

A brief overview of the right to water in international treaties and in the EU system

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Sommario: 1. Introduction. – 2. The human right to water in international treaties. – 2.1. International agreements on regional water resources – Outline. – 3. The right to water in the European perspective. – 3.1. The role of the Commission. – 3.2. The role of the European Parliament. – 3.3. The Right2water initiative. – 4. The implementation of the Directive. – 5. Conclusions.

1. Introduction

Water is a fundamental resource for the birth and development of human civilization.

Ernst Kapp classified the great ancient civilizations by assuming water as a taxonomic criterion, distinguishing three types of civilization: the potamic, the thalassic and the oceanic cultures¹.

In the same sense, Carl Schmitt had elaborated a contrast between terrestrial civilizations and oceanic civilizations, assuming water as the foundation of every civilization².

Nowadays the distribution of water is unbalanced: the resource is in continuous contraction and the indiscriminate use of the resource combined with climate change will increase the imbalances.

It is calculated that within the terrestrial hydrosphere, fresh water constitutes about 2.5%, and no more than 0.26% overall can be used for human purposes, the remaining quantity being constituted by the Antarctic ice.

¹ Cfr. Ernst Kapp *Elements of a Philosophy of Technology On the Evolutionary History of Culture*. Edited by Jeffrey West Kirkwood and Leif Weatherby, 2018.

² C. Schmitt, *Land und Meer. Eine weltgeschichtliche Betrachtung*, Stuttgart, Klett-Cotta, 1954, trad. it. Milano, Adelphi, 2002.

According to the 2015 edition of the World Water Development of the United Nations, by 2030 is expected a 40% drop in water availability, unless the management and use of this resource will improve³⁴.

The idea of a *right to water*, as a constitutionally protected value and as a guaranteed essential common good, is one of the fundamental problems of the 21st century.

In the European law system, there are many problems concerning the use of water: for example, the various forms of pollution that threaten rivers, lakes and underground waterways or the various uses of water resources⁵.

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On this point also Pope Francis in the Encyclical *Laudato si*, dated 24.05.2015, has made many considerations on the theme of "care of the common home" and on the link, today increasingly evident among the concerns for nature and justice towards the poorest.

The Pope addresses in his text an invitation to act to the States to ensure the right of everyone to access water: "*to face the fundamental problems that cannot be solved by the actions of individual countries, a global consensus is essential. for example, (...) to ensure access to drinking water for all*"⁷.

Most of the rules on water are addressed to states, which often deal mainly with affirming their territorial sovereignty over water resources present in their territory rather than guaranteeing the right to water of their citizens.

Furthermore, under the international law, the right to water is subject to a series of normative acts of different legal value, from the declarations of the General Assembly of the United Nations to acts of greater effectiveness from the point of view of the obligation, which, moreover, are not addressed in the same direction.

This contributes greatly to making the overall regulatory framework even more uncertain and contradictory.

For instance, in the Chart of Nice, there is no precise reference to right to water, whilst some constitutions of African countries have recognized this right.

³ *The UN World Water Development Report 2015, Water for a Sustainable World*, disponibile su <http://www.unesco.org/> ; sul punto cfr. anche *2017 UN World Water Development Report, Wastewater: The Untapped Resource*, disponibile su <http://www.unesco.org/>.

⁴ Cfr. anche <https://www.un.org/sustainabledevelopment/water-and-sanitation/>.

⁵ Edward Brans, Esther J. De Haan (edited by), *The Scarcity of Water, Emerging Legal and Policy Responses*, Kluwer Law International, 1997.

⁶ Cfr. Giuffrida R., Amabili F., *La tutela dell'ambiente nel diritto internazionale ed europeo*, Giappichelli, Torino.

⁷ Cfr. Biscotti B., Lamarque E., *Cibo e acqua. Sfide per il diritto contemporaneo: Verso e oltre Expo 2015*, Giappichelli, Torino.

It should be noted that the effects of privatization policies are more aggressive when they are aimed at territories in which there is not a strong welfare tradition, as in the EU, capable of balancing the most radical thrusts of privatization and liberalization.

