

*Disobedience and Criticism. The ethos of Ombudsman's Institution and the „East-European Revolution of Human Rights*

by

PROF. DR. MÁTÉ SZABÓ

The commissioners of personal rights in the Parliament aim at ensuring the protection and formation as well as the development of the culture of personal rights with their activities in Hungary and all over the world. What else could be done by the citizens practising their disobedience during the non-violent revolutions in 1989 after Mahatma Gandhi, Martin Luther King and the American Henry David Thoreau? At the first glance, it perhaps seems to be strange to put the following question: what is the connecting link between the role of political law of a public state and the citizens breaking the rules in order to protect the constitutional rights? What will be the result of this comparison? I think, the result is that we can recognize the role of both functions more thoroughly in operating the constitutional state suitably in order to protect the culture of constitutional rights (reactive role) and to develop them (proactive role).

The commissioners of citizens' disobedience and the personal rights (ombudsmen)

Both roles – i.e. the role of disobedient citizen and the role of ombudsman – are accompanied by a strange and subjective aspect that cannot be avoided as well as by the definition of constitutional rights and fundamental rights bearing the risk of error. Thomas Paine who was a philosopher and a public character taking part in the French Revolution characterized the human rights by his strange British experiences as a light the source of which cannot be seen owing to the heavy fog and these rights can come to us as a grey, refracted substance filtered by the clouds and fog. The „Source” does not appear uniformly for everybody – it appears through many explanations (Thomas Paine: The people's rights). It means that – concerning the human rights - the mantle of ignorance made of clothes of different thickness covers each right of a human being (according to the expression of a Canadian philosopher John Rawls); it is a strange aspect that allows the message of constitution and human rights to pierce in the given situation. The common characteristics of the disobedient citizen and the ombudsman are that they have a dramatic explanation prescribing an intervention for them against the situation and process damaging the constitution and the human rights in order to create the

„right” situation. They have a similar starting point and opinion about the world – it is a kind of „crisis” or „depression” that’s why an action resulting in catharsis is necessary.

However the significant difference and the general rule are that the disobedient citizen is amateur and the ombudsman is professional. The ombudsman’s professionalism is prescribed by the rules of election (juridical qualification, political independence, special achievements) while disobedience can be committed by any of the citizens nay by anybody – even by a homeless person – in order to protect the human rights, without any professional criteria of taking a role. The amateur protects and develops the constitution in an ad hoc way, he/she livens up at a certain point of focus that can be regular and it is the minority of the half-professional and half-official protectors of rights, however the majority of people consist of citizens committed to the protection of civil rights on occasion. The ombudsmen (in Europe) administer their role professionally within the framework of their scope of activity during a period determined by the constitutional law – it is six years in Hungary. Their co-workers, the organizations and institutions help them to do this activity. The ombudsman himself is one of the institutions of protection of constitutional- and human rights surrounded by professional assistants organized in a strange official structure. On the contrary, the disobedience of citizens is not a scope of activity but it is a voluntary obligation; it is the result of a personal or collective decision undertaken voluntarily on the basis of an internal „vocation” based on a confidence. The disobedient citizen is a „would-be candidate”, but the ombudsman is designated (by the President in Hungary) and is elected in a determined order (by supporting of the 2/3 of the number of the unicameral parliament).

### John Rawls’ model

The disobedient citizens’ activity or non-activity, i.e. the breach of measure by them actively or by abstention in order to call the attention to the constitutional legal injury are tortious and the content of activity follows an individual or collective strategy developed autonomously. The ombudsmen’s scope of activity and their means are prescribed by the constitution and the laws (in Hungary, an ombudsman examines the constitutional anomalies, writes a report about them and can use the means prescribed by the laws) however only general, conventional principles are available concerning the activity of the disobedient person. These principles are not normated legally as they cannot be ruled – how a situation in which one can hurt somebody on the basis of a subjective convincement can be specified by the law? (It can be

circumscribed only for the right of resistance practicable in order to keep the constitutional order).

On the basis of the globally effective theory of John Rawls, these general principles are as follows:

- It is directed to remedy the serious constitutional legal injury;
- The constitutional legal injury is more serious than the committed injury of rights (proportionality)
- Expending of the available legal remedies (no more upper forums)
- The publicity, i.e. the transparent and documented effectuation (records, video, media) (it is separated from the secret terror- and criminal acts even in case if they have the same motives and root of problems);
- The non-violence in the course of the activity (its content is explained in different ways but it is one of the most important denotations against the terrorism).
- The voluntary submission to the trial power of state, the acceptance of sanction (it is the other important difference comparing to the terrorism and the „ethical criminality” – Robin Hood culture – i.e. the bringing of voluntary decisions).

