PROBLEMS IN GUARANTEEING THE RIGHT TO SAFE WATER – THE CASE OF IRRIGATION IN AGRICULTURE USING GROUNDWATER

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Introduction

This article aims at providing the approach towards the problem based on realization of fundamental right to save water at the local level for efficient implementation of the Sustainable Development Goals at the national level.

In the article we describe a case, how the Government approved the Decision on legalization of irrigation using groundwater, which may negatively impact the access to safe water for future generations. It highlights shortcomings in the process of making sustainable decisions that affect the guarantees of fundamental rights.

Fundamental rights historically have been based on the natural state of human, today human rights are based on the collective consciousness. In this sense, the right to water derives from the right to life and can be realized only by working together and sharing experiences in order to implement policies that will ensure the realization of the right to water as a human right.

The right to water is a precondition for a healthy life and essential to the realization of all human rights. Access to water and sanitation, as a fundamental human right, for the first time was recognized by the United Nations General Assembly, at its 64th Session on 28 July 2010.

Access to safe water and sanitation is a priority issue of the UN's Millennium Development Goals and the 2015 World Summit on Sustainable Development. Reports to the Second International Conference on Water and Climate (France, October 2017) have shown that the water scarcity already affects almost every continent and more than 40 percent of the people on our planet. By 2025, 1.8 billion people will be living in countries or regions with absolute water scarcity, and two-thirds of the world's population could be living under water stressed conditions of all biomes, freshwater ecosystems being the most threatened. [1]

Lack of access to safe, sufficient and affordable water has a devastating effect on the health, dignity and prosperity of billions of people, and has significant consequences for the realization of other human rights.

The Agenda 2030 for Sustainable Development (hereinafter "Agenda 2030") is the result of the largest consultation process in the history of the United Nations involving a large number of stakeholders, based on a 'human rights-based approach'. People are rights-holders and States are duty-bearers of providing the right to safe water. Rights-holders can claim their rights and duty-bearers must guarantee the rights to safe water equally and without discrimination.

The 'human rights-based approach' of the 17 sustainable development goals (SDGs) and 167 objectives stresses the correspondence between rights and obligations, providing a framework for Member States and other organizations that aims to ensure that respect for human rights are integrated into development plans at all levels guaranteeing the implementation mechanism at the local level.

Moldovans, have faced water-stressed conditions from the beginning of the new century. The volume of water available is about 500 m3 per capita per year or even less. Internationally recommended thresholds define a safe level of renewable drinking water availability as 1 700 m3 per capita per year. If the volume of water available is less than 1 000 m3 per capita per year the resulting water shortage could negatively affect the economic development as well as the health and living standards of the population. [2]

The process of Sustainable Development integration presents a challenge for the Republic of Moldova and includes two main directions of action: harmonization of national environmental

legislation with the Goals of Sustainable Development and institutional reform, which implies the development of an institutional mechanism capable to enforce the newly adopted legislation.

Method and materials

The National Development Strategy "Moldova 2030" (approved by the Moldovan Government on 10 June 2020), being the main reference document for the sectoral strategies and the subsequent policy interventions, aims to assume a greater responsibility to stop the degradation of the environment and the uncontrolled consumption of natural resources, taking into account the needs of future generations, as well as commitments undertaken under 2030 Agenda. The policy document "Moldova 2030" declares the principles of the green economy, which will ensure economic resilience and adaptation to the impact of global climate change and will contribute to enhancing its competitiveness at the regional and international levels, and, in the long term, will avoid the huge economic costs due to environmental degradation and climate impact. In the Strategy, people's rights are placed at the center of the development process, which could be accounted for in a sustainable way only by empowering people to participate, to contribute and to benefit from economic, cultural, social and political development based on a common attitude in which all human rights and freedoms are observed.

The comparative analysis of the NDS "Moldova 2020" adopted in 30.11.2012,and the "Agenda 2030" reveals a relatively weak correlation between the two documents. Out of the 106 Sustainable Development Goals (SDGs) targets that need to be nationalized; only 18 are partially and 5 are fully part of the NDS "Moldova 2020", while the remaining 83 are not reflected in the NDS "Moldova 2020". An analysis at the level of policy areas reveals the largest discrepancy is within the "Governance and Human Rights" policy area SDG 5, 10, 16 and 17). The vast majority of its specific objectives (about 92%) are not included in the NDS "Moldova 2020". A better situation is observed in the case of Economic area (SDGS 8, 9, 11 and 12), where a lower share (63%) of targets are missing from the NDS "Moldova 2020". The cause is that the NDS "Moldova 2020" revolved mainly around issues of economic development, and focused less on other policy areas. [3]

