the aforementioned directive on the awarding of concession contracts precisely with reference to the

---

of order as it did not comply with the Standing Order 156, which prohibits the initiation of a Bill by a private member which «involves the appropriation of revenue» other than incidental expenses. In fact, according to Dáil Standing Orders opposition parties are prevented from tabling laws that involve the spending of exchequer funds.

issue of water (Palladino 2014: 32). As pointed out by Salacuse (2013: 227), «a water concession contract has a dual nature of both a contract and act of the sovereign». As a result as Miranda (2007: 532) has highlighted, water concessions should be treated as public policy mechanisms rather than merely as private contracts, therefore they should be subject to the scrutiny of the public.

Likewise, the Right2Water outcome raises the question of whether the EU is committed more to strengthening the high level of quality and safety of SGEI and less to ensure economic accessibility. A further step in the direction of a gradual framework of sanitation and right to water has been the amendment of the drinking water directive, intended for human consumption. The text proposes to tighten the maximum limits for some pollutants such as lead (to be halved) and harmful bacteria, and to introduce new limits for the most polluting substances (Press release from Parliament dated on 23 October 2018). It also supports the principle of universal access to drinking water, securing it for vulnerable groups with zero or limited access. It provides for Member States to take measures to «improve access to water in cities and public places, by creating free fountains, where technically feasible and proportionate», and to encourage «the supply of tap water for free or at low cost in restaurants, in canteens and catering services».

Turning to the framing of a fundamental right to water, it must be recalled that the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which entered into force in 2013, created a complaint mechanism allowing individuals or groups to file formal complaints on violations of the human right to water and sanitation, but other elements must be defined in order to ensure the right to water. For example, it is important to draw a distinction between availability and affordability. According to European Parliament, these two concepts are present both in Art. 14 TFUE and in Protocol no. 26 on services of general interest, in according with which «water supply and sewerage enterprises are services of general interest and have the general mission of ensuring that the entire population is provided with high quality water at socially acceptable prices»[17]. As U.N. Special Rapporteur Catarina de Albuquerque explains, on the one hand, «availability requires that water and sanitation facilities meet people's needs now and in the future: Water supply must be sufficient and continuous for personal and domestic uses, which ordinarily include drinking, personal sanitation, washing of clothes, food preparation, and personal and household hygiene» (de Albuquerque 2014: 33). On the other hand, affordability means that «people must be able to afford to pay for their water and sanitation services and associated hygiene. This means that the price paid to meet all these needs must not limit people's capacity to buy other basic goods and services, in-

[17] European Parliament resolution of 8 September 2015 on the follow-up to the European Citizens' Initiative Right2Water (2014/2239(INI)), para. 44.

cluding food, housing, health and education, guaranteed by other human rights» (de Albuquerque 2014: 35). Both of them must be part of legal framework of right to water. The right to water has a compound nature but above all it is a right of highest complexity. It depends on the climate but also depends on different interpretations varying the expectations from country to country and entails different technically water supply technologies (see Thielbörger 2014: 124, 130). The intertwined of numerous interrelated and complementary factors can become an additional obstacle in order to attend the need for greater precision in the framing of rights as entitlements, provided that rights must be framed as explicit as possible for their assessment and feasibility in judicial terms. Notwithstanding this, CJEU's case law on WFD (along with EESC opinions) should be welcomed as a major contribution to specify what is meant by the right to water.

Aqua Publica Europea
2016 *Water Affordability. Public Operators' views and approaches on tackling water poverty*, Brussels.

Baietti A., Curiel P.
2005 "Financing Water Supply and Sanitation Investments Estimating Revenue Requirements and Financial Sustainability", *Water Supply & Sanitation Working Notes*, Note no. 7, October.

Blagoeva T., Rossing C.
2015 "Study on water services in selected Member States", Copenhagen, Ramboll.

Bakker K.
2007 "The 'commons' versus the 'commodity': alter-globalization, antiprivatization and the human right to water in the global south", *Antipode*, 39, pp. 430 ff.

Bakker K.J.
2010 *Privatizing Water: Governance Failure and the World's Urban Water Crisis*, Ithaca and London, Cornell University Press.

Barlow M., Clarke T.
2002 *Blue Gold: The Fight to Stop the Corporate Theft of the World's Water*, New York, The New Press.

Berg S.V.
2013 *Best practices in regulating State-owned and municipal water utilities*, Economic Commission for Latin America and the Caribbean (ECLAC), United Nations, May.

Bluemel E.
2004 "The implications of formulating a human right to water", *Ecology Law Quarterly*, 3, pp. 957 ff.

Camenen F.-X.
1996 *Public undertakings and public services in the European Union, Economic Affairs Series*, Working document 21, European Parliament, Directorate-General for Research.

Casullo L. *et al.*
2019 "The 2018 Indicators on the Governance of Sector Regulators. Part of

the Product Market Regulation (PMR) Survey", *Economics Department Working Papers*, no. 1564, pp. 1 ff.

Cittadino F.
2017 "Public Participation in the Water Framework Directive (WFD)", in EVA JULIA Lohse E.J., Poto M.P. (eds), *Best Practices for the Protection of Water by Law: Focus on participatory instruments in environmental law and policies*, Berlin, Berliner Wissenschafts-Verlag, pp. 45 ff.

Correljé A. *et al.*
2007 "Economic Implication of Water Liberalisation Scenarios", in Finger M. *et al.* (eds), *Water and Liberalisation. European water scenarios*, London, IWA Publishing, pp. 142 ff.

Cullet P.
2011 "Water Law in a Globalised World: the Need for a New Conceptual Framework, *Journal of environmental law*, 23(2), pp. 233 ff.