Naturally, the central basic principles of the aforementioned theory of citizens' disobedience are controversial and they are not accepted and realized by each philosopher or disobedient person. However if we compare the activity of the ombudsman to them, we can obtain the following result:

- The activity of an ombudsman is of a wider range because an ombudsman deals not only with the serious anomalies but any of the constitutional anomalies belonging to his/her scope of activities nay he/she deals with the anomalies of administration affecting the interest of the citizens in Hungary and in many other European countries.
- The proportionality can merely be interpreted in an abstract way on the level of the general constitutional basic principle in the system of relationships between the actual problems.
- Pursuant to the Hungarian legal system, the entire use of legal remedies is a necessary but not an adequate condition of the procedure done by an ombudsman.

- It is not prescribed but in accordance with the international culture, the ombudsman's „main weapon” is the publicity as without the publicity his activity is only the communication with the authorities and the organizations that does not attain the sense of citizens and public characters. According to the ombudsman's international jargon, „naming is shaming”, i.e. the trespassers can be „named and shamed” only by means of the publicity in case if the sanctions are missing.
- The non-violence is obvious but the basic element separating the exemplar injury of rights of disobedient person is the entire and absolute keeping of the frames of constitutional state however in my opinion, the „picking” of the limits of competence can be allowed to a certain extent.
- The official sanctions are rare against the ombudsmen in Hungary; they have immunity rights similar to the parliamentary representatives. No ombudsmen were called to account in Hungary owing to their own scope of activity and owing to injuring other rules. However the informal sanctions and the formal political and economic application of pressure on both the ombudsmen and their co-workers can be caught though it is not easy to prove them.

As it can be seen, this comparison enriches us with the treasury of similarities and differences. However we should not get lost in the details but we should ask the sense of Total. Why? Whose interest is it? What does it serve for? In my opinion, the answer approves the community, the rights and freedom of citizens - the predominance of constitutionalism and human rights is served by practicing of both roles. While in this process the ombudsman is an institution of a constitutional state who puts certain elements of the citizen's commitment and culture into the “machine” of constitutional state, the citizen's disobedience is an extraordinary element of civil society and the citizen's culture that means the injury of rights committed on a subjective base in favour of the human rights, constitutionality and constitutional state in order to start the correction mechanisms of publicity and constitutional state. The ombudsman is the „balm” used regularly by the constitutional state; he can be the life-line and artificial respiration in the period of the citizens' disobedience, during the crisis and disease – but not on doctor's order. The ombudsman shall have a medical qualification and has a receipt-book while the disobedient citizen bears a hand in case if he feels that there is a danger of death and he just has taken part in a training of first aid. Naturally there are doctors, qualified lawyers who organize the first aid by practicing their avocations – they are the civil legal advisers.

## Democracy and dictatorship

The state-political system of conditions being the basic condition of both activities intensifies the community as well. It is a well-known fact that Gandhi wrote a letter to the European Jews in which he offered them to use the non-violent, civil means of citizens' disobedience against the gripe and genocide of the Third Empire. It is thought by a lot of people that the great philosopher and strategist was mistaken though in his case the disobedience can become a resistance as the citizens' disobedience is possible there where the human rights predominate the constitutional culture and the citizen's autonomous sphere exist. These criteria are not present in the dictatorship - there are only vassals here who are confronted with the enslavement. Gandhi could develop and realize his conception owing to his strange situation, as he did his activity on the British colonies. While Great Britain belonged to the leading states of constitutional and human rights on the territory of the British Isles, the predominance of these rights was limited on the colonies though in a different extent. Consequently, a strange conflict could develop - Gandhi and his followers could refer to the British rules of law as well as to the rights of British people against the injuries and oppression in the colonies. Namely the citizens' disobedience and the ombudsman's activity can predominate only within the system of operation of a constitutional state.

However in the international practice we can find such authority systems tending towards democracy that have established the ombudsman's institution under an international pressure in order of the evolution or for the sake of the democratic expectation. These countries are the following: Poland (1988), or the recent Turkey, Uzbekistan, Azerbaijan, Georgia, Armenia, etc. Here the institution can play an important role in the process of democratizing but it is not enough alone. Georgia, Armenia and Azerbaijan can be mentioned as examples where the movement of citizens' disobedience was kept down by force by stigmatizing it terrorism and insurrection but the ombudsman's institution somehow operates though the realities of the authority circumstances shall be accepted by it. In turn, no civil disobedience can be interpreted there where the maverick movements shall use the opposition and the entire spectrum of disobedience and not only the civil disobedience.

Namely the citizens' disobedience is closely connected to the existence of relationship of basic rights and constitutional state between the state and the citizen meeting the international

expectations. We can speak about civil disobedience only in case if the citizens can partly be disobedient and they must not be disobedient against the whole system (because this later one is opposition) just in order that the basic rights are predominant and they won't be „thrust to the wall” owing to this action but they have a possibility to proceed a fair procedure, they can appeal, they can turn to the publicity by revealing the legitime and legal reasons of their injury of rights and can mobilize the publicity in order to realize their standpoints by conducting a rational and free legal and political discussion and they can influence the re-regulation of the basic problem democratically. Naturally, extreme cases can arise, let's think about the American soldiers opposing the war in Vietnam who were escaped to Sweden and were amnestied after a long time. (Nowadays some mercenaries have escaped to Germany owing to the war in Iraq where their affairs are represented by the organizations of human right). Consequently, one of the „leading” democratic states of the world is in front of us which vindicates the human rights, where the citizens wearing uniform and opposing the militarism and genocide cannot use the means of disobedience but they get a political asylum by means of the global civil society in neutral states or in states representing different politics. It means that in the USA, in one of the native places of civil disobedience, where the culture of civil disobedience is very wide owing to the great philosopher Thoreau opposing the conquering war of the USA in Mexico in the 19<sup>th</sup> century by denying the paying of tax, the culture of the constitutional state does hasn't tolerated the protestation against one of the bloodiest war within the army and it isn't tolerated even today.

