

The Philosophy of a Hungarian Ombudsman



Barriers hinder communication, exchange of views and mobility. Borders make the interaction of people possible and provide for the free flow of material and nonmaterial values. Borders are vanishing in today's Europe and Hungary, there still exist, however, strong barriers hindering the emergence of the master value and framework of human rights and human dignity.

Our duty is to further diminish these barriers.

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Unprotected? Who safeguards the guardians?

Certain events that happened in the past year have induced me to draw attention to the shortcomings of legal protection given to the parliamentary commissioner of civil rights and his colleagues, and the importance of remedying these shortcomings.

The objective and justification behind the institute of ombudsman is to investigate the complaints of citizens as an autonomous and independent body and carry out investigations in relation to activities of authorities and other organizations falling into its scope of authority without disturbance. Ombudsmen forums in Europe and around the world regularly discuss the dangers that threaten the independence of ombudsmen. In my opinion, political independence in Hungary is ensured, although there remains some room for improvement, such as the prohibition of certain functions provided on the basis of suggestions and agreement of political parties, following the expiry of the mandate. However, this still leaves room for criticized organizations affected by the investigation to target the ombudsman and his colleagues and exercise negative discrimination against them by following their own rules of procedures. Thus, myself, as well as my staff, as private persons carrying out investigations may become targets of „backlashes“ by organizations under investigation, on the basis of our experience following some of our investigations.

The parliamentary commissioner of civil rights, as dignitary, is entitled to the right of immunity of a Member of Parliament, in order to facilitate his legal protection activity. However, he executes his tasks through his public officer colleagues. With respect to this, circumstances related to the position of parliamentary commissioner that directly affect the legal status and execution of tasks of his colleagues should be clarified.

The ombudsman can only exercise his statutory rights through- and by the help of his staff. They are the experts that directly participate in certain acts and procedures, on the basis of assignment by the parliamentary commissioner of civil rights, devise the methods of the investigation in progress, liaising with the commissioner, and carry out their tasks prudently, with respect to the scope of authority of the commissioner as stipulated by law.

Sadly however, - I believe as a result of the declarations I made following my investigations -, several of my staff have encountered retorsion from organizations under investigation. Even if I assume good faith behind the administrative actions taken by authorities against my staff, as private individuals, or their family members (e.g. inspection by authorities, order of freezing salaries, execution of immediate clean collection, registration of execution rights for properties), the suspense of retorsion arises in instances when, shortly (1-2 months) following the disclosure of my specific declaration as a result of the investigation, the authority under investigation takes a legal and more or less justifiable, yet suspiciously targeted measure in a case related to my colleague undertaking the investigation. This is true even when such a measure was legally well founded, since in this case, the authority might have taken the same measure earlier, and no similar decision had been taken against anyone else to date.

As a noteworthy circumstance, I would like to refer to one of the investigation reports prepared by my forbearer in office. Referring to the declarations made following the investigation, a business enterprise directly unrelated to- and not even named in the investigation has started a hundred million forint lawsuit against the parliamentary commissioner – primarily, as ombudsman, and secondarily, as private individual. It were these experiences that led me to the conclusion – and also to inform Hungarian and international professional and civil members of public life, as well as the general public thereof – that protection of my staff in relation to their investigation activities is insufficient, as they have in the past and may in the future be subjected to sanctions which, although more or less legally founded, have made them apprehensive of such incidents in relation to certain types of cases or certain organizations. The lucrative civil lawsuit initiated against the ombudsman in relation to his investigation is, on the one hand, absurd, in my opinion, and on the other, it serves to intimidate a private individual in any office from starting an investigation in relation to certain authorities and organizations that are ready and willing to enforce their interests by any means, or to make them restrict the investigation to only a formal procedure. I believe that the situation when the ombudsman and his staff must be wary of threatening measures in relation to their constitutional investigation activities is contrary to the justification and motives behind the establishment of the institute, and serves as a threat to the state and purpose of independent legal protection.

It is my suggestion to decision makers, in particular, the committees of Parliament that deal with constitutional rights, that they should ensure that highest possible level of legal protection to ombudsmen and their staff, even by means of legal regulation, if necessary, and protect them from all attacks and negative consequences that they may expect or that they may face because they participate in the independent, legal protection activities of the ombudsman and direct criticism at the activities of authorities and other organizations. However, it is not only the introduction of new legislation that is needed, which may not even be sufficient to solve this problem, but a legal and political culture where even the possibility of such threats is unthinkable. This, however, is impossible without ensuring the critical role of independent legal protection, and then the vicious circle effectively closes. The way out may be that, by turning the original meaning of the proverb around, we ask the question: „Who safeguards the guardians?”

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Recipients – in Hungarian:

Chairman of Parliament; Parliamentary Committees, Ministers, Constitutional Court, Supreme Court, State Audit Office, Prosecutor General, Legal protection organizations, county and special Courts

In English:

AI, Transparency International, Freedom House, IOI and other international ombudsman organizations, Ombudsmen, embassies in Budapest

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

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 a 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 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 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 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 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 is 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 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 occasionally. The ombudsmen (in Europe) administer their role professionally within the framework of their scope of activity during a period determined by 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 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 (supported by a two-thirds majority 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 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 conviction can be specified by the law? (It can be circumscribed only as 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 injury committed to rights (proportionality);
- Expending of the available legal remedies (no more upper forums);
- 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);
- 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);

