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A RIGHT WITHOUT A SUBJECT?

THE RIGHT TO A HEALTHY ENVIRONMENT IN THE HUNGARIAN CONSTITUTION AND THE PRACTICE OF THE HUNGARIAN CONSTITUTIONAL COURT*

Though it takes on different forms and its substance is varied, the desire for protecting the environment appears in the constitution of numerous European Union countries.[1] The various methods of regulation differ in terms of whether they formulate a right that all citizens can lay a claim to, as the Spanish, Portuguese and Belgian constitutions do, or a requirement incumbent on the state instead. The latter approach was chosen by the Austrian Constitution and the German Basic Law, for example.[2] There are also instances when it is both an individual right and a state obligation, which is the route taken by the Latvian Constitution. The Hungarian Constitutional Court's decision 28/1994. (V. 20.)—in addition to associating environmental protection with third generation rights—views the Hungarian constitutional provisions, which contain a formulation similar to the one found in the Latvian Constitution, as an 'independent institutional protection'. (According to the Constitutional Court, the latter denotes a state obligation without associated individual rights, whose realisation is thus incumbent upon state institutions.) Occasionally the notion of sustainable development[3] also crops up in constitutions. Pursuant to Article 2 (3) of the Swedish Constitution, for example, public institutions must support sustainable development, which creates a "good" environment for present and future generations. Furthermore, this provision declares the realisation of environmental protection objectives to be a state obligation. Present article will refer to various categories that are uncertain and difficult to define in legal terms; I will return to their analysis below.

According to Article 37 of the European Union's Charter of Fundamental Rights, "a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development". Consequently, ensuring this is the joint responsibility of those organs in the Union vested with legislative, judicial and executive powers. In the Lisbon Treaty, which has not entered into force yet, the notion of sustainable development is recurrent. Thus Article 2 (3) declares that the European Union "shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment".[4]

An examination of the relevant international regulations shows that the claims to a healthy environment appear as individual rights—in the context of human rights protection—in non-binding documents of international law. Binding international environmental conventions, however, do not adopt the language of human rights, which address the rights holders in terms of individual rights, but mostly declare only state obligations. The often cited *Aarhus Convention* is no exception in this regard. Though it makes provisions concerning the procedural rights of the right to a healthy environment, it specifies *state obligations* meant to protect the right to a healthy environment of all "every person of present and future generations".[5] Human rights documents often formulate these claims as the right to a healthy environment or as associated with sustainable development[6] and hence part of the right to development.[7] (Sustainable development is also specifically designated as a right, since its achievement requires the joint realisation of first and second generation rights.) Yet, there is an obvious difference between the two modes of regulation. The right to a healthy environment may appear in national documents as well, in no small part because some of its elements denote real individual rights as well as specific obligations of the state. The normative substance of the right to development, in contrast, would be more difficult to define unequivocally. The following are

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mentioned among the subjects of the latter right: all humans, all nations, and occasionally current and future generations altogether. They are all entitled to delineate the direction of economic, social, cultural and political development. In these documents we also observe examples of the rights to environment and development both being represented. The Rio Declaration, which in its Principle 3 establishes sustainable development as a right and specifies the procedural rights of the right to a healthy environment in Principle 10, is a case in point. Principle 10 therefore contains the following: the participation of affected citizens in environmental decision-making, the access to environmental information, as well as the possibility to seek effective judicial and administrative proceedings, including the right to legal redress and remedy.

The author believes that in examining the justifiability of a legal regulation, comparative methods and community as well as international legal examples need to be used cautiously, since the mere existence of a legal regulation obviously does not determine whether the particular solution it offers is suitable or not. In any case, the inclusion of environmental protection in constitutions also implies a value judgment on the importance of this issue. It generally does not provide a new individual right, but it does enrich the substance of fundamental rights, including the individual rights. By the latter I mean real rights, which are not construed only as state obligations, but also wholly as individual rights with subjects, in other words as rights that can be enforced.