The creative discrepancy between the legality and legitimacy characterising the constitutional state is necessary both for practicing the role of citizens' disobedience and the role of ombudsman. The norm-system of the constitutional state as well as the transparency and coherency of norms define both from the point of view of the internal rights and of the international rights what is over the legality, and what is the so-called „borderline” case. The legitimacy is an aspect over the internal transparency and relationships of rights, it means that it is necessary to consider the given legal norm, procedure and case acceptable, valid and supportable in accordance with the universal and specific norms of constitutional case and the culture of human rights. The law is not a crystalline structure without a controversy though it wants to be a crystalline structure pursuant to its leading principles. „The completion of law is always gaping open somewhere” – Attila József wrote it in his beautiful poem (József Attila. *Eszmélet* in: *Összes versei. Szépirodalmi kiadó. Budapest.1967.296.o.* /Attila József: “Consciousness” in: *Collected poems. Publishing Company of Belles Lettres Budapest 1967*

p. 296/). Each coat will wear out and break away in spite of the most careful attention. That's why the „ checking technics of tailoring and sewing” together with the ombudsman are necessary in a constitutional state, in the democratic states of the 21<sup>st</sup> century.

## Legality and legitimacy

The problem of legitimacy as well as its relationship with the legality creating the common base of both the activities of disobedient citizen and the ombudsman exists besides the aspect of legality. Namely the disobedience is directed against the more serious constitutional anomalies and the ombudsman's activity is directed against the less serious constitutional anomalies in order to reconstitute the conditions meeting the prescriptions of constitution and law and therefore it represents the aspects of legitimacy contrary to the legality i.e. it represents the spirit of law contrary to the letters of law. In addition, the coat seems to be narrow in the course of the development and increase and the social and cultural changes demand the new conceptions of legitimacy while the world of legality – especially the world of constitution and law for the validity of which the two-third part of the votes is necessary remain unchanged. In this case, both the disobedient citizen and the ombudsman can criticise the legality on the basis of the alternative ideas of legitimacy. In addition, the discrepancy between the regional integration, the law of European Union and the internal law cause more and more problems in the relationship between the legality and legitimacy. It is a well-known case from the practice that a distributor who was inflicted imprisonment because he sold the moped vehicles without a registration number pursuant to the prescriptions of EU has undergone his judgement bit by bit because a different procedure is prescribed by the Hungarian law. In the old days Thoreau was judged because he did not pay the bailment but his aunt paid it for him though the process of philosophic development of citizens' disobedience was not broken by this fact. There are people who consider the laws of EU or the case-law of Strasbourg justifiable and wear the red star that is forbidden by the Hungarian laws and these people contravene the laws of nation-state. Naturally, the ombudsman's activity covers the conflicts of legality as well as the official processes of authorities and public services both in Hungary and in other countries. However, the citizens' disobedience cannot be used for solving the legal conflicts, the administrative abuses and indolence of institutions of public utility. E.g. the call for not paying the tuition by the students or for not paying the fee of subscription of TV programs by the citizens who did not agree with the

actual politics and reality of university education and media could not be considered a call for the citizens' disobedience. Moreover the blockade organized by the taxi drivers in 1990 couldn't be considered a call for disobedience as well because the element of injury of basic rights and constitutionality was missing and the proportionality between the illicit activities and the rise of prices of fuel couldn't be interpreted as well.

The missing of sanctions is a common characteristic of the ombudsman's activity and the citizens' disobedience. The activity of a disobedient citizen can inhibit a process but it hasn't got a legally dilatory force. Later the assessment of the earlier illegal protest can become justifiable in case if the law changes. Similarly, the criticism, proposals and initiations of an ombudsman don't have a binding force. (Certain ombudsmen – e.g. the commissioners of data protection and the commissioners of environmental protection – can bring binding official decisions but in my opinion it is the unorganized uniting of the profile of authorities and the profile of an ombudsman). Therefore both activities need the critical publicity and its mediated forms drawn up by Habermas as the citizens can become aware of the disobedience concerning their basic rights and of the ombudsman's activity. The media is shaky on the critical publicity therefore nowadays the disobedient citizens rely upon the contra-publicity ensured by the post-modern communication technologies and the ombudsmen build Hungarian and international communication networks, develop a media-strategy, address the citizens and those who bring the decisions as well as the critical social sciences. The protection of civil rights and its publicity is the organ of both the ombudsmen and the quasi-institutional civil organizations protecting the rights (e.g. the journals entitled „Acta Humana” and „Fundamentum” in Hungary).