It is not a coincidence, therefore, that the most violent popular reactions against the processes of privatization of the water resource took place in Cochabamba in Bolivia and that the constitutionalization of the right to water is affecting the whole South America.

In particular, among the constitutions in which a right to water was expressly stated, those of Bolivia (article 20.III) of 2009, Ecuador (article 3) of 2008 and Uruguay (article 47) of 2004⁸.

As has been pointed out⁹, the change to the Bolivian constitution is a direct consequence of the revolt of 2000, which was known as *water revolt*.

These events explain both the forecast of access to water and sanitation as a human right, and the prohibition of forms of privatization of the water service.

Also worthy of note are other provisions of the Bolivian constitution: for example the §373 defines the fundamental right to water for life, and attributes to the State the task of guaranteeing and promoting access to water resources, implementing a series of principles including those of solidarity, equity and sustainability¹⁰.

The proclamation of the right to water as fundamental has consequently determined, a centralization of the competences: in Bolivia was established the Ministry of Water.

2. The human right to water in international treaties

The right to water has been configured as a social right to be traced back to the widest scope of the right to life¹¹.

⁸ Cfr. Hilderling A., *International Law, Sustainable Development and Water Management*, Eburon, 2006; also Iannello C., *Il diritto all'acqua. L'appartenenza collettiva alla risorsa idrica*, la scuola di Pitagora.

⁹ Ibidem.

¹⁰ "El agua constituye un derecho fundamentalísimo para la vida, en el marco de la soberanía del pueblo. El Estado promoverá el uso y acceso al agua sobre la base de principios de solidaridad, complementariedad, reciprocidad, equidad, diversidad y sustentabilidad. II. Los recursos hídricos en todos sus estados, superficiales y subterráneos, constituyen recursos finitos, vulnerables, estratégicos y cumplen una función social, cultural y ambiental. Estos recursos no podrán ser objeto de apropiaciones privadas y tanto ellos como sus servicios no serán concesionados". Available on <https://bolivia.justia.com/nacionales/nueva-constitucion-politica-del-estado/cuarta-parte/titulo-ii/capitulo-quinto/>

¹¹ It is important to underline, in this context, the so called *Water Manifesto*, written in 1998 by an international committee and led by the former president of Portugal Mario Soares.

There are four key ideas:

- water is an irreplaceable source of life and a "vital good" that belong to all the inhabitants of the land in common;
- water is a patrimony of humanity and for this reason it is a resource that, unlike any other, can not be the object of private property;

As noted by Luigi Ferrajoli, the paradigm of the right to life as it was theorized at the origins of modern juridical civilization is profoundly changed and includes also the "right to subsistence"¹².

The central problem is to guarantee the access to the water for billions of people who for political, economic and ecological reasons are not able to dispose of them.

Precisely for these reasons, it has been proposed that the right to water should be conceived as a *social right*¹³.

It is a "new" social right, because the underlying need is new, generated by the growing scarcity of the necessary good, by the inequality with which it is distributed or is accessible, by the disputes provoked by competition for its hoarding.

The principal problem is to start up a widespread reform of the national legal systems in order to guarantee the social and constitutional right of access to water in favor of all the members of the social group, starting from the most disadvantaged and marginalized¹⁴.

In particular, at present, there are some international treaties in which is affirmed the existence of a right to water and hygiene, as an indispensable element to face the fundamental needs of a human being.

For instance, the right to water is expressly mentioned, for example, in the Convention on the Elimination of All Forms of Discrimination against Women (New York, 1979), in the Convention on the Rights of the Child (New York, 1989) and in the Convention on the Rights of Persons with Disabilities (New York, 2007)¹⁵.

- Human society is conducted, at different levels of its organization, must also guarantee in economic terms the right of access to all without any discrimination;

- water management and democratic institutions, participatory and representative democracy. For this reason, it is urgent to organize, on a global level, a "Water Parliaments Network", launch international information campaigns and establish a "World Observatory for Water Rights".

