DEPUTY COMMISSIONER FOR FUNDAMENTAL RIGHTS
OMBUDSMAN FOR FUTURE GENERATIONS

AJB-6894-2/2020

Answers to the Questionnaire on 'Global Water Crisis and Human Rights' provided by the Hungarian Ombudsman for Future Generations

1. Please provide examples of ways in which water pollution, water scarcity and floods are having adverse impacts on human rights.

The Hungarian Ombudsman for Future Generations (OFG) is an organ of the Hungarian Parliament functioning since 2008 with a specific constitutional mandate to safeguard the environmental interests and the natural and cultural heritage of future generations, guaranteed under Article P, and to oversee the enforcement of the right to a healthy environment enshrined in Article XXI of the Fundamental Law. The OFG is independent from the government and is tasked with reviewing the conduct of state authorities and public service providers in environmental matters. A more detailed description of the powers and the institutional structure of OFG can be found in Annex I to this questionnaire.

A leading water pollution problem in Hungary lies in contaminated sites that are waiting to be remediated. The majority of such sites have seen socialist-era heavy and chemical industry and Soviet military bases operating in the country between the '50s and '80s. Toxic chemicals deposited on the premises often seep into the ground and reach aquifers contaminating drinking water reserves and thereby causing a violation of the right to a healthy environment and the right to health. The OFG found such violations several times when the state failed to abate such pollution in an effective way.[1]

Water pollution may also be intertwined with the right to property, because the Fundamental Law stipulates that ownership entails social responsibility, meaning that owners of private property may bear obligations relevant to preventing the pollution of water reserves.

Although the right to water is not expressly enshrined in the Fundamental Law, the OFG regards ensuring an access to safe and clean drinking water to be an essential element to the right to health and the right to a healthy environment. The pipeline systems of old residential buildings that still contain lead and asbestos constitute a typical source of pollution endangering access to safe drinking water. In certain districts of cities such pipelines have not yet been replaced, which causes a major public health risk threatening with a violation of the right to health and to a healthy environment.[2]

Lack of access to water may also violate the right to life, the right to health and the right to human dignity. Restricting the outflow of water wells enacted by municipalities or public utility providers may disproportionately affect the Roma ethnic minority, leading to a violation of the right to non-discrimination. The OFG investigated a complaint in this regard, which will be addressed under Question 7.

[1] AJB-813/2012., AJB-831/2012.
[2] AJB-677/2013.

The wasteful use of water resources may also threaten the right to a healthy environment. Upon a complaint filed by an NGO, the OFG opined that the absence of a regulation addressing the loss of water through the evaporation of pit lakes jeopardizes the right to a healthy environment. In light of the scientific evidence suggesting that the evaporation of pit lakes lowers groundwater levels on a local scale, the OFG argued that imposing a payment obligation on mining companies is necessary for providing an effective impetus for reducing the quantity of the water lost, and hence, for realizing the right to a healthy environment.[3]

Relaxing regulatory oversight of access to common water resources may also violate the right to a healthy environment. In another proceedings, the OFG submitted an *amicus curiae* brief to the Constitutional Court in an *ex ante* constitutional review procedure initiated by the Head of State against an amendment to the Water Management Act. The amendment sought to abolish the statutory permitting requirement for drilling new wells down to 80m. In the amicus brief, the OFG stressed that the intended relaxed regulatory oversight of the drilling process would result in drilling wells in inappropriate locations and using inappropriate technology, which could in turn pollute finite groundwater resources and would adversely affect other users of the common pool. The Constitutional Court decision No. 13/2018 found a violation of Article P and the right to a healthy environment and abolished the amendment echoing the arguments of the amicus brief.

Lastly, taking only ineffective flood protection measures also violates the constitutional rights to life, to health, and to a healthy environment[4] (for more details see Question 3).

2. How has climate change exacerbated water-related problems?

Water scarcity is a major cause for concern as the climate of Hungary is gradually becoming more arid. In order to sustain yields in a drying climate, farmers face an increased need for irrigation and small and middle-scale farmers may use wells drilled for household purposes for irrigation. This, in turn, drives legislative proposals seeking to allow the creation of new and deeper wells, which would ultimately accelerate the depletion of finite groundwater resources (for more details see Question 1).

3. To protect a wide range of human rights, what are the specific obligations of States and responsibilities of businesses in terms of addressing water pollution, water scarcity and floods?