### The state and the civil society

However, in spite of the similarity and common characteristics, both the ombudsman's institution and the disobedience can communicate between the state and the civil society in case if the state and the civil society are interpreted vertically as it was interpreted by Hegel as well. However the ombudsman is nearer the „upper” pole the bureaucratic fields of constitution, law and order and lawfulness. Though Hegel does not accept them, contrary to his logic, the disobedient citizens address and wish to change the constitutionalism, the law and order „from underneath”. It is very difficult to interpret what Hegel really writes because posteriorly the different conservative and revolutionary philosophers – e.g. Marx and Marcuse



– explain it in a different way. Hegel writes that „Each country has a constitution that is suitable for that given country” (Hegel, *Jogfilozófia*, Budapest: Akadémiai.1971.298.o. /Hegel: *Philosophy of Law*, Budapest: “Academy” Publishing Company 1971. p. 298/) i.e. the civil society can demand directly to change it – the interpretation of the activists says it, but it is not possible – the conservative interpretation described by Hegel says it.

Both the ombudsman and the disobedient citizen represent the right of nature, the norms of universal human rights against the positive rights and administrative realities of the state but they have different roles and administrative-legal system. Consequently their responsibilities are also different. The ombudsman can be called to account by keeping the high material thresholds of law of procedures beyond the general rules as he practices the function of institutional civil constitutional critics and he needs an extra protection against the criticized authorities and power. On the contrary, the civil disobedient person fights for vindicating his rights outside the usual framework of law owing to the fact that he has called the attention to a more serious constitutional anomaly. E.g. the person participating in a sit-down strike blockade against the delivery of nuclear waste material affects the rules for the sake of the rights to life or the radical societies for the prevention of cruelty to animals injure the rights to property when they „liberate” the experimental rats or rabbits in order to protect their life. It means that the civil disobedient people shall have a high commitment and a so-called „civil pluck” and shall take the responsibility of undertaking the fight by which they try to prove actively for the publicity that the actual norms and rights are against the basic norms of human rights and the constitutional democracy. In case if he mistakes, he will be in jug and/or pay and he will be stigmatized and his existence will be threatened for all his life. The constitutional democracy spreads a pile-carpet in front of the ombudsman, he can criticize the constitutional and administrative anomalies from a protected position and he is rarely called to account. However the edge of carpet is marked clearly, e.g. the ombudsman cannot practice a political activity and therefore the anomalies can be criticized by him neutrally. However, he can criticize the valid constitutional and legal norms and practices he can disclose the anomalies, can study the official documents and can publish their content. He can avoid the difficulties of voluntary trespasses, can work in a comfortable position in order to ensure the development of constitution and law.

In this regard, the purpose of the ombudsman and the disobedient citizen is common. Both of them serve the concept of constitutional development of rights and the constitutional reform,

with the exception if we accept the conceptions of the civil disobedience being in fellowship with the resistance and revolution under the influence of Gandhi. (e.g. Theodor Ebert and a lot of German peace-fighters as well as the pacifistic-anarchistic philosophers). I think that the close relationship between the revolution, the right to the resistance and the civil disobedience can be interpreted only in autocratic systems that are not entirely democratic systems and they cannot be interpreted in the constitutional democracies as e.g. in Hungary because according to the Freedom House, Hungary belongs to this system of constitutional democracy. In Hungary a revolution meeting the requirements of a constitutional state was carried out in 1989 without any ombudsmen and with some actions of civil disobedience – e.g. demonstrations were not permitted up to coming into force of the right of assembly and of the law ruling the operation of the different parties. The ombudsman's institution has been operating in Hungary since 1996 and it is a part of the global and European network of ombudsmen in addition it has been acknowledged as an equal partner from the beginnings. More was spoken about the citizens' disobedience but it was realized in a less extent pursuant to the definition model developed by Rawls; (such a case was e.g. the disturbing of the programs organized for celebrating the joining the NATO), but it can be stated generally that it was a marginal phenomenon in the history of the Hungarian democracy. I.e. the civil disobedience appeared during changing the political system but it didn't have any political significance because the outgoing upper class was ready and open to the introduction of reforms and this fact created new legal frameworks. Since the middle of 90<sup>th</sup>, the ombudsman's institution has been the integral part of the Hungarian constitutional democracy. The protection of civil rights and the publicity of its critics together with the critical political science and jurisprudence are the significant conditions of the ombudsman's culture as well as the culture of disobedience in Hungary today. The aforementioned criteria rely upon the traditions existing before 1989, the traditions of the way of thinking and activity of the movements of democratic opposition parties that create the significant element of the new democracy as a part of the culture of the recent democracy.