¹² Cfr. L. Ferrajoli, *L'acqua come bene comune e il diritto all'acqua come diritto fondamentale*, Relazione al Convegno internazionale sul diritto all'acqua, Gorizia, 8 febbraio 2003

¹³ T.H. Marshall, *Citizenship and Social Class*, in T.H. Marshall, *Class, Citizenship and Social Development*, Chicago, The University of Chicago Press, 1964

¹⁴ Hilderling A., *International Law, Sustainable Development and Water Management*, Eburon, 2006.

¹⁵ «States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communication» (art. 14, par. 2).

«1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and the rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(c) To combat disease and malnutrition, including within the Framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious food and clean drinking-water, taking into consideration the dangers and risks of environmental pollution» (art. 24, par. 2).

«States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:

It also seems appropriate to refer to the Convention on the Use of International Watercourses other than Navigation (New York, 1997)¹⁶ which recognize and provides the needs of the vital needs of the individuals in case of a conflict due to the use of an international waterway.

The human right to water and hygiene is also regularly regulated in the Protocol on Water and Health (London, 1999) to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki, 1992). In this context, it has been positively promoted with a view to protecting health through the management of water resources¹⁷.

The right to water and hygiene is already considered implicit in several human rights affirmed in other human rights treaties (the right to life, food, housing and health).

The right to water is therefore included in the right to life (Article 6) of the Covenant on Economic, Social and Cultural Rights (New York, 1966), the right to food and housing (Article 11) and law to health (Article 12).

The Committee on Economic, Social and Cultural Rights, in the general comment n. 1 (2002) on the right to water found that the same should be understood as a condition to benefit from other human rights¹⁸.

The content of the human right to water and hygiene is understood by these international treaties as "*the obligation of the State to assure the individual the availability, quality, accessibility of water, as well as the related information*". Water is a social and cultural asset, not a commercial asset and the cost of supply must be sustainable at an accessible cost for everyone.

At the international level, was elaborated a sort of hydrological naturalism which, in Vandana Shiva, assumes the connotations of a *global ethics* almost with a religious accents¹⁹.

(a) *To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance br disability-related needs; (...)*» (par. 28, par. 2).

¹⁶ Cfr. SC. MCCaffrey, M. Sinjela, *The 1997 United Nations Conventions on International Watercourses*, in American Journal of international Law, 1998.

Cfr also A. Tanzi, M. Arcari, *The united nations convention on the law of international watercourses*, Kuver law international, London, 2001.

¹⁷ «*Equitable access to water, adequate in terms both of quantity and of quality, should be provided for all members of the population, especially those who suffer a disadvantage or social exclusion*» art. 5,l «*Special consideration should be given to the protection of people who are particularly vulnerable to water-related disease*» (art. 5, k).

¹⁸ «*Water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life in human dignity. It is a prerequisite [or the realization of other human rights]*» «*The human right to water entitles everyone to sufficient. safe, acceptable, physically accessible and affordable water [or personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements]*».

Cfr. United Nations Document E/C.12/2002/11 20 January 2003 par. 1.

¹⁹ V. Shiva, *Water Wars: Privatisation, Pollution and Profit*, Cambridge (Mas.), South End Press, 2002,

There are those who have tried to clarify the scope of this natural right on a normative level.

In fact, although it is a public service there are those who have understood it as a right to be guaranteed to everyone free of charge up to a certain amount, in an amount exceeding rising costs up to a certain quota beyond which they will suffer strong economic penalizations disincentivate waste.

2.1. International agreements on regional water resources - Outline

The protection of marine waters in Europe is governed by four international cooperation structures, the so-called regional maritime conventions between Member States and neighboring countries that share common water resources: the 1992 OSPAR convention (based on the previous Oslo and Paris conventions) for the north-east Atlantic; the 1992 Helsinki Convention for the Baltic Sea area; the Barcelona Convention (UNEP-MAP) of 1995 for the Mediterranean; the 1992 Bucharest Convention for the Black Sea. EU river waters are protected by the 1996 Danube Protection Convention and the 2009 Rhine Protection Convention.