To sum up: to draft efficient legal solutions, we must draw on the experience of international regulations and strive to use the least possible number of concepts that are difficult to delineate in legal terms. An example of a concept that is difficult to define is sustainable development, which refers to a hitherto unknown development that reconciles environmental needs with economic and social development. At the same time it would be difficult to precisely determine what the term means. There is no unequivocal, exact legal definition and, moreover, there are widely diverging philosophical approaches underpinning it. (Often even ones that proclaim the possibility of leaving behind modern industrial society). The term also alludes to intergenerational equality, but the notion of future generation is itself problematic in terms of legal regulation, since the interests of those not yet born or not conceived are difficult to discern, and hence within the framework of our current legal concepts they cannot be legal subjects in national legal systems. Indeed, it is even uncertain whether sustainable development can be achieved at all. Many believe that it is an oxymoron and cannot be implemented, as economic development as it is conceived today is based on growth, while the sustainable development presumes that our resources will remain fixed and finite. It is true that legal documents often employ terms whose content cannot be exactly defined. The concept of public interest—popular in Hungarian legal documents—springs to mind, for example. In limiting the rights of the owners of forests, the Hungarian Constitutional Court also alluded to public interest in connection with the right to a healthy environment.[8] But an efficient legal regulation ought to scale back the use of such terms to the greatest possible extent.

Let me add that theoretically in the case of international regulation, too, the most fortunate approach would be if it was not only the soft legal declarations but also the international conventions on the subject of environmental protection, which would refer to the connection between human rights and the state of the environment, and if they would moreover specifically enumerate the individual rights derived therefrom, thus truly integrating environmental protection into the framework of international human rights protection. It is obviously not a legal task to define the term environment, but it is nevertheless certain that it already entails a legal object worthy of protection. The following are typically among—often constitutionally—designated objects of protection: the earth's soil, air and water layer, the flora and fauna, as well as their interrelationship; occasionally the reference is specifically to climate. It also happens that constitutional provisions make a distinct declaration about the responsibility towards future generations, as well as the protection of animals[9] or the promotion of sustainable development. The evolution of the state's mandated duty to protect the environment may be substantially influenced by the following environmental principles—whose substance is oftentimes difficult to define in legal terms: prevention, polluter pays, sustainability, the prohibition on adversely altering the state of the environment. The list of these principles was formulated in the past decades, and in the time since it was expanded to include ever new principles. Occasionally the substance of individual principles has changed, too, though the legal regulations have not always been capable of capturing the changes in content. The impact of environmental protection interests on legislation becomes more important, as a result of the development—in no small part thanks to the green movements—that the members of the political community are increasingly committed to

environmental protection. What we can state already at the outset, however, is the following: the constitutionally laid down obligations to protect the environment are primarily incumbent on states rather than people.

THE HUNGARIAN CONSTITUTION

Act XXXI of 1989, adopted at the time of regime transition, was formally only an amendment of the earlier constitution, Act XX of 1949, but in practice it meant the adoption of a new constitution. The specifically enumerated human right rights transposed into the Constitution were—with consideration of international law obligations—mostly those rights that are beyond dispute.[10] In this respect the only exceptions in the list of fundamental rights—which is in any case rather extensive in scope—are Article 68 on the special rights of minorities and the right to a healthy environment, which was excluded from the chapter on fundamental rights. It is true, however, that the contents of the latter are not clearly circumscribed. It is only mentioned in Article 18 of the Constitution's *General Provisions* chapter, which lays down the fundaments of the constitutional order. Certainly, in this chapter the Hungarian Constitution also mentions other fundamental rights, such as for instance the freedom of economic competition or the right to property, enterprise or inheritance. Hence one cannot conclude that a right only entails a state obligation merely from the fact that it appears in the first chapter of the Constitution. In addition to the provisions already mentioned, this chapter also contains the commitment to the ethnic Hungarians who live across the borders, as well as the obligations to respect human rights or to take care of those in need.

Following Article 18, "[t]he Republic of Hungary recognizes and shall implement the individual's right to a healthy environment".[11] An effort to try to seek out the historical antecedents of this provision in the Constitution would be in vain, which is no coincidence given that the history of protecting the environment constitutionally is no more than three decades old. The fact that it appears in the new constitution is on the one hand a response to the environmentally devastating effects of the previous regime's industrialisation policy, and on the other hand to the population's lack of interest—up until the 80s—in this issue. But it may also have been a result of the fact that the environmental movements played a significant role in regime transition.

(An example worth mentioning is for example the Duna Kör [Danube Circle] civic organisation, founded on 1st August 1984, which fought against the construction of the Gabčíkovo—Nagymaros Waterworks, by publishing samizdats and organising protests.)