The ombudsman and the disobedient citizens as well as the protectors of civil rights sit in one ship with the bureaucratic anomalies of the realities of the constitutional state, with the injuries of the Hungarian and international rights, querying the democracy. In this ship, there is room for a lot of people but there are different roles that are not organized in a hierarchy similar to the organization of a real ship and they don't have an all-powerful captain. So the crew and the swabs of the ship try to find the balance against the storms, eddies, rocks and

swimming icebergs and to ensure the heading towards an aim that is similar to St. Graal according to Paine's nice image – nobody has seen and touch it yet but we know that somewhere it exists in the harmonic union of predominance of human rights in a stabile democracy. The road is the aim itself, one can get to it only on a legal road on the water of democracy and constitutional state even in case if the validity of certain norms and arrangements is doubted by the critics in an abstract way (ombudsman) or actively (disobedience). The protector of the civil rights, the ombudsman and the disobedient civil person are in- and outsiders in their own country at the same time because they are the citizens of the developing global civil society, the citizens of the cosmopolitan unity of title who receive their legitimacy from the international law and the global civil society mainly in the autocratic systems. The disobedient citizen and the ombudsman balance continuously between the empires of internal and international law, the Past and Future, the Force and Freedom. It is a difficult task full of responsibility that they try to solve in their own individual way.

The possibilities of development of the ombudsman's system in Hungary

The purpose of the ombudsman's institution is to investigate the citizens' complaints as an individual and independent organization and to investigate the activities of organizations belonging to the authorities. The dangers threatening the independence of ombudsmen are regularly discussed in the European and World-forums of ombudsmen. I think that the political independence is ensured in Hungary though it could be developed by prohibiting the appointments requiring the agreement of the political parties after expiring their mandate. However it cannot be excluded by this prohibition that the criticized and investigated organizations discriminate the ombudsman and his co-workers by keeping their procedures. So my co-workers and I myself as private persons can become the targets of „backflash” by the investigated organizations on the basis of our experiences following the investigations.

The parliamentary privilege behoves the parliamentary commissioner of citizens' rights because this commissioner is a public dignity and shall ensure the activity of protecting the rights. However he fulfils his tasks by the help of his civil servants. Taking into consideration of the above facts, the circumstances concerning the position of the parliamentary commissioner directly influencing the legal status of his co-workers and the fulfilment of their tasks should be unanimously clarified.

The ombudsman can practice his constitutional rights only by means of his co-workers. They are the specialists who take part directly in the activities of the different procedures on the basis of the commission issued by the parliamentary commissioner of citizens' rights, work out the method of actual investigation by agreeing with the commissioner and do their work thoroughly by taking into consideration the scope of activities prescribed by the law.

However on the basis of my experiences, unfortunately I feel that a lot of my co-workers have been exposed to retortion by the investigated organization. Even in case if I suppose bona fides from the part of the authorities, the suspicion of discrimination against my co-workers as private persons or against their family-members arises in the background of the decision of authorities (e.g. audit by the taxation authorities, forbidding of their salaries, carrying out of an immediate collection, ordering the regulatory statue for a real property owing to the debt of parking fee) as the authority having checked by my co-workers brought a prejudicial though justifiable decision in a short time (one or two months) following their checking. It is true even in case if the decisions brought by the aforementioned authorities are based on a public act because this arrangement could have been done by the authorities earlier, or no similar decisions were brought against other people. It can be mentioned that the audit by the taxation authorities was carried out simultaneously at two of my colleagues by auditing two different kinds of taxes at the same time following the carrying out of the checking procedure.

Here I would like to call your attention to a checking report made by one of my official predecessors: referring to the statements of this checking report, an economic company that had not been named and concerned directly in the checking procedure commenced a case having a sum of one-hundred million HUF against the parliamentary commissioner – first of all as an ombudsman and secondly as a private person. On the basis of these experiences I have to state: my co-workers are not protected suitably concerning their checking activities because they have been and can be fined by the authorities (though these arrangements can seem to be more or less legal) and my co-workers are afraid of these arrangements. I have informed the Hungarian and international publicity about these experiences. In my opinion, the lawsuit commenced against the ombudsman as a consequence of his checking procedure is absurd on the one hand and on the other hand it is suitable for

concurring any private person having a position; as a result this private person will carry out the checking procedure only formally at the authorities and organizations which are able to vindicate their interests by using all the means available for them. I think that the situation when the ombudsman and his co-workers must be afraid of the threatening actions as a consequence of their checking activities carried out within the framework of the constitutional state disagrees the reasons and motives of establishing this institution and endangers the situation and purposes of the independent protection of rights.

It is suggested to the decision-makers and first of all to the parliamentary committees dealing with the constitutional rights to ensure the highest level of presumption of law for the ombudsman and his co-workers – it can be done by the regulation of law – and to protect them against the attacks and negative consequences that they have to suffer owing to the fact that they take part in the independent activity of ombudsman for protecting the rights and practice criticism concerning the activity of authorities and other organizations. E.g.: Why doesn't the right protect the civil servants taking part in the checking carried out by the ombudsman, why don't they have a regulated system of justification, why aren't they protected such a way as everybody having a magisterial power?