Interregional environmental cooperation focused on marine waters or river basins has led to the development of different macro-regional strategies in the EU: the strategy for the Baltic Sea region in 2009 (the first global EU strategy designed for a macro-region); the strategy for the Danube region (2011) and the strategy for the Adriatic-Ionian region (2014).

3. The right to water in the European Union

The European Union has always been very sensitive to the planning of water resources and has promoted water resources planning instruments to guarantee essential water quality levels²⁰.

At present the main problems concerning the management of water resources are due to the lack of public investments for the efficiency of the water network, as well as to consumption and dispersion by private individuals both in the performance of economic activities and for domestic use.

However, at present Europe seems to be very oriented towards accentuating the individual dimension of the right to water, to the detriment of the collective or

²⁰ cfr. also P. Urbani, *Il recepimento della direttiva comunitaria sulle acque: profili istituzionali di un nuovo governo delle acque*, in *Riv. giur. amb.*, 2004, pp. 209 ss. e G. Cordini, *La tutela dell'ambiente idrico in Italia e nell'Unione europea*, *ivi*, 2005; also Garofalo L., *Osservazioni sul diritto all'acqua nell'ordinamento internazionale*, in "Analisi Giuridica dell'Economia" 1/2010, pp. 15-28; cfr. Claire Joachim et Laurène Mazeau, *Between risk and complexity: European water protection law issues*, in *Journal international de bioéthique et d'éthique des sciences*, 2017.

communitarian right. Observing environmental litigation, it is noted that there is no room for popular actions other than those related to compensation for damages.

Therefore, the European legal system does not offer new ideas in the conception of common goods.

In more detail, the right to water is assumed to be linked to the human fundamental rights on which the Union is founded (Article 2 TEU) and indirectly linked to the environmental protection referred to in art. 37 of the Charter of fundamental rights of the European Union and also in art. 191 TFEU, dedicated specifically to the European Union's environmental policy²¹.

The first Council Directive, n. 75/440/EEC on the quality of surface water was intended for the production of drinking water in the Member States, emphasized in the preamble «*the need to protect human health and to exert control over surface water intended for the production of drinking water and on the treatment of such water purification*»²².

In 1980 the Council adopted a directive on the quality of water intended for human consumption, which was then repealed by Council Directive 98/83 with the aim of protecting "human health from the adverse effects of contamination of water intended for human consumption, ensuring its healthiness and cleanliness"²³. EU water law had therefore initially developed in a fragmented way, focusing on the different forms of water use and pollution, on issues of implementation and subsidiarity²⁴.

The breakthrough in EU policy on this matter was achieved by the Directive of the European Parliament and of the Council known as the *Water Framework Directive*.

The Directive is innovative from many points of view. It conceives the water management referring to the "river basin" (art. 2, 13) according to an integrated approach. It also proposes to regulate the management of fresh water combining quantitative and qualitative aspects including both surface and underground waters²⁵.

However, the Directive merely states, in a general way, in the first paragraph of the preamble that «*water is not a commercial product on a par with others, but a heritage that it must be protected, defended and treated as such*».

Related to the Framework Directive are also the Council and European Parliament Directives adopted in 2006 and 2008 respectively on the protection of

²¹ Cfr. S. Hendry, *Frameworks for Water Law Reform*, Cambridge University Press, 2011; also Sara De Vido, *Il diritto all'acqua nella prospettiva europea*, in *Il diritto all'acqua*, atti del seminario di studio svoltosi a Milano il 26 novembre 2015 (by L. Violini e B. Randazzo), Giuffrè Editore, 2017.

²² Directive of the council, n. 75/440/CEE

²³ Directive of the council n. 91/676, to avoid nitrates pollution.

²⁴ E. Morgera, *Environment*, in S. Peers, C. Barnard (eds), *European Union Law* (OUP, 2014).