Apart from its mention in Article 18, the word environment appears only in one other place in the Constitution: in the fundamental rights chapter's Article 70, where the constitutional legislator mentions the protection of the built-in and natural environment in connection with the assertion of the right to health.[12] This is the only place where environmental protection appears explicitly in the fundamental rights chapter of the Hungarian Constitution, as the guarantee of the "highest possible level of physical and mental health"—the drafters of the Constitution regard environmental protection as one of the safeguards of the right to health. The latter article was part of the Constitution already before 1989.[13]

This article adds little to the understanding of the right to a healthy environment, though it allows for the conclusion that the concept of environment extends not only to natural, but also to built-in environment. This is the formulation that necessitated the analysis found in Constitutional Court decision 28/1994. (V. 20.), according to which neither the mention of the state's environmental obligations as instruments for the realisation of the right to health, nor the wording of Article 18, which expressly refers to the right to a healthy environment, can be regarded as limitations on the right to environment.[14] Legal literature does not interpret the wording restrictively (they use the attributes clean or appropriate to provide a clearer specification, or they quite simply refer to it as the right to environment, occasionally as the right to environmental protection.) We should add that the name of a legal institution does not inescapably lead to conclusions regarding its contents. If all we had to go on was the meaning of a term, then for instance the right to environment would be impossible to grasp.[15] Moreover, the wording used by the Hungarian Constitutions does not refer to human health only, but to a healthy environment in general, which is obviously a broader category. And the fact that the Constitution mandates an implementation of the right to health with a consideration of environmental interests cannot in itself provide a basis for the restriction of the right to environment. Overall, all that can be said regarding this article's relation to the environment is that it speaks of an environmentally conscious application of the right to health. Which, given the provi-

sions of Article 18, is in my opinion a legitimate expectation regarding the implementation of any fundamental right.

THE RIGHT TO A HEALTHY ENVIRONMENT

It is the Constitutional Court's task to uncover the various layers of meaning behind Article 18's right to a healthy environment. The Court addressed this issue in several decisions, thereby developing its binding interpretation. To understand the gravity of these decisions, it is necessary to refer to the concept of the "Invisible Constitution", invoked in its early phase by the first Constitutional Court, which acted from 1st January 1990 on—and undoubtedly evinced a greater sensitivity to dogmatic issues than the current Court. In contrast to the official reasoning, at first glance this concept appears to be inspired by natural law. According to the concept, the justices believe to discern an "independent permanence" behind the Invisible Constitution, and in ascertaining it they rely on the methods offered by comparative law and legal literature.[16] The postulation of this doctrine, which was later withdrawn, was necessitated by the particular circumstances of the rule of law transition, as well as the text—originally thought to be transitional—of the 1989 Constitution. The notion suggests that the Constitution has a layer of meaning that we would search for in vain by looking at the text only—it emerges from the Constitutional Court's decision instead. It was in part due to this—subsequently rejected—concept that the Constitutional Court early on began to refer back to its own practice, that is to the "Invisible Constitution" contained therein. By doing so it achieved the following at the very least: it either declared correct one of potentially several competing interpretations of individual articles or redressed regulatory deficiencies. Thereby it also significantly constrained the latitude available to those making, interpreting and applying the law. True enough, apart from redressing regulatory deficiencies all constitutional courts do this even without the concept of an "Invisible Constitution".

According to Article 27 (2) of Act XXXII of 1989 on the Constitutional Court, a decision by the Constitutional Court is binding for everyone. The question is what happens if the interpretation in the given decision is not consistent with the text of the Constitution and who is entitled to make this determination if such an instance were to occur. In construing Article 18, for instance, surprisingly even the text of the visible Constitution did not significantly tie the hands of those shaping the "Invisible Constitution".