De Albuquerque C.
2014 *Realising The Human Rights To Water And Sanitation: A Handbook*, UN Special Rapporteur on the human right to safe drinking water and sanitation, Portugal.

Delimatsis P.
2017 "The Regulation of Water Services in the European Union Internal Market", in Chaisse J., The Regulation of the Global Water Services Market, Cambridge (United Kigndom), Cambridge University Press, 263 ff.

EESC
2014 *Opinion of the European Economic and Social Committee on the affordability of SGEIs: definition, measurement, challenges, European initiatives (own-initiative opinion)* (2014/C 177/04).

Espaliú Berdud C.
2016 "A Reflection on the Participation of Individuals in the Creation of European Law through the European Citizens' Initiative and its Scope in International Law", *Cuadernos Europeos de Deusto*, 54, pp. 181 ff.

Gallo D.
2010 I *servizi di interesse economico generale. Stato, Mercato e Welfare nel diritto dell'Unione europea*, Milano, Giuffrè.

Hugon P.
2005 "L'eau est-elle un bien privé ou public?", *Societé civile et marchandisation de l'eau. Revue Sciences de la societé*, 64, février, pp. 31 ff.

Jakab N., Mélypataki G.
2019 "The right to water as a social fundamental right", *Journal of Agricultural and Environmental Law*, 26, pp. 6 ff.

Kaika M., Page B.
2006 "The EU Water Framework Directive: part 1. European policy-making and the changing topography of lobbying", *Environmental Policy and Governance*, 13(6), pp. 314 ff.

Lucarelli A.
2010 "La nature juridique de l'eau entre bien public et bien commun", *Les enjeux de la gestion locale de l'eau*, *Annuaire des Collectivités Locales*, 30.

Massarutto A.
2019 "Fate tre passi indietro (con tanti auguri)", *Staffetta Acqua*, 23 luglio.

Melella C., Stagnaro C.
2019 "*L'acqua è già pubblica! Perché la proposta di legge sull'acqua fa male agli investimenti e all'ambiente*", Istituto Bruno Leoni Briefing Paper, no. 173, 19th February.

Melo Zurita M.L. *et al.*
2015 "Reframing water: Contesting H2O within the European Union", *Geoforum*, 65, 2015, pp. 170 ff.

Miranda N.
2007 "Concession Agreements: From Private Contract to Public Policy", *Yale Law Journal*, 117, pp. 510 ff.

Naegele J.
2004 "What is Wrong with Full-Fledged Water Privatization", *Journal of Law & Social Challenges*, 6, pp. 99 ff.

National Research Council
2004 *Confronting the Nation's Water Problems: The Role of Research*, Washington D.C.

OECD
2014 *Applying Better Regulation in the Water Service Sector. The governance of water regulators*, 3rd meeting of the Network of Economic Regulators, 5 November 2014, GOV/RPC/NER(2014)6.

Palladino R.
2014 "L'iniziativa legislativa dei cittadini dell'Unione Europea alla sua prima prova: l'acqua come diritto umano universale, bene comune e di pubblica utilità", *Iura and Legal Systems*, A(2), pp. 14 ff.

Parks L.
2014 "Framing in the Right2Water European Citizens' Initiative", paper prepared for presentation at the ECPR general conference, 3-6 September 2014, Glasgow.

Rastello E., Sipalla H.Jr. (eds)
2007 *The World Water Crisis: A Challenge to Social Justice*, Makuyu Kenya, Paulines Publications Africa.

Salacuse J.
2013 *The Three laws of International Investment: National, Contractual, and International Frameworks for Foreign Capital*, Oxford, Oxford University Press.

Sen A.
2005 "Human rights and the limits of law," *Cardozo Law Review*, 27, pp. 2913 ff.

Simmonds G.
2003 *Universal and public service obligations in Europe*, CRI (Centre for the study of Regulated Industries) Research Report no. 15, University of Bath, Bath.

Smith W.
2003 "Regulating infrastructure for the poor. Perspectives on regulatory system design", in Brook P.J., Irwin T. (eds.), *Infrastructure for Poor People: Public Policy for Private Provision*, Washington, The World Bank.

Stern P. C.
2011 "Design principles for global commons: natural resources and emerging technologies", *International Journal of the Commons*, Vol. 5, nº 2, 213 ff.

Subramaniam M.
2018 *Contesting Water Rights: Local, State, and Global Struggles*, Cham (Switzerland), Palgrave-MacMillan.

Tamames R., Aurín R.
2015 *Gobernanza y gestión del agua: modelos público y privado*, Barcelona, Editorial Profit.

Thielbörger P.
2014 *The Right(s) to Water. The Multi-Level Governance of a Unique Human Right*, Heidelberg-New York-London, Springer.

Tornos Mas J.
2016 "La remunicipalización de los servicios públicos locales algunas precisiones conceptuales", *El Cronista del Estado Social y Democrático de Derecho*, 58-59, pp. 32 ff.

Tully S.
2005 "A Human Right to Access Water? A Critique of General Comment No. 15", *Netherlands Quarterly of Human Rights*, 23(1), pp. 35 ff.

Van den Berge, J., Boelens, R. and Vos J.
2018 "Uniting Diversity to Build Europe's Right2Water Movement", in Boelens R., Perreault, T. and Vos, J. (eds.), *Water Justice*, Cambridge (United Kingdom)-New York, Cambridge University Press.

Van der Zaag P., Savenije H.H.G.
2006 "Water as an Economic Good: The Value of Pricing and the Failure of Markets", *Value Of Water Research Report Series* no. 19, UNESCO-IHE, Institute for Water Education, July, pp. 1 ff.

Williams M.
2007 "Privatization and the Human Right to Water: Challenges for the New Century", *Michigan Journal of International Law*, 28(2), pp. 469 ff.