²⁵ Cfr. Sarah Hendry, *Frameworks for Water Law Reform*, Cambridge University Press, 2015; cfr. Sara De Vido, *Il diritto all'acqua nella prospettiva europea*, in *Il diritto all'acqua*, atti del seminario di studio svoltosi a Milano il 26 novembre 2015 (by L. Violini e B. Randazzo), Giuffrè Editore, 2017.

groundwater against pollution and deterioration and on the environmental quality standard in the water policy field²⁶.

More recently, was adopted the Directive 2014/23/EU of the European Parliament and of the Council on the awarding of concession contracts: it explicitly excludes concessions in the water sector from its scope²⁷.

In the preamble, in paragraph 40, we find an important reference to water as a "good", «*the importance of water as a public good of fundamental value for all citizens of the Union*»²⁸.

Not even the interpretation of the aforementioned directives provided by the Court of Justice of the European Union has contributed to the affirmation of the human right to water. And indeed there were a lot of infringement proceedings issued by the European Commission against one of the EU member states for failure or incorrect transposition of one of the aforementioned directives²⁹.

3.1. The role of the Commission

In 2012, the Commission launched the European Water Resources Safeguard Plan, a long-term strategy aimed at ensuring a qualitatively adequate water supply for all legitimate uses, improving the implementation of current European water policy, integrating the objectives of water policy into other sectoral policies and filling the gaps in the existing framework. This plan provides for the development, by the Member States, of an accounting of water resources and water efficiency objectives, as well as the definition of European standards for water reuse.

Union policy has established two main legal frameworks for the protection and management of freshwater and seawater resources through a holistic ecosystem-based approach, namely the European Water Framework Directive and the Environmental Strategy Framework Directive marine.

3.2. The role of the European Parliament

²⁶ Directive 2008/105/CE of the EU Parliament and the Council of 16 december 2008, GU L 348, 24.12.2008 p. 84, also, Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks, in O L 288/28, 6.11.2007, 27-34

²⁷ Cfr. Sarah Hendry, *Frameworks for Water Law Reform*, Cambridge University Press, 2015; also Sara De Vido, *Il diritto all'acqua nella prospettiva europea*, in *Il diritto all'acqua*, atti del seminario di studio svoltosi a Milano il 26 novembre 2015 (by L. Violini e B. Randazzo), Giuffrè Editore, 2017.

²⁸ Directive 2014/23/CE of the EU Parliament and the Council, del 26 February 2014 GU L 94, 28.3.2014.

²⁹ Economic Social Cultural rights Committee, General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant) Adopted at the Twenty-ninth Session of the Committee on Economic, Social and Cultural Rights, 20 gennaio 2003. E/C.12/2002/11.

According to some authors the Court has contributed to «strengthening of the legal basis for the human right to water». 5. M. A. SALMAN and Siobhán McInerney-Lankford, *The Human Right To Water*, Washington 2004, Salman M. A. Salman and Siobhán McInerney-Lankford.

As is known, the "Right2Water" European citizens' initiative, of its kind, urged the EU institutions and Member States to ensure that all citizens enjoy the right to water and sanitation, which is the supply and the management of water resources are not subject to internal market rules and water services are excluded from liberalization measures.

In response to this citizens' initiative, the Parliament, by a large majority, asked the Commission to propose legislation that enshrines the universal human right to drinking water and sanitation, as recognized by the United Nations and, where appropriate, a revision of the water framework directive to recognize universal access and the human right to water.

The Parliament, underlining the need for a transition to a circular economy, supported plans to promote the re-use of water for agricultural irrigation. In this same spirit, he approved plans to improve the quality of tap water in order to reduce the use of plastic bottles.

In its resolution on the international governance of the oceans, the Parliament *"emphasises that creating a sustainable maritime economy and reducing pressures on the marine environment require action on climate change, land-based pollution reaching the seas and oceans, marine pollution and eutrophication, on the preservation, conservation and restoration of marine ecosystems and biodiversity, and on the sustainable use of marine resources"*.