- Voluntary submission to the trial power of the state, the acceptance of sanction (it is the other important difference compared to terrorism and „ethical criminality“ – Robin Hood culture – i.e. making 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 with 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 publicity as without publicity his activity is only communication with the authorities and the organizations that does not attain the sense of citizens and public character. According to the ombudsman's international jargon, „naming is shaming“, i.e. the trespassers can be „named and shamed“ only by means of publicity in case the sanctions are missing.
- Non-violence is an obvious but basic element separating the exemplary injury of the rights of a disobedient person is the entire and absolute keeping of the frames of the constitutional state, however, in my opinion, the „picking“ of the limits of competence can be allowed to a certain extent.
- Official sanctions are rare against the ombudsmen in Hungary; they have immunity rights similar to members of parliament. 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 a treasury of similarities and differences. However, we should not get lost in the details but 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 the constitutional state who puts certain elements of the citizen's commitment and culture into the "machine" of the 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 basis in favour of human rights, constitutionality and constitutional state in order to start the correction mechanisms of publicity and the 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 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 danger of death and he just has taken part in a training of first aid. Naturally, there are doctors, qualified lawyers who organize first aid by practicing their avocations - they are the civil legal advisers.

Democracy and dictatorship

The state and 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 grip 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 disobedience could become resistance as the citizens' disobedience is possible there where human rights predominate in the constitutional culture and the citizen's autonomous sphere exists. These criteria are not present in a dictatorship; there are only vassals who are confronted with enslavement. Gandhi could develop and realize his conception owing to his strange situation, as he did his activity in 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 in the colonies though to 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 the 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 international practice we can find such authority systems tending towards democracy that have established the ombudsman's institution under an international pressure in view of evolution or for the sake of democratic expectation. These countries are the following: Poland (1988), or 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 as terrorism and insurrection but the ombudsman's institution somehow operates though the realities of the circumstances of authority 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 civil disobedience.

Namely, citizens' disobedience is closely connected to the existence of relationship of basic rights and the constitutional state between the state and the citizen meeting the international expectations. We can speak about civil disobedience only in case 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 will not be „thrust to the wall” owing to this action but they have a possibility to proceed along a fair procedure, they can appeal, they can turn to publicity by revealing the legitimate and legal reasons of their injury of rights and can mobilize 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 us think about the American soldiers opposing the war in Vietnam who 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 rights). Consequently, one of the „leading” democratic states of the world is in front of us which vindicates human rights, where the citizens wearing uniform and opposing 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 19th century by denying the paying of tax, the culture of the constitutional state has not tolerated protest against one of the bloodiest wars within the army and it is not tolerated even today.

The creative discrepancy between legality and legitimacy characterising the constitutional state is necessary both for practicing the role of citizens' disobedience and the role of the ombudsman. The norm-system of the constitutional state as well as the transparency and coherence of norms define both from the point of view of the internal rights and of international rights what is above legality, and what is the so-called „borderline” case. Legitimacy is an aspect of 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 a constitutional case and the culture of human rights. Law is not a crystalline structure without a controversy though it wants to be a crystalline structure pursuant to its leading principles. „The complexity 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.* /Attila József: “Consciousness” in: *Collected Poems. Publishing Company of Belles Lettres Budapest 1967: 296/*). Each coat will wear out and break away in spite of the most careful attention. This is why the “checking techniques of tailoring and sewing” together with the ombudsman are necessary in a constitutional state, in the democratic states of the 21st 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, 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 legality i.e. it represents the spirit of law contrary to the letter of law. In addition, the coat seems to be tight in the course of development and growth and the social and cultural changes demand new conceptions of legitimacy while the world of legality, especially the world of constitution and law for the validity of which a two-thirds vote is necessary remains unchanged. In this case, both the disobedient citizen and the ombudsman can criticise legality on the basis of the alternative ideas of legitimacy. In addition, the discrepancy between regional integration, the law of the European Union and the internal law causes more and more problems in the relationship between legality and legitimacy. It is a well-known case from practice that a distributor who was inflicted imprisonment because he sold the moped vehicles without registration number pursuant to the prescriptions of EU has undergone 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 the 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 the 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, citizens' disobedience cannot be used for solving legal conflicts, the administrative abuses and indolence of institutions of public utility. E.g. the call for not paying for 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 citizens' disobedience. Moreover, the blockade organized by taxi drivers in 1990 could not 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 could not be interpreted as well.

The missing sanctions are a common characteristic of the ombudsman's activity and the citizens' disobedience. The activity of a disobedient citizen can inhibit a process but it has not got a legally dilatory force. Later the assessment of the earlier illegal protest can become justifiable in case the law changes. Similarly, the criticism, proposals and initiations of an ombudsman do not 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 critical publicity and its mediated

forms drawn up by Habermas as the citizens can become aware of disobedience concerning their basic rights and of the ombudsman's activity. The media is shaky on critical publicity therefore nowadays the disobedient citizens rely upon the counter-publicity ensured by the post-modern communication technologies and the ombudsmen, and 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 rights (e.g. the journals entitled „Acta Humana” and „Fundamentum” in Hungary).

The state and civil society

However, in spite of the similarity and common characteristics, both the ombudsman's institution and disobedience can communicate between the state and civil society in case the state and the civil society are interpreted vertically as it was interpreted by Hegel as well. The ombudsman, however, is nearer the „upper” pole of 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 constitutionalism, 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. /Hegel: *Philosophy of Law*, Budapest: Academy Publishing Company 1971: 298/) i.e. civil society can demand directly to change it – the interpretation of the activists says it, but it is not possible – says the conservative interpretation described by Hegel.