However, not only a new regulation is necessary that maybe cannot solve this problem but a legal and political culture is needed as well, where the possibility of such a threat cannot arise. It is impossible without ensuring the critical role of the independent protection of rights and the devilish circle is closed by it. We can find a way out of this circle in case if we obvert the proverb and ask: „Who guards the guardians?”

The alternative ways of the development of Hungarian civil culture

The primary „bio-political interest” of societies is to ensure the reproduction. It is a mechanism in the earlier societies that infiltrates in the structure of everyday life and predominates entirely. In the modern societies, autonomic mechanisms are established for protecting the children, for ensuring the children's rights. They create norms that protect the rights of future generation like the convention about the children's rights created by the UNO ratified by Hungary as well in 1991.

What are the bases of the modern interpretation and culture of children's rights?

- The concept of modern development that keeps the future „which we grow in” valuable as the source of values as the „golden age” was the Past in the previous societies.
- The concept of modern rights that considers the spread of rights and the process of emancipation unlimited and involves newer and newer groups into the community of rights and ensures newer and newer licences for them.
- However, according to the post-modern concept of rights, the rights fit to the differences existing between the groups and problems - it does not use an equal „gauge” - but ensures special rights for the different groups having special demands.

The children’s special pretension is the right to the development, the system of legitimacy directed towards ensuring the obtaining of autonomy in which the children’s right to the development is protected and prescribed by the sub-systems of protection-supply-involving (inclusion, participation); „It is necessary to promote the evolving of the children’s personality as well as the development of their intellectual and physical talents and abilities to the widest ranges of possibilities”; it is necessary to prepare the children to assume all the responsibilities accompanying the life by acquiring the liberality, the peace, the patience, the equality between the genders, the friendship between all the people, nationalities, nations and religious groups. (Convention about the Children’s rights – UNO; Article No. 29, 1./a./d.)

The UNO and the other international organizations as well as the non-governmental organizations (NGO) and the states participating in the Convention create a so-called „Regime of Children’s rights”. The concept of regime serves for indicating the negative, rejective things in the publicism. However, in the new language of international politics, the international regimes are mechanisms that mean the mechanism of co-operation of the international organizations, the global civil organizations and states and inter-state mechanisms in order to realize special purposes. The international regime of children’s rights is such a concept and Hungary takes part in it. Our representative is present in the special commissions of UNO and they discuss the annual report there.

The problems arising in the course of the changes of our social and economic life as well as the effects of international financial crisis cause serious troubles from the point of view of the

protection and supply – they burden both the society and the families and children. The negative traditions of the children- and youth-politics of communist regime makes it very problematic and difficult to involve the children in the social life that means an actual negative example even today and prevents the development of new forms of organizations for the young people.

A co-operation between the state and the civil organizations would be necessary for vindicating the children's rights „for ensuring the supreme interests of children”. In Hungary, however, the government agencies do not cooperate in an optimal way for ensuring these rights. After disappearing of the communist regime, the development of civil organizations has been spectacular but it is far from the necessary and maintainable level. The cooperation between the government agencies and civil organizations for solving the accentuated task is to be expected. But this task is important. The number of children decreases year by year and more and more knowledge and talent are necessary for dealing with them in the 21<sup>st</sup> century. The prestige of family, the church and school loses its significance in a greater and greater extent; everything is determined by the craze of consumption, the media and the contemporary groups. It is very difficult to intervert these processes – perhaps they cannot even be moderated therefore it would be necessary to keep them within a suitable, cultural framework. It can be promoted by the culture of children's rights – it is popularized by the commissioner of citizens' rights in Hungary for the sake of the future generations and we hope, tomorrow there will be an ombudsman of children's rights as well as everywhere in Western Europe pursuant to the proposals of UNO and European Council.

Nowadays the institutional encouragement of the social and political activity of young people is necessary both in Hungary and in Europe. Recently Europe actuates the young people and the young people don't actuate Europe in spite of the fact that a lot of positive changes started in 1968 that resulted in new scales of values, new sensitivity and more open institutes. What an extent do young people require the self-management originating in 1968? In my opinion, a wider sphere would be ensured for the young people to create their imaginations in our social life, in the 21<sup>st</sup> century, and in this case they would be able to create new things that correspond to the cultural-communicative horizon of young generations. They are no more the children of Gutenberg-galaxy but they are the inhabitants of the so-called „Google-galaxy”, i.e. the children of the modern virtual communication technology. As the parliamentary commissioner of citizens' rights, I try to reach the children and the young citizens on the

Internet by using active projects expounding their rights. We try to operate an alternative homepage containing the children's rights ([www.obh.hu](http://www.obh.hu)) through their virtual world in order to expound the basic rights behoving everybody. First of all we rely upon the European experiences. By using the European networks, on the one hand it becomes possible to spread the Western experiences and methods and on the other hand to multiply our tight resources by our common activities. Besides the financial support of EU, the common cooperation and the real solidarity are also the power of development.