In this context *"urges the Commission to support international efforts to protect marine biodiversity, in particular in the framework of the ongoing negotiations for a new legally binding instrument for the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction" and 'calls on the Commission to propose more stringent legislation in order to preserve and ensure sustainable uses of marine biodiversity in areas under the jurisdiction of the Member States"*.

3.3. The Right2water initiative

A support for the progressive recognition of the right to water in the EU, and consequently also international, actually, came from civil society, thanks to a new instrument of participatory democracy made available by the Treaty of Lisbon: the initiative of European citizens (ICE)³⁰.

³⁰Cfr, *inter alia*, F. Featno, *Il diritto di iniziativa dei cittadini europei: uno strumento efficace di democrazia partecipativa?*, in *Rivista italiana di diritto pubblico comparato*, 2011, p. 727 Ss.; In, *il nuovo istituto di democrazia partecipativa le sue prime applicazioni*, in *Studi sull'integrazione europea*, 2012, p. 523 ss.; G. Allegri, *Il diritto di iniziativa cittadini europei: verso quale democrazia partecipativa in Europa?*, in S. Civitarese Matteucci, F. Guarriello, P. Puoti (eds), *Diritti fondamentali e politiche della UE di Lisbona*, Santarcangelo, Maggioli, 2013.

As noted by the doctrine, the ECI is set up as a form of “initiative (of citizens) for an initiative (the legislative one of the European Commission)” therefore an absolutely unique and innovative tool in the legal system of the Union. In other words, the ICE would operate as a "law initiative", which is also "transnational" given the participation of citizens of different Member States³¹.

Three initiatives reached the required number of statements of support and were presented to the Commission. The first to reach one million signatures was "Right2water" (1,659,543 signatures).

In the proposal, the citizens' committee urged the Commission to propose legislation aimed at establishing the universal human right of drinking water and sanitation.

The Commission responded to the European Citizens' Initiative with the Communication of 19 March 2014, stating that the right to safe drinking water and sanitation as internationally established must always be linked to the right to life and human dignity as if it is a "derived right"³² rather than an autonomous right.

In the communication, the Commission emphasizes EU action to guarantee access to drinking water and sanitation for the population³³.

Recently, with the Communication of January 31, 2012, the European Commission presented a proposal for a Directive of the European Parliament and of the Council in order to amend the Directives n. 2000/60 / EC and 2008/105 / EC. The amendments were limited to the management of the substances in the water sector: it was "technical" proposal, evidently not aimed at the recognition of the human right to water³⁴.

The European Parliament, vice versa in its resolution of 8 September 2015, invited the Commission (paragraph 10) to present legislative proposals, *«including, where appropriate, a revision of the Water Framework Directive which recognizes universal access and law human water»* calling for an universal access to safe drinking water and sanitation to be recognized in the EU Chart of Fundamental Rights.

This would imply the possibility for individuals to claim the rights deriving from the directive before the national courts.

Among the aims of the Directive, in addition to the quality of the water, it should be provided that every State must guarantee access to a minimum amount of water necessary to satisfy the essential needs of all individuals.

However, the essential level could be defined internally at national level, based on indications from the World Health Organization and / or the European Commission.

³¹ Cfr. Sara De Vido, *Il diritto all'acqua nella prospettiva europea*, in *Il diritto all'acqua*, atti del seminario di studio svoltosi a Milano il 26 novembre 2015 (by L. Violini e B. Randazzo), Giuffrè Editore, 2017.

³² Communication of the Commission, Bruxelles, 19.3.2014 COM(2014) 177 final.

³³ *Ibidem*.

³⁴ SEC(2011) 1546 final, SEC(2011) 1547 final. Bruxelles, 31.1.2012 COM(2011) 876 final 2011/0429 (COD).

This would ensure on the one hand the opportunity for individuals to own rights that can be exercised before internal jurisdictions, and on the other hand the opportunity for the Court of Justice to interpret the provisions of the Directive.

The Court of Justice in this way could assess whether the minimum quantity, set by the State, of water necessary for the essential needs of individuals, meets the parameters detected at the international level.

This would ensure that the elements of the right to water (availability, accessibility, acceptability, affordability and quality) would be subject to a minimal harmonization.