Serious theoretical objections can be invoked against the comparative law methods used to reveal the Invisible Constitution. The essence of said objections is aptly illustrated by the interpretation of the right to a healthy environment, in construing which the Constitutional Court quite obviously relied on the interpretation of the German constitution. It did so in spite of the fact that the environmental provisions of the two constitutions differ to no small degree. As opposed to the German Basic Laws, the Hungarian Constitution formulates the right to a healthy environment as an individual right and not merely as a state objective.[17]

Given the position of Article 18 in the Constitution and the dynamic changes in its contents as well as the state policy underlying it, the Constitutional Court was compelled rather early to analyse the right to a healthy environment. Since it does not appear as a human right in the fundamental rights chapter, and hence does not seem to be a right at first glance, the Court had to discern a veritably invisible content, and on occasion create it, too. The interpretation that thus emerged is still making itself felt in legislation. After all if there is a compelling, logical, binding and moreover appealing reasoning, which additionally enjoys the widespread support of civil society, then the legal profession and the public often accept it without hesitation. The Constitutional Court's reasoning also cropped up in public policy proposals and on occasion it provided a point of reference in the creation of new public institutions. As I shall elaborate below, with the help of the Constitutional Court's reasoning the future generations have come to play a role—though only in indirect form—in public policy debates and have given a meaning and a name to the act on a new parliamentary commissioner (ombudsman). The main elements of the analysis were summarised in Constitutional Court decision 28/1994. (V. 20.). A differently constituted Constitutional Court was not able to add anything subsequently, nor did it undertake an attempt at reinterpreting it. Though environmental protection does appear in Constitutional Court decisions adopted later.[18]

THE OBLIGATED PARTY

Article 18 of the Constitution mentions as a right of everyone a right that does not appear in the Constitution's fundamental rights chapters, and whose en-

forcement is designated as a state obligation. According to Constitutional Court decision 28/1994. (V. 20.), it is by no means a coincidence that the right to a healthy environment was included among the general provisions. The decision states that in the area of environment it is the state's duty to protect the natural bases of life and to develop the institutions that manage the finite resources.[19] (The Constitutional Court presumably borrowed the term natural bases of life from the formulation of the German Basic Laws.)[20] That is pursuant to Article 18 it is the responsibility of the Republic of Hungary to enforce this right and to implement it practically.

In extrapolating the responsibilities of the party under obligation, it is essential to determine whom the obligation is incumbent upon: the state or private persons, too. Following Constitutional Court decision 996/G/1990, as a result of relevant constitutional provisions "the state is obliged to create and operate specific institutions serving to realise the right to a healthy environment. […] The state's obligations need to include the protection of the natural bases of life and have to extend to the creation of institutions for the management of finite resources".[21] In terms of the organisational structure of the state, these obligations primarily influence legislation,[22] and only through the latter do they affect the judiciary and the executive.[23]

These obligations, however, may also bind the executive in situations in which there is no distinct provision mandating that the executive organs design their organisational structure and procedures in an environmentally friendly fashion. Such kind of provisions cannot have a direct effect on private persons. If the state fulfils its legislative duty, then environmental obligations reach private persons through the mediation of legal regulations. It is the legislator who can mandate the environmentally friendly behaviour of private persons, that is the state obligation reaches its targets via the legal regulation. The obligation laid down in the Constitution does therefore not directly refer to non-state actors.

THE POSSIBILITY OF RESTRICTING RIGHTS

Constitutional Court decision 28/1994. (V. 20.) states that it is the state's duty to preserve the status quo in the area of environmental protection. The right to a healthy environment laid down in Article 18 "encompasses the duty of the Republic of Hungary to ensure that the state may not lower the level of environmental protection provided through legal regulations, unless it is unavoidable in the interest of asserting another fundamental right or constitutional principle".[24] The Court further argues that even if the latter case applies, the degree of lowering the level of environmental protection may not be disproportional relative to the other right or principle in question.[25] In the case of adverse changes in legislative and organisational safeguard provisions concerning environmental protection, the adequate level of protection needs to be ensured by applying the requirements mandated with regard to the restriction of fundamental rights, so that the possibilities for sustaining life are not affected.

In expounding on the right to a healthy environment, the Constitutional Court placed the emphasis on analysing the aspects relating to the state's obligation, while the individual right aspect was relegated to the background. Though the Court's assertions with regard to these obligations are not in dispute, it does not hurt to add the following: the Constitutions' wording on environmental protection does not refer to state obligations only, but also to *everyone's rights*—that is their entitlements—on the other side of the ledger. Rejecting the existence of a constitutional individual rights aspect of the relevant provisions—based on the reasoning discussed below—cannot be justified on the grounds of the position they occupy in the Constitution. Though it cannot be denied that—as we noted—for a variety of reasons other rights, too, were included in this chapter of the Constitutions, these did not become only state obligations by virtue of this fact. The fact that the right to property is included in the first chapter of the Constitution does not mean that it can be construed merely as a state obligation, and the Constitutional Court does not claim this, either.