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 systems. 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 criticism and he needs 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 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 right 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 courage” and shall take the responsibility of undertaking the fight by which they try to prove actively to the public that the actual norms and rights are against the basic norms of human rights and constitutional democracy. In case he is mistaken, he will be in jail and/or pay and he will be stigmatized and his existence will be threatened for all

his life. 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 the carpet is marked clearly, e.g. the ombudsman cannot practice 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 constitutional reform, with the exception if we accept the conception of civil disobedience as 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 pacifist-anarchistic philosophers). I think that the close relationship between revolution, the right to the resistance and civil disobedience can be interpreted only in autocratic systems that are not entirely democratic ones and they cannot be interpreted in the constitutional democracies as e.g. in Hungary because according to 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 part of the global and European network of ombudsmen, in addition it has been acknowledged as an equal partner from the beginning. More was spoken about citizens' disobedience but it was realized in a lesser extent pursuant to the definition model developed by Rawls; (such a case was e.g. disturbing the programs organized for celebrating accession to the NATO), but it can be stated generally that it was a marginal phenomenon in the history of Hungarian democracy. I.e. civil disobedience appeared during changing the political system but it did not 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 90s, the ombudsman's institution has been an 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 a significant element of the new democracy as 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 boat with the bureaucratic anomalies of the realities of the constitutional state, with the injuries of Hungarian and international rights, querying democracy. In this boat there is room for a lot of people but there are different roles that are not organized in a hierarchy similarly to the organization of a real

boat and they do not have an all-powerful captain. So the crew and the officers of the boat try to find the balance against the storms, eddies, rocks and floating icebergs and to ensure heading towards an aim that is similar to Holy Grail according to Paine's nice image - nobody has seen and touched it yet but we know that somewhere it does exist in the harmonious union of the predominance of human rights in a stable 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 if the validity of certain norms and arrangements is doubted by the critics in an abstract way (ombudsman) or actively (disobedience). The protector of 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, citizens of the cosmopolitan unity of rights who receive their legitimacy from international law and the global civil society, particularly in the autocratic systems. The disobedient citizen and the ombudsman balance continuously between the empires of internal and international law, Past and Future, 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 Worldforums of ombudsmen. I think that political independence is ensured in Hungary though it could be developed by prohibiting the appointments requiring the agreement of the political parties after the expiry their mandate. However, it cannot be excluded by this prohibition that the criticized and investigated organizations discriminate the ombudsman and his co-workers by rigorously keeping their procedures. So my co-workers and I myself as private persons can become the targets of „backlash” 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 rights. However, he fulfils his tasks with the help of his civil servants. Taking into consideration the above facts, the circumstances concerning the position of the parliamentary commissioner directly influence 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 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 organizations.

Even in case if I assume the 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 tax authorities, stopping the payment of their salaries, carrying out immediate collection, writ of execution on real estate property for on-payment of parking fees) 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 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 tax 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 HUF one-hundred million 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 procedures. I have informed 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 it is suitable for concussing any private person having a position on the other; 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 to 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 runs counter to the reasons and motives establishing this institution and endangers the purposes of the independent protection of rights.

It is suggested to the decision-makers and first of all to the parliamentary committees dealing with constitutional rights to ensure the highest level of legal protection 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 the ombudsman for protecting the rights and practice of criticism concerning the activity of authorities and other organizations. E.g.: Why does not the civil servants taking part in the checking carried out by the ombudsman have the same protection as the authorities have, why do not they have a regulated system of justification, why are not they protected the same way as everybody having magisterial power?

However, not only a new regulation is necessary that may not 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 independ-

ent protection of rights and the vicious circle is closed by it. We can find a way out of this circle 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 reproduction. It is a mechanism in the earlier societies that infiltrated the structure of everyday life and predominated it entirely. In modern societies, autonomous mechanisms are established for protecting children, for ensuring children’s rights. They create norms that protect the rights of the future generation like the Convention on the Rights of the Child created by the UNO and 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 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 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 claim is the right to 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-involvement (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 life by acquiring the liberality, peace, patience, and equality between the genders, friendship between all the people, nationalities, nations and religious groups. (Convention on the Rights of the Child – 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, rejectable things in the journalism. However, in the new language of international politics, the international regimes are mechanisms that mean a mechanism of co-operation of international organizations, 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 trou-

bles from the point of view of protection and supply, they burden both the society and the families and children. The negative traditions of the child and youth policies of the communist regime make it very problematic and difficult to involve children in social life and it means an actual negative example even today and prevents the development of new forms of organizations for young people.

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 co-operate in an optimal way for ensuring these rights. After the disappearance of the communist regime, the development of civil organizations has been spectacular but it is far from the necessary and maintainable level. Co-operation between the government agencies and civil organizations for solving the accentuated task is to be expected. 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 21st century. The prestige of family, the church and school lose their significance to an ever growing extent; everything is determined by the craze of consumption, the media and the peer groups. It is very difficult to revert 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 that in the near future there will be an ombudsman of children's rights here too as well as everywhere in Western Europe pursuant to the proposals of the UNO and the European Council.