The initiations of EU are significant in the political education both today and tomorrow because it is an unregarded field of our social life. In Germany and in Austria, a wide organizational system and exquisite methods of political education has been developed outside the school after the fascism for spreading the culture of democracy and human rights. Nowadays it is the past in both countries, these methods have been retrograded and ceased and they have been replaced by an educational method for eliminating the preconceptions against the immigration and aliens and for accepting the bases of multicultural coexistence.

However, in the post-communist countries, the purgatory against the authority traditions and for accepting the new institutions has been omitted till now. We can see the result: the missing knowledge, impossibility of communication, stagnation of the willingness to the participation. It is a very serious problem of the effective democratizing, the cultural acquiring of human rights, of the formation of „homo democraticus” necessary for the democracy instead of the „homo sovieticus”.

The young people's standing off the political life, the laws and even the human rights circumscribing their own autonomy remembers me the famous novel entitled „At the Gate of Law” written by Franz Kafka. A member of the guard is standing in front of the Gate of Law and a landsman arrives there who sets up a housekeeping for a long time, for years in front of the Gate, - it is Kafka's absurd idea – he lives together with the member of guard, he immolates his life to the admittance but without avail – his life comes slowly to an end. He asks before his death: „How is it possible that nobody wanted to apply for admittance but me for such a long time?” The member of guard answers as follows: „This entrance has been assigned only for you. Now I am going and closing it.” (A törvény kapujában /Translated by József Gáll/ in: Franz Kafka: Elbeszélések Európa Könyvkiadó. Bp. 1973.189.o. /At the Gate of Law in: Franz Kafka: Novels; „Europe” Publishing Company Bp. 1973 p. 189). Aren't we



similar characters? The Gate of Law was opened in 1989; have we tried to find the way for entering the entrance that belongs only to us and not to anybody else? I think that our defaults have accumulated in those delimitations that now hinder the young people from entering that gate.

The teaching of democracy and the new culture of human rights is necessary because we don't have any other alternatives but the democratic Europe. The apathy, the alienation, the aggression, the intensification of nationalism, the crisis of communities and individuals are contrary to it. We have to take down the limits in front of the culture of human dignity in Europe which is without borders. It seems that the borders disappear before the limits being in our soul and sense and preventing us to keep the norms of co-existence in the democratic countries of Europe would disappear. The failure of the preparations of the European Constitutional Agreement is a restraining force in the realization of this aim but the European legal institutions and a lot of cooperation agreements fling the Gate of Law in front of us – don't hesitate, let's enter it – it has been built for us.

## References

Bay, Christian: Civil Disobedience in: The International Encyclopedia of the Social Sciences Vol. 2. MacMillan: London.1968.473-478.

Csapody Tamás(szerk.):A polgári engedetlenség helye az alkotmányos demokráciákban.T-Twins: Budapest.1991. (*Tamás Csapody (editor): The place of civil disobedience in the constitutional democracies. T-Twins: Budapest. 1991.*)

Ebert, Theodor: Gewaltfreier Aufstand. Alternativen zum Bürgerkrieg. Waldkirch: waldkircher Verlagsg. 1981.

Eide, Asbjørn: Interdependence and Indivisibility of Human Rights, Yvonne Donders-Vladimir Volodin(eds.): Human Rights in Education, Science and Culture. Legal Developments and Challenges. UNESCO/AshgateBodmin/Cornwall.2007. 11-53.

Fekete, Sándor: A polgári engedetlenség elmélete és magyarországi gyakorlata, in: Csefkó Ferenc-Horváth Csaba(szerk.): A demokrácia deficitje avagy a decifites hatalomgyakorlás.Pécsi ÁJTK-Pécs-Baranya Értelmiségi Egyesület: Pécs.2008.263-279.o. (*Sándor Fekete: The theory of civil disobedience and its practice in Hungary. In: Ferenc Csefkó – Csaba Horváth (editors): The deficit of democracy or the deficient governance. ÁJTK – Pécs – Baranya Association of Intellectuals: Pécs. 2008. p. 263-279.*)

Felkai Gábor(szerk.): Új társadalmi mozgalmak és politikai tiltakozás. Rejtjel: Budapest.2003. (*Gábor Felkai (editor): New social movements and political protestation. "Code": Budapest. 2003*).

Gandhi, Mohandas Karamchand: Önéletrajz. Európa: Budapest.1987. (*Gandhi, Mohandas Karamchand: Curriculum Vitae. Europe: Budapest. 1987*)

Gandhi, Mahatma: Az erkölcsiség vallása. Farkas Lőrinc Imre K: Budapest.1998. (*Gandhi, Mahatma: The Religion of Ethos. Imre Lőrinc Farkas K: Budapest. 1998*)

Gáthy, Vera: Gandhi.Akadémiai: Budapest.1987. (*Vera Gáthy: Gandhi. „Academy“ Publishing Company Budapest 1987*)

Glötz, Peter(hrsg.): Ziviler Ungehorsam im Rechtsstaat.Suhrkamp: Frankfurt am Main.1983.