INDIVIDUAL RIGHTS?

If we examine the individual rights aspect of the right to healthy environment, then the question arises whether there are any individual rights behind the provisions at all. If there are none, then in a situation in which a state organ fails to respect its obligation vis-à-vis private persons, the individuals become defenceless in the face of the state's failure to discharge its duties. In such cases the substance of the constitutional obligation extends to all three branches of government, but at the same time it does not provide for the possibility—ensured on a constitutional basis—of private persons enforcing their claims. If a constitutionally declared state obligation is not paired with matching individual rights,

then in and of themselves they do not provide legal protection for the individual.

Without procedural rights, any human rights protection system could become inoperable, and the rights contained therein, too, could become victims of state despotism. To comprehend this, let us take an example that may not be entirely comparable with that of domestic regulation, but is nevertheless illustrative. How could there be a means of asserting individual interests before the European Court of Human Rights if the for instance the European Convention on Human Rights were to mention a fundamental right merely as a state obligation, without designating its individual rights aspect?

Moreover, there are fundamental rights associated specifically with environmental protection—formulated in the context of human rights protection—, which are procedural rights. We may add that when talking about the right to environment, then in most cases we discuss rights—due to all who are affected—that the human rights documents contain in any case. Hence the right to a healthy environment must not necessarily be explicitly mentioned. These are mostly formulated as rights derived from procedural rights, thus endowing the derived rights with some kind of surplus content. Generally, this may happen with regard to the following rights: the rights to legal remedy, information and to participate in decision-making processes. The access to environmental information, for example, may have some surplus content, namely that the state not only erect no barriers to stem the free flow of information, but is also obliged to supply its citizens with information concerning the state of the environment.

I do not at all find it necessary that national legislators follow international documents—which mostly formulate this right as a third generation right—in developing the right to environment. The reason is that—and I will return to this below—third generation rights cannot be construed as rights in domestic legal systems. (In my view they can neither be moulded into rights, nor into duties without losing their original meaning.) Hence the characterisation that regards them as an utopia founded on common human values is apt indeed. Keep in mind that the rights to environment and development—linked to environmental interests—, which are often declared in international legal documents and treated as third generation rights, not only lack an unequivocal definition, but moreover also leave unclear who the rights holders are and what their rights consist of. Certainly we must also mention that of these two rights, the right to environment is in a better position, as the international documents formulate certain aspects of it—often almost as an aside—as a procedural right with specific, real substance.

INDEPENDENT AND AUTONOMOUS INSTITUTIONAL PROTECTION

From a jurisprudential perspective, the more problematic aspect of Constitutional Court decision 28/1994. (V. 20.) is that it construes the right to a healthy environment as an "independent and autonomous institutional protection".[26] This suggests that the safeguards concerning the realisation of the state's obligations in the area of environmental protection are elevated to the level of fundamental rights, and hence these must be implemented with statutory and organisational guarantees rather than by the legal protection of individuals on a fundamental rights level. This is problematic even beyond the issue that individuals are left without fundamental rights protection. To grasp this problem, it is helpful to raise the following question: Could there be a separate, "independent and autonomous institutional protection" without direct individual rights support? Does the text of the Constitution support such an interpretation? According to the reasoning provided by the Constitutional Court's decision, the answer is affirmative, but my personal response is: hardly. As an argument to the contrary it may be noted—beyond the fact that it is dubious in terms of jurisprudence—that the text of the Hungarian Constitution speaks of the right to a healthy environment as a right due to *everyone* and hence, as opposed to the German Basic Laws, it does not support such an interpretation. Moreover, in the Constitutional Court's reasoning the right to a healthy environment stands apart from other fundamental rights and only has an institutional protection aspect, which carries the aforementioned risk that an individual cannot lay claim to it before a court. Certainly, Constitutional Court decision 28/1994. (V. 20.) only rules out the individual rights aspect of direct fundamental rights protection. It does not rule out, however, that the right to a healthy environment might have enforceable individual rights elements (below the fundamental right level). In any case, the lack of a subject of the environmental protection obligation is dubious on the grounds that the rights expressly associated with environmental protection, which can be formulated independently as real individual rights as well, are as a matter of fact constitutionally guaranteed procedural rights.