Nowadays the institutional encouragement of the social and political activity of young people is necessary both in Hungary and in Europe. Today Europe moves the young people and not the young people move Europe in spite of the fact that a lot of positive changes started in 1968 resulting in new scales of values, new sensitivity and more open institutes. What an extent do young people require self-management originating in 1968? In my opinion, a wider sphere should be ensured for the young people to create their imaginations in our social life, in the 21st century, and in this case they would be able to create new things that correspond to the cultural-communicative horizon of the young generations. They are no more the children of the Gutenberg-galaxy but the inhabitants of the so-called „Google-galaxy“, i.e. they are children of the modern virtual communications 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 children's rights (<https://www.obh.hu>) through their virtual world in order to expound the basic rights behoving everybody. First of all we rely on European experience. By using the European networks, on the one hand it becomes possible to spread the Western experiences and methods, and to multiply our tight resources by our common activities on the other. Besides the financial support of the EU, common co-operation and real solidarity are also powers of development.

The initiations of the EU are significant in the political education both today and tomorrow because currently it is a neglected field of our social life. In Germany and in Austria, a wide organizational system and exquisite methods of po-

litical education have been developed outside the school after Fascism for spreading the culture of democracy and human rights. Nowadays it is the past in both countries, these methods have been eliminated and stopped and they have been replaced by an educational method for eliminating preconceptions against immigration and aliens and for accepting the bases of multicultural coexistence.

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

The young people’s standing off political life, the laws and even the human rights circumscribing their own autonomy remind me of the famous short story entitled „Before the 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 house-keeping for a long time, for years in front of the Gate, – it is Kafka’s absurd idea – he lives together with the members of the guard, he sacrifices his life for admittance but of no 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 the 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. /*Before the Law* in: Franz Kafka: *Novels*; Europe Publishing Company Bp. 1973: 189). Are not 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 our omissions 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 do not have any other alternatives but a democratic Europe. Apathy, alienation, aggression, the intensification of nationalism, the crisis of communities and individuals are contrary to it. We have to put 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 do and preventing us to keep the norms of co-existence in the democratic countries of Europe. 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 co-operation agreements throw open the Gate of Law in front of us – do not hesitate, let us enter it – it has been built for us.

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MÁTÉ SZABÓ

1809-1948-1989-2008-2009

Milestones in the Global and European Development of Human Rights

On the 10th of December 2008 we celebrate the 60th anniversary of the Universal Declaration of Human Rights by the UN General Assembly. The event indicated that - after years of defying the law during WW2 - member states of the UNO raised high the flag of human rights and represented a milestone in the history of approaching and codification of human rights. Great many steps had to be climbed to make this flag flying high. That time communist-socialist countries, however, subscribed and ratified the declaration, long suffering, hard work and conflicts - let's now think of the life and work of Alexander Solzenicyn - have led these countries, including Hungary, to become true contributors to and benefit from enforcement of the UN Chart. For such achievement the '89 change of the political system was required. Looked at from present-day perspective, the formal undertaking of international human rights related obligations by the authoritarian political systems of Eastern Europe without institutional democracy had remained dead and *our historical '48 and '89 could not be experience as a vivid sentiment.*

1989: before and after the political system's change

Before 1989 in Hungary and other socialist countries too, the enforcement of human rights and criticism of barriers in practicing such rights were first attempted by groups of the democratic opposition, the seedlings of an emerging civil society. The message from catacombs of the samizdat involved: "help us and demonstrate in the western press the infringement of rights and the outdated political mechanisms - our voice alone sounds weak". International treaties on human rights also ratified by the socialist countries supported the recognition and legitimization of oppositionist views and provided somewhat better conditions for going on with efforts. The earnest of the change to come and the change itself further amplified the voice of the oppositionists and promoted its appearance in the official („first”) publicity. (I remember the touch of a personal cultural shock when I first saw and heard the

„Beszélő”¹ being advertised and sold in the Budapest subway - later, the paper softened to become a standard item in newspaper stalls...). Forums of the

¹ „Speaker” (the word may be used figuratively: a., may mean a spokesman of a case, or b., the occasion when a visitor is allowed to talk with a detainee. This latter interpretation gave the word kind of an ironic feeling toward communism.)

informal network stepping up in opposition to the centrally controlled press and publishers were hotbeds of socio-political disputes, cultural events and art-works carrying the high values of human rights. Such values formerly could reach the wider domestic public mostly through western publications or - following the political changes - years or even decades after their origin, only.

Despite of all the difficulties the web of oppositionist cultural and political debates overreached the borders. As for the pre-change softening of the political system and the consequences of "glasnost" and "perestroika" period we may talk about the emergence of an "Oppositionist International". Thanks to the influence of relevant ideas and concepts - in spite of the strict political control - the amplifying effect of international human rights relations on resources of individual oppositionist groups had been sensible even in the harder period of the communist system.

The 19th Century, bringing about the development of modern political tendencies and associated democratic institutions, may be referred to as the classical era of human rights and political ideas. The power of ideas and reasoning, however, had not been overrun yet by the 20th Century complexity of the contest of political parties, mass-democracy and propaganda. Similar framework conditions had revived by the 2nd half of the 20th Century in the anti-communist sub-culture and the "second publicity" not corrupted by the single-party state and its mass propaganda. So, in a role similar to that of the 18th-19th Century liberalism, a few philosophers and activists of the oppositionist movement could come together and concentrate with 19th Century intensity on debating each-others views for solving particular human rights issues and finding escape from communist pressure. Several "Living Classic Figures" of oppositionist human rights concept emerged, like ADAM MICHNIK, VÁCLAV HAVEL, ROBERT HAVEMANN, BRONISLAW GEREMEK, KONRÁD GYÖRGY, HELLER ÁGNES, KIS JÁNOS, VAJDA MIHÁLY and others. The alternative oppositionist choir of human rights was and still is a treasury of collectively cited philosophers (Orwell, Rawls, J. S. Mill and others) and addressed issues, events and processes. Consequently, the oppositionist approach - in Hungary and in the Eastern Block as a whole - became an inspiring factor in the revival of post-communist critical political thinking relative to human rights.