3.1.State obligations

In the practice of the OFG, any non-compliance with water related laws and regulations on part of state authorities constitutes a violation of the right to a healthy environment. Moreover, if the authorities have discretion under relevant laws in making decisions that affect water resources, it is the consistent practice of the OFG that state authorities should take the rights of present as well as future generations duly into account while balancing competing environmental and economic needs.

In particular, in the context of abating water pollution, state authorities have been called for by the OFG to ensure access to water by providing safe and clean drinking water in an appropriate quantity and quality to all consumers.[5] Moreover, the competent ministries were called upon to enact as soon as possible appropriate laws and regulations delineating buffer zones around

[3] AJB-1078/2012
[4] AJB-8288/2012.
[5] AJB-813/2012.

vulnerable aquifers susceptible to pollution.[6] In other words, the OFG deems the right to ensure access to water as including an obligation to protect the quality of aquifers.[7]

In the context of safeguarding the quantity of finite water resources, the OFG stressed that constitutional human rights as well as Article P) of the Fundamental Law confer a regulatory obligation on public authorities to incentivize the rational and economic use of water by private entities, i.e. corporations, through adopting appropriate legislative measures to that effect.[8]

In terms of ensuring equitable access to safe and clean drinking water, state authorities bear a duty to provide a minimum per capita amount of water from public wells to those who exclusively rely on such wells for access to water.[9]

In relation to flood protection measures, local municipalities have an obligation to organize flood protection and to prevent flood-related damage by building appropriate systems of protection (e.g. dams and other river management measures). Although the government has discretion to determine the amount and kinds of financial and technical assistance provided to municipalities in this respect, it has a duty to provide such assistance in a timely manner. A repeated failure to do so due to financial and/or administrative hurdles triggers a violation of the basic rights of affected citizens.[10]

3.2.Obligation of corporations

First of all, public utility providers are obliged under the right to health and the right to a healthy environment to protect groundwater reserves – which also form an essential part of the national heritage – and to use it in a sustainable manner. This means that in designing and building water related infrastructure, utility service providers ought to choose technical solutions that safeguard against polluting groundwater reserves and aquifers.[11]

4. **If your State is one of the 156 UN Member States that recognizes the right to a safe, clean, healthy and sustainable environment, has this right contributed to preventing, reducing, or eliminating water pollution, water scarcity and floods?**

The OFG has a human rights-based mandate meaning that all its investigations are triggered by suspected violations of the constitutional right to a healthy environment and its recommendations are rooted in national and international human rights standards. The exact ways in which the human rights-based advocacy of OFG relates to abating water pollution and water scarcity is mapped under the specific questions of this questionnaire.

5. Please provide specific examples of good practices in preventing, reducing, or eliminating water pollution, water scarcity and floods. These examples may occur at the international, national, sub-national, or local level.

The National Remediation Program, which provides financial resources from the central budget to remediate certain contaminated sites could be a major tool to prevent water pollution originating from historical environmental damage (so-called orphan damage). This program is run by the government, hence the order of priority in which sites are to be remediated is determined by the competent ministry. Its effectiveness is, however, constrained due to the limited resources allocated to the Program. The OFG issued a package of legislative

[6] AJB-831/2012.
[7] AJB-677/2013.
[8] AJB-1078/2012.
[9] AJB-5527/2013.
[10] AJB-8288/2012.
[11] AJB-677/2013.

recommendations on environmental liability to boost the effectiveness of the Program by *inter alia* reforming the scope of its financial input.[12]

Moreover, in order to preserve the amount of finite thermal water resources, applicable legislation requires users of thermal water for electricity generation purposes to pump back the water after use. This is couched as a general obligation, yet competent authorities may exempt an electricity generating company from this duty upon individual request. Agricultural uses of thermal water are also exempted, which further restraints the practical effectiveness of the pumping back policy.

Furthermore, the Water Framework Directive of the EU calls for involving the public in drawing up river basin management plans. Such a participatory mechanism, when in fact put into practice, counts as a best practice of water management accommodating Aarhus public participation rights. Another noteworthy international instrument to which Hungary is a party to, is the Protocol on Water and Health to the 1992 Helsinki Convention, which provides for specific targets in the field of access to water and sanitation.

Lastly, the Hungarian Environmental Protection Acts imposes a joint and several liability on the owner and the user of a particular land for any environmental damage found on the premises. This constitutes an effective legal tool to allocate liability for diffuse groundwater pollution that cannot be causally linked to a particular economic operator or to a user of that land. The Court of Justice of the European Union confirmed that this scheme is compatible with the EU Environmental Liability Directive.[13] Yet, the effeciency of this liability regime is hindered by the fact that the owner can escape financial liability if it is insolvent or under liquidation.