The authors of the mid-term evaluation of the National Development Strategy "Moldova 2020", consider that, the analysis of the NDS "Moldova 2020" from a human rights and gender equality perspective reveals that the document was focused on the economic development of the country, without taking into account the barriers specific to women and men, the elderly, persons with disabilities, Roma population, minorities and other social. The human rights and gender equality approach implies an obligation of the state to take into account the interests, needs and priorities of everybody, including vulnerable groups, recognizing the diversity of people. This implies a shift in the paradigm: from development focused on areas towards an individual-focused approach. [3]

The Republic of Moldova, along with other countries, makes efforts to introduce the concept of sustainable development. The most important policy document designed to establish clear priorities in environmental protection activities, the practical implementation of which will lead to sustainable development of the country, is the Strategy of the environment for the years 2014-2023. [2]

The Strategy sets specific objectives to ensure access of about 80% of the population to safe water supply systems and improving the quality of at least 50% of surface waters. The most important drinking water sources are surface waters, particularly the Dniester River, which supplies about 83%, the Prut River – 1,8%, and other surface waters – 0,2%. Groundwater sources accessed through artesian wells, common wells and springs supply about 15% of the consumption. [2, p.35] However, the specific objectives in the strategy are rather wishes, due to insufficient financial and organizational support for implementation.

The Water supply and sanitation strategy (2014 - 2028), approved by GD no. 199/2014, has as its main purpose to contribute to the development of the water and sanitation sector and to create gradually before 2028 access to safe water all localities and the population of the Republic of Moldova.

The National Program for the Implementation of the Protocol on Water and Health in the Republic of Moldova for the years 2016–2025, accepted by GD no. 1063/2016, proposes to contribute to improving the quality of life of the population and access to safe drinking water.

Moreover, a new National Development Strategy "Moldova 2030" based on the EU association agenda, includes the majority of the objectives of the Association Agreement RM-EU. [4] The

Association Agreement is accompanied by an implementation Program of Action for European Integration: Freedom, Democracy, Welfare [5], which addresses human protection and sets the framework for the congruence of Moldovan policies with European ones.

Without legislation it is not possible to achieve the ambitious political goals set. However, the transposition of the provisions of EU Directives to national legislation remains overdue and an inefficient implementation remains a challenge.

The Law on Drinking Water Quality [6], which regulate the requirements on drinking water quality and drinking water safety management, entered into force only in 2019, while the goal of the strategy of the environment for the years 2014-2023 was that this should be achieved in 2023.

Water Law no. 272/2011 and many other regulations (most of which adopted in 2013) create the legal framework for the management, protection and rational use of surface and groundwater resources and is partly harmonized with EU directives.

The experience of the implementation of the national development strategy "Moldova 2020" shows that the efficiency of its realization depends on the tools available. Therefore, it is necessary to develop a National Development Plan, which will reflect the structure of the NDS "Moldova 2030" and will include the appropriate actions and financial resources necessary for the implementation of the strategic objectives of the sector. Following the objective of harmonizing EU standards at national level, it is necessary that national development plans include the priorities of the Association Agreement RM-EU.

Results and discussion

In line with the international trend, international instruments emphasize the direct link between a healthy environment, democracy, human rights and sustainable development.

In the context of the approval of the NDS "Moldova 2030", elaboration and approval of legislation based on human rights approach from protection and guarantee perspective is imperative. The legislation in force must pursue the realization of human rights, stipulated in international treaties, and the respect of the right to safe water should be guaranteed through the activity of state bodies.

The interdependence of private and public interests underlying the right to a healthy environment is also reflected in one of its components of the right to safe water.

The modern understanding of the efficient realization of the right to safe water depend on content of the ecologically function based on the duties and actions of state bodies to ensure the synchronization of guarantees of the environmental rights and the corresponding responsibilities of state bodies to ensure the effectiveness of the implementation of these rights.

In this context, at the Fourth "Environment for Europe" Ministerial Conference in Aarhus, Denmark, on 25 June 1998 the Aarhus Convention was adopted. The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998) (Aarhus Convention) embraces governmental accountability, transparency and responsiveness. It sets minimum standards – a floor, not a ceiling – for citizens' rights in the field of environmental decision-making. [7]

Moldova ratified the Aarhus Convention by Parliament Decision nr.346-XIV from 07. 04.1999. As a consequence all environmental information is of public interest and must be accessible. Further, the decision opens up to public participation in the process of decision making leading to strengthening the protection of the environment and health. This mechanism ensures that the responsibility of state authorities for their decisions increases.

International agreements in the field of human rights protection to which the Republic of Moldova is a party act directly on the jurisdiction of the country and can be applied directly according to Article 4 of the Constitution of the Republic of Moldova, even if provisions of the Convention are not reflected in national law.

The Constitution of the Republic of Moldova enshrines the right to environmental information by article (art. 37 paragraphs (1) and (2)).