The arrival of 1989 brought about a full-scope change: the former *bottom up* mechanism of legal enforcement was replaced by a *top down* one: the idea of human rights became organically embedded into the governmental ideology and values and have ever since been deemed as the norm of codification and application of the law. Political representation of the civil rights spread all over post-communist Eastern-Europe with the speed of lightning and, similarly to pre-1989 Western European practice, the *ombudsman* became effective supporters of the enforcement of such rights. The office of the *ombudsman* originated in Sweden in 1809 to investigate citizen's complaints of bureaucratic abuse and report it to the King on the work of the executive. With development of democracy the ombudsman became the appointee not of the executive but of the legislature. This kept in mind we may say that *in respect of enforcement of human rights 2009 is going to be of double importance: the bi-centennial anniversary of the ombudsman office and the 20th anniversary of the democratic political change in Eastern Europe.*

1809: the office of the ombudsman

The office of the ombudsman as legislative commissioner exists in nearly all European countries, except for the federal decentralized democracies of Switzerland, Italy and Germany where the office exists only at Cantonese, Federal Member State or Local Government levels. Outside Europe the ombudsman normally plays the role of human rights' commissioner at local to regional administrative organizations and various institutions (like universities, for example). The office does not exist in the USA neither at federal nor at member state legislation levels. The success of the ombudsman's office involves more or less efficient integration of downward and upward initiatives to enforce human rights in proceeding either in response to civil claims or ex officio. The ombudsman – like common citizens – has no positive power in decision making but has the right to inspect and demand the fullest administrative background information on problematic cases. In any case the ombudsman has to balance along a narrow path circumscribed by the fixity, efficacy and capabilities of the administration on the one hand as well as the variation, creativity, commitment or – occasional radicalism – of civil rights protection on the other hand. The style and behavior of the ombudsman is governed partly by his/her own judgment and partly by expectations of social environment or opportunities.

Similarly to the democratic opposition the most important means available to the ombudsman in demonstrating and possible solving of complaints is the wide publicity.

Spreading of the ombudsman's office is bound to the new generation human rights issues and their modern/post-modern interpretation. In Europe there are specialized offices for protection of the rights of children, women or handicapped persons, for the protection of information and data and for surmounting discrimination. How such institutionalism characterizes the new human rights philosophy? In the original conception of human rights subjects had been deemed as a multitude of uniform spheres. To-day, as described by MICHAEL IGNATIEFF, the illustrious Canadian politologist (*Michael Ignatieff: The Rights Revolution. CBC: Toronto, 2000*) subjects of human rights issues may be deemed as various length, thickness and color fibers of a rag-carpet. The conventional egalitarian approach proved to be useful in criticizing hidden or explicit legal discrimination practiced by authoritarian e.g. socialist regimes. However, when reaching the freedom and equality characterizing a constitutional state – after 1989 in Hungary – the recognition of social diversity and dissimilarities of conditions becomes inevitable. Contrary to the former homogenizing (egalitarian) approach the constitutional state has to recognize and accept the diversity of social conditions. The examples given by Ignatieff are institutions tailored to the specific character of the rights of native inhabitants of Canada. In Ignatieff's wording, however, there is a need for differentiation of rights in respect of recognizing and accepting the specific and particular rights of various groups like women, children, handicapped, diseased or homeless persons, homosexuals, refugees, immigrants or ethnic minorities. Consequently, in respect of human rights the plain world of uniform spheres should be replaced by the colorful diversity of a rag-carpet. All these aspects are prevailing in fields of the

traditional political, punitive and civil law and – in the perpetually developing and reshaping post-modern cultures – in the specific fields of law related to environmental, data and social rights protection, too.

2008: particular subject and particular rights?

The classical concept of human rights deals with a homogeneous multitude of free and equal subjects, while the post-modern approach realizes and accepts the diversity of conditions within overall limits of freedom and equality. *The rights of individuals for recognition, self-realization, independent conduct and particular self-identity* make the post-modern constitutional state similar to the rainbow pattern emitted by an otherwise transparent glass-prism. Today, on the Day of Human Rights, this post-modern plurality looked at together with human rights cultures of global and/or regional regimes developing through the decay of traditional forms of nation-states (e.g. the European Union, international treaties on climatic protection, etc.) as well as sub-states (like Scotland or Catalonia) shows an amazingly colorful context of patterns similar to that of a rag-carpet.

Unfortunately, the tendencies of outlawry and expansion as well as law equalization are simultaneous processes. Let us consider the relation between homelessness and democracy or emancipation. With specific attention to human rights, how to deal with homelessness, the allotment of some of our fellow-citizens? Applying the model developed by T.H. MARSHALL to illustrate the evolution and emancipation of human rights (*Thomas H. Marshall: Bürgerrechte und soziale Klassen. Zur Soziologie des Wohlfahrtstaates. Campus: Frankfurt am Main.1992.*), we have to discover a reversed process called *de-emancipation or demancipation* hitting hard a social group. Marshall's model describes substantive development and extension of civil rights as the wave-like movement of concentric circles. Relations between citizens – like master and servant, man and woman, etc. – were first manifested in interactions governed by common law. Political rights developed generations later to govern various layers of right for voting and electivity, freedom of speech and gathering, etc. Still later further new generations of human rights appeared – like the right to social allowances, the right to healthy environment, free access to information, the right for self-determination etc. Such full-society and global dynamism is however not free from inherent contradictions and – while being far from embracing all countries or people of the world – may take a reverse direction among those living without homes or the global outlaws not having citizenship in any country. In our case the personal state of homelessness while entitling for certain social allowance may lead to upsetting the balance of historically textured civil rights. As worded by ULRICH BECK, a sociologist specialized on globalization: *“No housing – no job. No job – no housing. Without job and housing there is no democracy.”* (Ulrich Beck: *Mi a globalizáció? (What is Globalization?) Szeged, 2005., p 164.*) The massive reproduction of homelessness is an inherent part of the global neo-liberal capitalist system. A 9th of October, 2008 report approved by the Europe Parliament on the poverty in Europe forecasts the elimination of street homelessness and solving the problem of gutter-children in member countries by 2015 issue of children...