This proposal is only one on the long route of the affirmation of the right to water as a norm of international law.

One of the important indications that could derive from the Directive could be the identification of the "right price" of the water, to be defined at a national level according to the indications of the Directive itself.

In this context, however, it is noted that the European Parliament in this regard stressed that the Commission should not - under any circumstances - promote the privatization of water in the context of an economic adjustment or in any other procedure on coordination. of the EU's economic strategy (paragraph 22).

4. The implementation of the Directive

The implementation of the Directive on the treatment of urban wastewater, launched in 1991, has certainly led to the reduction of the emission of pollutants into the receiving water bodies but still 22% of European water bodies is polluted by point sources and new problems have emerged recent due to the discovery in water bodies of substances not previously considered, such as pharmaceutical product residues, including medicines for human use³⁵.

Compared to the previous EU legislation, the Water Framework Directive has contributed to overcoming the concept of water management limited to their distribution and treatment.

The basin management plan envisaged by the Water Framework Directive is seen as "*the plan of plans*", or as a reference tool for sectoral plans including urban planning, which must therefore necessarily be compared with the layout of the territory and the availability of water resources in the hydrographic basin or district, to which the planning refers³⁶.

³⁵ Directive on the treatment of urban wastewater available on https://ec.europa.eu/environment/water/water-urbanwaste/implementation/implementationreports_en.htm.

³⁶ Ibidem.

The development of management plans and therefore the drafting and implementation of the programs of measures must take into account climate change, which must also be taken into consideration in the implementation of the "Floods" Directive³⁷.

A guideline document of the European Commission, published in 2009 (CIS Guidance N° 24 - River Basin Management in a changing climate), intended to provide useful indications for the identification of adaptation measures to climate change to be included in the planned management plan by the Water Framework Directive, in the drought management and water scarcity Directive, which refers to the strategy on these issues covered by the specific communication issued in 2007, and again in the flood risk management plans provided for by the "Floods" Directive³⁸.

The cyclical nature of the aforementioned plans will allow the gradual implementation of innovative measures and instruments, proving over time the effectiveness of the response to the changes taking place.

The European Environment Agency has more specifically dealt with the impacts of climate change in urban areas in a 2009 report (Urban adaptation to climate change in Europe) in which ample space was devoted to analysing the challenges posed by the new climate trends and particular attention was paid to floods and recurrent droughts and water scarcity, which are increasingly impacting³⁹.

The possible solutions must be supported by the overall improvement of the adaptive capacity of urban areas. To be effective, these adaptation measures must be adopted following a systematic planning process in which the priorities for implementing the actions are clearly identified.

The improved adaptability certainly leads to a reduction in the vulnerability of cities to the risks related to climate change but this objective is achievable through a plurality of factors that include knowledge, the right to water as a public good, access to technologies and infrastructure, economic resources and the efficiency of institutions. Fundamental to the success of the adaptation strategy at city level is the connection of local institutions with the regional, national and European levels, also and above all in times of "spending review" for the activation of economic instruments consisting mainly of structural funds and from research ones, both national and community.

³⁷ Ibidem

³⁸ WFD Guidance Documents, available on https://ec.europa.eu/environment/water/water-framework/facts_figures/guidance_docs_en.htm; The challenge of climate change to the European coastal areas, available on https://ec.europa.eu/environment/iczm/state_coast.htm; AA.VV., *Climate change, impacts and vulnerability in Europe 2012° an indicator-based report EEA Report No 12/2012*, Luxembourg: Office for Official Publications of the European Union, 2012. AA.VV., *Climate change, impacts and vulnerability in Europe 2016An indicator-based report*, Luxembourg: Office for Official Publications of the European Union, 2016.

³⁹ AA.VV., *EEA SIGNALS KEY ENVIRONMENTAL ISSUES FACING EUROPE 2009*, Luxembourg: Office for Official Publications of the European Communities, 2009.