6. Please identify specific challenges that your government, business, or organization has faced in attempting to employ a rights-based approach to address water pollution, water scarcity and floods and the impacts of these problems on human rights.

The OFG's task is to articulate the human rights impacts of governmental water policies and to advocate for the environmental interests of future generations. In this respect, a major challenge lies in the fact that water management and policy-making are delegated to several ministries making difficult to find the balance between human rights and economic interests.

Moreover, sustainable water use could only be achieved if there is a close cooperation between the government, municipalities, corporations, expert NGOs and the general population in water-related decision-making. Yet, public participation is only symbolic in this arena, as governmental stakeholders are reluctant to involve expert NGOs and the affected population in their decision-making processes. In a similar vein, the human rights aspects may receive less attention and could be overridden by economic interests when our office is excluded from rapid legislative procedures despite the general statutory obligation of the legislature to consult with our office regarding laws and regulations affecting the environment.

A prerequisite to a meaningful exercise of public participation rights is raising public awareness on the importance of sustainable water use. Yet, citizens generally stick to a widely-held belief that Hungary has rich water resources and the public is not aware of the effects of climate change and our vulnerability owing to the fact that over 80% of our freshwater resources are transboundary in nature. Even the National Water Strategy recognizes the lack of adequate public awareness on issues related to water management.[14] To tackle this problem, the OFG

[12] AJB-1495/2019.

[13] Case C-129/16, Túrkevei Tejtermelő Kft. v. Országos Környezetvédelmi és Természetvédelmi Főfelügyelőség (judgment delivered in 2017).

[14] „Kvassay Jenő" National Water Strategy, as adopted by the Parliament in 2017., pp. 64-65.

emphasized the need for creating an effective and overarching nationwide program of environmental education in kindergartens and elementary schools.[15]

Moreover, in certain regions, boron and arsenic are naturally present in the drinking water reservoirs in concentrations above safety standards.[16] A special governmental program was launched to ensure safe drinking water in such regions.

A further challenge lies in the fact that despite repeated recommendations of the OFG, the legislature has failed to ensure a horizontal protection of water resources by requiring that key national and local legislations in any sector pay due regard to the indirect adverse effects imposed on the quality and quantity of water. Finally, enacting sustainable water policies requires a delicate balancing between ecological and industrial water uses. Policies prioritizing agricultural water withdrawal can jeopardize not only the access to water of private individuals but also the long-term sustainability of finite resources endangering the interests of future generations.

7. Please specify ways in which additional protection is provided (or should be provided) for populations who may be particularly vulnerable to water pollution, water scarcity and floods.

In 2013, the OFG investigated complaints filed by Roma people because the public utility provider restricted the access to public wells during a summer heatwave in a district inhabited by mainly the Roma. A considerable part of the Roma population relied exclusively on such water wells in the absence of running water in their households. The measure complained of was a decision of the municipality closing down some wells and restricting the outflow of several others in the area. The municipality justified its measure with increased water withdrawal that was allegedly caused by other than household needs. The OFG found an indirect discrimination, a violation of the right to health and the right to human dignity and reasoned that ensuring a minimum of 20 liter/day/capita water withdrawal free of charge was necessary to maintain personal hygiene and satisfy basic human needs.[17]

In light of the above, a preferable solution for providing equitable access to water for vulnerable groups would be to ensure their access to the public water supply system, or as an alternative, to public wells. In this respect, wells ought to be available within a short distance and in adequate numbers to cover the per capita daily personal water needs of the population relying on such wells. Furthermore, financial difficulties of municipalities were identified as one of the main reasons behind the closure of public taps. Hence, sufficient governmental funding would be necessary to halt such adverse trends in ensuring access to water.

Moreover, authorities should plan the construction, extension and renovation of public utility networks of water and sanitation by considering the number of residents and not that of real estates affected by such renovations. The OFG also repeatedly called for designating protective buffer zones around both private and public wells to guard against pollution of water resources.[18] The competent ministry accepted our recommendations to that effect.

As regards the protection of vulnerable groups by floods, an efficient tool would be to launch a real estate exchange program for households that had been built in the floodplains. This should be complemented with planning measures seeking to prevent building housings in such areas.

[15] AJB-676/2013.
[16] AJB-3277/2018, AJB-1934/2018.
[17] AJB-5527/2013.
[18] AJB-831/2012.