Let us consider now the global scale violation of children's rights. The rights of children require special protection. Children have little positive power to enforce their interests, can not organize themselves, are scattery, not aware of their rights, dependant and can easily be abused or exploited. Children are exposed to particular risks including that their parents are unable or are not willing to raise them. In such cases the state, a church or other civil organization shall take care of them. They also may be adopted by a family. Such procedures fall within the scope of special attention of the national protection of children. The children's development may be affected by several forms of aggression and abuse in the family or school or as a result of recent processes, through the media and virtual reality. The institutions dedicated to protect and assist the children represent sort of a world of Kafka similar to that built by Gulliver for Lilliputs - unfortunately scaled to the dimensions of Gulliver.

No wonder, therefore, that in the context of new generation human rights increasing attention is paid to children's rights at both global and European levels. An important axiom is that children, being handicapped or homeless, are special subjects of the law and their rights are not sort of mini or Lilliput ones but are equal, if not higher, in rank to those of Gulliver. With the increasing significance of education and training and both - inverted to each-other - global demographic tendencies the attention toward children gained particular emphasis: while the accelerated decrease of birth-rate in the welfare societies of OECD countries made children scarce treasure, in the Islamic world they are particular, inevitable addressees of legislation and law enforcement due to the populous young generations.

Beginning in the 2nd half of the 20th Century the European welfare democracies - with Sweden on the lead - alongside with continental and global institutions and organizations, like the specialized organs of the UNO concluded essential international Charts and treaties on children's rights, regularly adopted by Hungary, too. What are the particularities of children's rights? One such feature is, that similarly to other international norms, enforcement of some of the rights and sanctioning of their violation face barriers. For example, the prohibition of within family aggression toward children can not be enforced and penalty sanctions can not be applied if the level of such aggression does not exceed a threshold resulting in injury. This is the reason why so frequently is talked about "*a culture of children's rights*" that is different from practicing other rights in general. Children's rights should rather be deemed as a mental development set up of moral values and program. Let us mix Lilliput tastes to Gulliver's meal!

In Gulliver-scale societies like ours still is, when children's rights are mentioned, the danger of upsetting the balance between obligations and rights are referred to by many. Rights? And where are the children's obligations toward the family, the school and the Homeland? In my capacity as legislative commissioner of the rights of citizens my specific personal aspect is focused on enforcement of rights and, in my opinion, throughout our History the burden of obligations had much more frequently pressed the tender shoulders of children than decent rights granted to them. So I am convinced that the 21st Century European and global balance should be shifted in favor of children's right. Such target is set up by the

“*children’s rights regime*” consisting of international networks, organizations and civil associations capacities of which are – at least partly – reaching over the states, they can however not go without supportive assistance of states in the enforcement of rights.

In English, the children’s right regime relies on the principle of *3P*, that is: Protection, Provision and Participation. In constitutional states children may claim special *protection* since their interests are weak, subject to risks and generally represented by others. Children should be protected from aggression, sexual abuse and any violation of their development and human dignity in the family, in the school and on public areas. In our current world the above hazards may further be severed by the virtual reality of wizard fancy homes reaching the children through the virtual spaces of the internet and mobile communication, where they perhaps spend more time than true reality. As for the fast expansion such dangers their extensity and intensity, the protection of children is lagging far behind – like chasing the shadow of a supersonic aircraft on a bike. Children should also be protected from administrative bureaucracy – administrative procedures are frequently unclear, scaled to Gulliver and authorities tend not to take even notice of them looked down from under their Gulliver’s hat. Supervisors, the various enforcing and security organizations or houses of correction are frequently dominated by grown-ups rendering them stupid in stead of giving instructions for their improvement.

“Do not hurt me Nuncle, please’ – cries the child addressed with aggression. Aggression is a false replacement medium of communication in inter-children and children to adult relations alike – just as unjustifiable as in the social relations of grown-ups. The aggression spreading among adults sooner or later penetrates into the communities of children, too. (Just let us read through the novel titled „A fehér Király” (The White King) by GYÖRGY DRAGOMÁN: The novel describes a totalitarian utopia of a culture of children’s aggressiveness. (Actuality of the topic is indicated by the fact that said novel has been translated to 28 languages.) Historically, the toughness of school systems addressed the children. Nowadays the assaulting of teachers by children is in focus. The change of the political system was associated with decreasing prestige of practically all institution. Especially so with the all in vain many times restructured school system. If the respect of magistracy undergoes deterioration, the family, the state, the police and school alike will suffer of the phenomena. Improvement can only be expected through strategies reaching over the walls of the school.