Gönczöl Katalin-Kóthy Judit: Ombudsman 1995-2001.helikon: Budapest.2002. (*Katalin Gönczöl – Judit Kóthy: Ombudsman 1995 – 2001. Helikon Publishing Company Budapest 2002*)

Habermas, Jürgen: A társadalmi nyilvánosság szerkezetváltozása. Gondolat. Budapest.1971. (Habermas Jürgen: The change of structure of social publicity. “Gondolat” /”Idea”/ Publishing Company Budapest 1971)

Hegel, G. W. F.: A jogfilozófia alapvonalai. Akadémiai: Budapest.1971. (*Hegel, G.W.F.: The Basic Lines of Philosophy of Law. “Academy” Publishing Company Budapest 1971*)

Hopgood, Stephen: Understanding Amnesty International.Cornell U.P. Ithaca: London.2006.

Kardos Gábor: Emberi jogok egy új korszak határán.T-Twins: Budapest.1995. (*Gábor Kardos: Human Rights at the Boundary of a New Era. T-Twins: Budapest 1995*)

Kleger, Heinz: Der neue Ungehorsam.Campus: Frankfurt am Main.1993.

Komlósy Szilvia(szerk.): Tízéves a magyar ombudsmantörvény. Országgyűlés Hivatala: Budapest.2004. (*Szilvia Komlósy /editor/: The Hungarian Law of Ombudsmen is ten years old. Office of Parliament Budapest 2004*)

Linse ,Ulrich et.al.: Von der Bittschrift zur Platzbesetzung. Dietz.Bonn: 1988.

Majtényi László: Ombudsman-állampolgári jogok biztosa.KJK: Budapest.1992. (*László Majtényi: Ombudsman – the Commissioner of Citizens’ Rights. KJK: Budapest 1992*)

Marcuse, Herbert: Ész és forradalom, Gondolat, Budapest.1992. (*Marcuse Herbert: Notion and Revolution. Gondolat /“Idea”/ Publishing Company, Budapest 1992*)

Marx, Karl: A hegeli jogfilozófia kritikájához 378-392.o., Marx- Engels művei 1. kötet.Kossuth: Budapest.1957. (*Marx, Karl: The criticism of Hegel’s philosophy of law. p. 378-392. Publications by Marx and Engels, Volume 1., Kossuth Publishing Company, Budapest 1957*)

- Miller, William Robert: Martin Luther King: Discus Books: New York.1968.
- Paine, Thomas: Az ember jogai.Osiris: Budapest-1995. („olyan fényként jelenik meg így az ember előtt, amely ködön szüremlik át, a fény forrása pedig homályba vész, és az ember nem lát semmit, amit tisztelhetne ebben a szürke fénysugárban.”85.o.) (*Paine, Thomas: The people's rights. Osiris Publishing Company Budapest 1995. /"It appears as a light that is filtered through the fog in front of the human being and the source of light disappears in the shadow and you cannot see anything that could be respected in this grey light-ray/*)
- Rawls, John: Az igazságosság elmélete.Osiris: Budapest.1997.455-465. (*Rawls John: The Theory of Rightfulness. Osiris Publishing Company Budapest 1997. p. 455-465*)
- Steinweg , Reiner (Hrsg.): Die neue Friedensbewegung.Suhrkamp: Frankfurt am Main: 1982.
- Szabó Máté-Haraszti Katalin: Az emberi jogok fejlődésének globális és európai fordulópontjain, in: Gömbös Ervin(szerk.): Globális kihívások, milleneumi fejlesztési célok és Magyarország.Magyar ENSZ Társaság: Budapest.2008.155-173. (*Máté Szabó – Katalin Haraszti: At the global and European hinges of development of human rights. In: Ervin Gömbös (editor): Global Challenges, Purposes of Development for the Millennial and Hungary. Hungarian Society of UNO Budapest 2008. p. 155-173*)
- Takács Albert: Régi és új dilemmák az ombudsmanok tevékenységében, in: Sándor Péter-Vass László-Tolnai Ágnes(szerk.): Magyarország politikai évkönyve 2006-ról. II. kötet.DKMKA: Budapest.2007.272-281.o. (*Albert Takács: Old and new dilemmas inombudsman's activity. In: Péter Sándor – László Vass – Ágnes Tolnai: The Political Almanac of Hungary in 2006. Volume II. DKMKA: Budapest 2007. p. 278-281*)
- Tamás, Csapody: Ne az én nevemben. Nyitott könyv: Budapest.2004. (*Tamás, Csapody: Not under my name. Open book: Budapest 2004*)
- Tamás;,Csapody Civil forgatókönyvek. Századvég. Budapest.2002. (Tamás, Csapody: Civil Scenarios. Századvég (The end of the Century) Publishing Company, Budapest, 2002)
- Thoreau ,Henry David: A polgári engedetlenség iránti kötelességről,Európa: Budapest.1990. (*Thoreau, Henry David: The obligations for the civil disobedience. Europe Publishing Company, Budapest 1990*)
- Varga Zs. András: Ombudsmanok Magyarországon.Rejtjel: Budapest.2004. (*András Zs. Varga: Ombudsmen in Hungary. Code: Budapest 2004*).