Paragraph 3 of the same article stipulates: "The concealment or falsification of information about factors that are detrimental to human health is prohibited by law."

At the same time, the Republic of Moldova adopted the Law no. 1515-XII of June 16, 1993 on environmental protection, which establishes in art. 30 that the state provides all individuals with general, timely and free access to information on the environment and health of the population and free access to participation in environmental decision-making process.

Another law reflecting access to environmental information is Law no. 982-XIV of May 11, 2000 on access to information (art. 5).

However, despite the existing legal framework, the Republic of Moldova faces difficulties in the effective implementation of the Aarhus Convention.

The Government this year approved at 19.08.2020 the Decision nr.635, which regulates the irrigation using groundwater. The public consultation process and how the Government took into consideration the opinion of the civil society shows many problems in ensuring the right to safe water.

Moldova is facing conditions of water stress during the period of irrigation in agriculture as the Republic of Moldova is situated in a region with insufficient humidity and negative effects of climate change. The average annual atmospheric precipitation fluctuates from 380 mm to 550 mm. Permitting irrigation using groundwater is a vital decision and requires a thorough analysis of all possible risks. Groundwater has a special role in the surface water balance in the RM. It is an important part of the hydrological cycle and influences the level of surface water.

Initially, the draft regulation with about 70 points and an environmental impact assessment were presented for public discussion. Subsequently, a preliminary analysis of the regulatory impact of this normative act was made in the State Chancellery, after which the text of the regulation was changed and significantly reduced by a third. The new draft was published for public consultation on Friday and the deadline for consultation was only 3 days until Monday. It should be noted, that the aspects of environmental impact assessment and ecological expertise were excluded, moreover, the opinion of civil society and their arguments were ignored.

The Governmental Decision was proposed based on old data about volume and quality of groundwater. Moreover, due to lack of financial and institutional capacity (high cost of groundwater research and the lack of laboratories accredited in accordance with EU standards), this approved decision will not prevent illegalities in issuing permits and will not ensure the control of correct implementation of environmental legislation.

The preliminary analysis of the regulatory impact (AIR) did not analyze the proposed legislative initiative based on human rights approach and ignored guarantees of the right to safe water. In conformity with methodology of the preliminary analysis the regulatory screening impact is made only on general environmental and social policies. More attention is paid to the impact on the state budget and how it affects entrepreneurial activities. This approach leads to approving decisions, based only on economic interests.

We can conclude that the Governmental Decision No. 1277 of 26.12.2018 on Methodology of the preliminary analysis of the regulatory impact does not regulate the analysis of the human rights impact and only recommend to consider objections obtained in the public consultation process.

Conclusions

The integration of the human rights and gender equality approach in the NDS "Moldova 2030" should contribute significantly to the advancement of human rights protection in the Republic of Moldova. In the context of implementation of the strategy "Moldova 2030" it is imperative to make the full use of the human rights and gender equality approach based on following principles: free access to participate of society in the elaboration of the policy documents, (empowerment of vulnerable groups; accountability of public authorities, identifying and removing barriers in access to education, justice, services including social protection; increased participation of society in the implementation process; ensuring equal opportunities for all; increasing social cohesion).

The strategy "Moldova 2030" must aim at achieving the principles and standards in the field of human rights stipulated in international treaties. The principles should constitute the conditions

for the process of elaboration, implementation and evaluation, and the standards must define the desired results of the NDS "Moldova 2030".

Apparently, for the moment, a favorable legal framework has been created for the development of measures in human rights protection, but some constraints in sustainable development can be observed:

- the multitude of strategies, programs, activity plans, as well as the lack of a special legal framework conditions the fragmentation of the responsibilities in the field, thus leading to the lack of an integrated management; the competent authorities do not have sufficient processes and levers to prevent human rights violation, as well as mechanisms for removing the negative consequences, in this respect, activities and tools are needed in addition to good practices;
- the need to reach the appropriate level of capacity in the field of integrated human rights protection management depends on the volume of investments needed to implement the measures and technologies that contribute to adaptation process of 2030 Agenda actions to the domestic priorities;
- capacity needs for adaptation of SDGs to integrated human rights protection are relevant and required to be available in two dimensions: conducting studies and negotiating the issues at the international level, mainly to attract funds to carry out the proposed measures in development policy documents.

Furthermore, attention should be given to the common standards in human rights and role of various stakeholders, which need to develop in terms of specific human rights, ensure preliminary analysis of the regulatory impact of the normative acts on human rights protection guarantee.

We propose to modify the Governmental Decision No. 1277 as of 26.12.2018 and introduce the obligation to make a preliminary analysis of the regulatory impact of all normative acts based on human rights approach. This procedure will be as a filter for legislative initiatives and operational measures for analyses the potential impact on human rights

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