Appropriate provision of children’s care is a neuralgic issue in countries of weak economic potential, like ours, still undertaking responsibilities of a constitutional welfare state. In areas of education, catering and provision of technical conditions daily discrepancy is felt between requirements and actual performance strictly controlled by scarce resources. The report of the European Parliament discussed on the 9th October, 2008 revealed the shocking indication that children’s poverty rate may reach 10% even in rich countries like Sweden while the same figure for freshly joined member states can add up to 20 to 25%. The forecast by the EP aims at lowering the figure below 10% everywhere in Europe by 2015 through provision of meals, school-bus service and child-care as essential social allowance to each and all children. The picture is shadowed and severed by the increasing

migration of the poor into rich target countries, while in poorer countries the poverty rate is maintained by after-growth. It seems obvious that issues of children's care are dependent on the level of organization of welfare and the society as a whole, and the problems can not find solution at the level of independent but isolated countries.

The "P" representing "participation" is an inevitable requirement in respect of social role and abilities of children. The accelerated maturation of youngsters requires nearing the Gulliver-like world to them. Children should establish their own organizations, discuss their particular affairs and make decision in their own names – yeas, but in what sort of a framework? Finding the appropriate way is aggravated by the heritage of forced youth organizations of the former communist system. In the Western regions aggravating factors are the individualization and privatization of the self accentuated by the virtual and mobile communication spheres – strongly sensed in our country, too. I am convinced that the turn is not on finding out children's parliament, government and self-administration - projecting Gulliver's world onto Lilliput. Creative imagination would rather be needed to establish an appropriate framework for self-development, recognition and independence within their virtual space. To promote such processes we have developed our web-site where children's rights are disclosed in a language spoken in Lilliput – our aim is to initiate interactive communication on the matter. Until today over 10 thousand visitors clicked on our web-site and we will only be happy to receive more!

Complying with UNO recommendations the ombudsman office exists everywhere in West-Europe for the protection of children's rights. The office has already been established in a few post-communist countries, too – like Poland and Croatia. Beyond the successful European and other international examples, the need for a relevant and independent ombudsman is supported by several arguments: the scope of its activity is interdisciplinary, embraces several political aspects and seems capable of mobilizing relevant civil initiatives.

2009: globalization and the universality of human rights

The colorful rag-carpet pattern post-modern texture of human rights should remind us that our global world is inhomogeneous and for billions living at large parts of the planet the classical egalitarian law – we believe to be surpassed in Europe – is still an attractive dream, if not a satanic world. Examples of the 2008 Olympic Games in China or the 11th September terrorist attack in 2001 demonstrated us the different nature of the Islamic world where implementation of even 18th or 19th Century human rights requirements faces stringent barriers. In respect of essential human rights that and several other parts of the world are still characterized by great many defaults. Let's just consider the practice of humiliating sentences or the lack of women's rights, the freedom of religion, the freedom of speech and so on. Therefore, the 60 years old declaration is still not obsolete: a large number of populous countries are still light-years' away from true implementation of the spirit of the Declaration.

For that world the dichotomy of the first and the catacomb-like second publicity – by European democracies already left behind – is still a live challenge. The

global activists of human rights and the global civil society support and promote human rights initiatives in such regimes – similarly to the way they helped us prior to 1989. Post-communist countries, including Hungary, are also contributors to this process. This is why – preparing for the EU presidency – the Foreign Department arranged the 1st Budapest Human Rights Forum in last August pronouncedly dealing with conditions of human rights promoters living under oppression. The Forum also scheduled the establishment of a centre in Hungary to focus on scanning and monitoring genocide anywhere in the world. This issue is also continuously held on agenda by European and global network of ombudsmen.

Now, at the threshold of evolution of global processes leading to the development of new loyalties, new identities and new institutionalism beyond those of traditional national states, the Universal Declaration of Human Rights may open up new perspective. Beyond its negative impacts, the globalization opens up a new treasury of perspective and alternatives in respect of enforcement of human rights. The Universal Declaration of Human Rights by the UNO in 1948 introduced a long process demanding the enforcement universal norms. The Declaration may be deemed as an impelling starting point to amplify conventional national state human rights protection. Supposing the possibility for the emergence of a global democracy it should consider the 60 years old UNO Declaration as a cornerstone, the preamble of which states the “recognition of unalienable right of every human being to dignity” and that this should be based on “freedom, justice and peace”.

Additional to international organizations, global enforcement of human rights norms is promoted by new emerging systems of global civil societies and global publicity. By these days publicity has already undergone several mutations. The 21st Century creates new challenges calling for further changes. The mobile electronic communication and the world-wide web opened up opportunities for individuals and spontaneously formed various size groups alike that may – through creating new channels – result in disintegration of conventional political communication and full rearrangement of the old system. The small, initiative and innovative groups - playing only marginal role in bureaucratic political systems relying on the mass media – are now capable of issuing global messages to potential supporters to mobilize personal and material resources. The global media can reveal any violation of law taking place anywhere in the world and such events can not be hidden any more from eyes of the also globally operating oppositionist human rights activists.

„The world is watching you” – this means that our world becomes more and more open and transparent making possible that the spirit of the Declaration and the criticism or assistance relying on it be sent to, received at or issued from anywhere. Through the screens of our TV or PC we may daily witness the global or our unfortunate domestic humanitarian and human rights related issues. This provides possibility for more effective global civil rights protection including that at least in major centers of the globalization and through the new media as well as the activity of NGOs – socio-political conditions for protection of rights will improve.

For one and only commissioner!