The operational plans of the territorial cooperation programs and the programming of European research activities up to 2020 take into consideration the need for coordination of national policies through a comparison between the various national programs, and also regional ones if relevant, in order to share the results and optimize the resources allocated to address the issues addressed⁴⁰.

While taking into account the variability of impacts and different degrees of vulnerability among the 27 Member States and associated countries, this stronger collaboration and coordination action aims to create a strengthening of the common European space and to create a single area of research and technological innovation shared by all countries belonging to the European Union.

A greater attention that in the past is also turned to the interaction between all the sectors involved and therefore between policies and strategies that must be adopted by the so-called "political decision makers", first of all by those who sit at community tables.

It is now widely accepted that the priority role of water management in environmental protection policies must find the appropriate confirmation in energy, industrial, agricultural, as well as in tourism and of course in urban planning and demographic policies.

The analysis of the results of the management plans has revealed a series of critical issues that have forced us to reconsider the goal of achieving good water status by 2015, as the data so far established suggest that only a little more than half of the water bodies will have such environmental quality characteristics.

To provide greater clarity on EU water strategies and to meet the need to more effectively integrate qualitative and quantitative aspects, the European Commission Communication "Blueprint to safeguard Europe's water resources" was published in the autumn of 2012 will guide Member States in the process of revising the first water management plan⁴¹.

5. Conclusions

As clearly stated in the Plan for the protection of European water resources, the European Commission considers it urgent that EU Member States focus on eco-compatible growth and make the resources used, including water resources, more efficient in order to overcome sustainably the current economic and environmental crisis, adapt to climate change and increase the possibility of strengthening the competitiveness and growth of the European water sector.

⁴⁰ Cfr. i.e. AA.VV., *Territorial Cooperation in Europe, A Historical Perspective*, Luxembourg, Publications Office of the European Union, 2015.

⁴¹ A Blueprint to Safeguard Europe's Water Resources, available on <https://www.eea.europa.eu/policy-documents/a-blueprint-to-safeguard-europes>.

In fact, the water sector (in Italy) includes 9 000 small and medium-sized active companies and counts, in the sector of water supply companies alone, 600 000 direct jobs⁴². The eco-compatible growth has good prospects for development and employment growth also in other sectors connected to the water sector (industries that use 39 water, development of technologies in the water sector, etc.), in which innovation can increase operational efficiency⁴³.

Research at European level has taken up the challenge and the scientific water community is committed to rapidly developing and transferring management solutions that make our cities more liveable and the negative pressures on the availability of good quality water for uses increasingly irrelevant potable and civil.

In this context it is important to develop a regulatory and legislative approach that does not settle for damage-repair dynamics but an approach aimed at prevention and planning directed towards two contexts: procurement and recycling-reuse.

This approach is aimed at reducing consumption, especially in procurement.

The challenge is to create an integrated city / countryside model that does not impoverish and impoverish resources.

In this context the most emblematic cases are those of the management of the Aral Sea and the case of the rivers in China, in particular the Beijing Guanting, and the Yangtze

In this context, we need to rethink our environment and our way of use of water resource as an opportunity to rethink the relationship between man and natural space.

In this framework it is necessary to try to carve out a living and living space for the human being that is not antithetical to nature, but that integrates it and protects it.

We need also to rethink our cities also trying to find a space that can create a green / blue belt that guarantees water supply on the one hand and pollution prevention on the other hand.

⁴² G. Muraro, *La gestione del servizio idrico integrato in Italia, tra vincoli europei e scelte nazionali*, in "Mercato Concorrenza Regole", 2/2003; AA.VV., *Infrastrutture e servizi a rete tra regolazione e concorrenza. Le infrastrutture idriche*, Astrid, 2008; Luca Arnaudo, *Gestione giuridica delle acque e concorrenza nei servizi idrici*, Mercato Concorrenza Regole, 2003.

⁴³ A. Massarutto, *La riforma della regolazione dei servizi idrici in Italia L'impatto della riforma: 1994-2011*, Research Report n. 9 January 2012, IEFÉ - The Center for Research on Energy and Environmental Economics and Policy at Bocconi University.