The present economic-financial crisis has raised the demand of reforming the Parliament and the election system by a lot of people by taking into consideration the aspects of economy and transparency. Wouldn't it be possible for us to inspect the institution of the commissioners of Parliament as well by which the functional revival and innovation of the Ombudsman's System in Hungary could be promoted in accordance with the European norms? Almost everywhere in Europe, the commissioners' institutions operated by more ombudsmen are well-structured, at least coordination but more often a hierarchy predominates among the individual commissioners. The four parliamentary commissioners working independently of each other is a Hungarian speciality, a strange hybrid phenomenon that does not meet with a special recognition in Europe and in the surrounding countries, neither the European ombudsman nor the national ombudsmen understand it, they cannot see the attractive alternate system in it – it is considered a kind of Hungarian caprice.

How can we argue for the uniform institution of commissioner of civil rights?

1. The protection of fundamental rights

The whole spectrum of fundamental rights could be treated in a uniform way, the complaints could be processed by a uniform complaint forum by applying uniform methods and transparency and it could have a higher information and analytical value both in Hungary and abroad.

The protection of fundamental rights is realized commonly by the separate constitutional institutes (Courts, Court of Constitution, Prosecution, etc.) in consideration of each other; the operation of a uniform institution of ombudsmen could meet these requirements much more effectively. Moreover, by integrating the forums of complaints specialized on a national level and operating as the part of ombudsmen's institution in the other countries, we could obtain a comprehensive picture about the change of structure and dynamics of the citizens' complaints by which the social and political problems could be recognized and treated in a more effective way.

2. The advantages of integrated operation

A unitarian ombudsman is needed in an unitarian state because it corresponds to the split predominating in the different organs of democratic control (Court of Constitution, Courts, Prosecution, Public Expenditure Survey Committee, etc.) The effective and integrated operation would multiply the role and significance of hungarian system of ombudsmen operating nowadays by different methods and strategies and without any coordination in the society, political life and legal culture and the transparency of operation of the system would guarantee that the citizens acknowledge it.

3. Uniformity, transparency and dynamism

The uniform system of organization ensures the concentration of resources as well as the innovative and dynamic resource-allocation towards the actual emphasized topics. At the same time the uniformity would promote the clear allocation of resources and tasks that are transparent both inside and outside and are based on common general basic principles. The parliamentary commissioner of civil rights as the personificator of the uniform ombudsmen's institution would suitably coordinate and mobilize the professional deputies to find solutions for the most actual and most significant problems. So no „spaces“ can develop between the new challenges and legislation preferences prescribed in the public act for a longer period and the approach of system of fundamental rights and by this the perfect protection of rights could be realized.

4. Appearance with charisma

The significance of the ombudsman's personality is emphasized in the references describing the ombudsmen's character and behaviour all over the world and not only in the references characterizing the parliamentary commissioners of european type. The ombudsman is independent, creative, is extensively known and acknowledged. On the one hand its independence entails a serious responsibility on the government agencies, the society and the international community and on the other hand it can intensify the acceptance of measures brought by him and the efforts to keep these measures.

5. Public and social prestige

The ombudsman in a country where a uniform institution of ombudsmen operates has a higher independence and a higher social prestige. Therefore an ombudsman in these countries could belong to the public dignities as the prime minister, the president of Parliament, the president of Supreme Court *de jure* or *de facto* (it is the situation in Poland, Romania, the Czech Republic, Slovakia or Slovenia). However the precondition of belonging to these dignities is that the threshold of adequacy shall be high similar to that of the judges of constitution (the candidate shall be over 45 years, shall be a university professor or the doctor of political science or jurisprudence in case of theoretical lawyers or shall have a professional practice of at least 20 years).

Otherwise it is a very frequent situation in the European practice that this position is occupied by the former presidents of the Court of Constitution, the Supreme Court, the Public Expenditure Survey Committee or even by the former head of state. Their high professional, ethical worship, their experiences of organizing and governing the country are an enormous advantage and it seems to be un-wisdom to leave these properties unappropriated moreover their activity revalues the ombudsmen's institution and the present ombudsmen could be professional deputies working with them.

6. *Rentability*

The economy is very important but the rationality and the democratic efficiency are the main aspects. However an indirect relationship can be recognized between them – the financial resources – that run to waste at the moment because they serve for maintaining the independence of the individual institutions of ombudsmen – these resources could be used more effectively in the uniform protection of fundamental rights as well.

Is there a different get out of the today's situation?

In my opinion, the consensual system ruled nowadays by the Law of Ombudsmen would be a fatal dead end because pursuant to this system a „divided up equalitarianism“ shall predominate among the four parliamentary commissioners. Namely it would entirely divide up and fragment the structure of the institution that is in my opinion over-differentiated in the wrong direction.

While the thematic offices of professional commissioners ensure the protection of one (or two) fundamental rights, the Parliamentary Commissioner of civil rights does his activity on the basis of the complete catalogue of fundamental rights. In my opinion, therefore the demand for the „emancipating of professional commissioners“ i.e. to cancel the element of integration from the overcentralized system ensuring „unjustified“ advantages for the Parliamentary Commissioner of civil rights cannot be justified.

It would be necessary to pass either on maintaining the status quo or a more democratic, more effective and economic uniform model of parliamentary commissioners following the European model. I am convinced that the present high level system of protecting the information rights could be realized by an autonomous authority of data protection independent of the government. The establishment of this autonomous authority seems to be reasonable not only from the point of view of economy and shortage of money but from the point of view of rationality and democratic efficiency as well.

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