To this group belongs the abovementioned right to participation in environmental decision-making, to access information regarding the environment and the right to legal remedy against environmental decisions.

These naturally need not be individually enumerated, they can be construed as derivative rights of traditional human rights. The right to a healthy environment laid down in the Hungarian Constitution could also be interpreted as saying that the state obligation is countered by an environmentally conscious application of traditional human rights. The freedom of information can obviously not be enriched with a layer of meaning which suggests that it does not merely formulate the need for a transparent state, but of a public power that is obliged to active behaviour directed towards providing its citizens with environmental information. The involvement of the population in making environmental decisions can clearly be seen as a right derived from political rights. And within the right to legal remedy is evidently contained the possibility of filing a complaint against environmental decisions. I emphasise that these rights cannot only be classified as rights derived from the right to environment—the justified social need behind them can also be formulated so as to say that they require the environmentally conscious application of traditional human rights. The essence of such an approach would be that the state obligation laid down in the Constitution's Article 18 can be contrasted with an environmentally sensitive application of the fundamental rights laid down in the Constitution. We could of course consider their environmentally conscious application as self-evident, but then the Constitutional Court's binding interpretation should have pointed this out. Though there are cautious references in the decision pointing in this direction, in its comparison of the nature of social rights and the right to a healthy environment the Court nevertheless rejects the possibility of such an interpretation.

In its decision 28/1994. (V. 20.), the Court also weighed whether to construe the right to environment as a right that curtails the substance of other fundamental rights. In this context it examined the relationship between social rights and the right to environment—as a third generation right—with regard to the question whether the constitutional duties underlying them are comparable. Based on this examination, the Court arrived at the following conclusion: "In addition to actions taken by the relevant institutions, social rights are realised with the use of the individual rights associated with them, which need to be determined by the legislature.

[…]

c) It follows from the above that although 'everybody', or at least every citizen, is entitled to social rights, the specific rights holders of the given individual rights serving the realisation of these social rights can be identified".[27]

Based on the above, the Constitutional Court concluded that the right to environment cannot be compared to social rights, either, since—as opposed to social rights—in the case of the right to environment it is the objective institutional side that is "prevalent and decisive".[28] And it adds the following: due to the particularity of this right, all the duties that the state in other areas fulfils through the protection of individual rights, are in this instance discharged "through the provision of legislative and organisational guarantees".[29]

Let us enumerate some of Constitution's fundamental rights in which the respective entitlement's relation to environmental protection could have been explored. Such is for instance the right to free movement and to freely choose one's location of residence, laid down in the Constitution's Article 58, or the inviolability of one's private home, to be found in Article 59. We may further also refer to the right enshrined in Article 61 (1), according to which "[i]n the Republic of Hungary everyone has the right to freely express his opinion, and furthermore to access and distribute information of public interest". (The Constitutional Court made a brief reference to this paragraph.) We could also point to paragraph 5 of Article 57, which states that "in the Republic of Hungary everyone may seek legal remedy, in accordance with the provisions of the law, to judicial, administrative or other official decisions, which infringe on his rights or justified interests. An act passed by a majority of two-thirds of the votes of the Members of Parliament present may impose restrictions on the right to legal remedy in the interest of, and in proportion with, adjudication of legal disputes within a reasonable period of time". And the list could go on.

Let us recall that there are applications submitted to the most important institution serving the protection of first generation human rights, the European Court of Human Rights, which specifically address environmental protection problems. Moreover, we should note: the breach of convention in cases pertaining to environmental issues was made out with reference to a violation of the respect for private and family life.[30] This was true even in cases in which the establishment of a violation of the right to life would have been conceivable, such as the *Guerra and Others v Italy* case. (Maybe in such cases judges are

prone to avoid making out a violation of the right to life to curb protest by the states in question.)[31]

Obviously the Constitutional Court's approach does not rule out the possibility that the realisation of the state's environmental obligation necessitates the formulation of individual rights. The Constitutional Court's decisions, however, do not provide any guidance as to the potential substance of such rights, save for the assertion that they only indirectly pertain to environmental protection. Instead, the decisions explore the state obligation aspects of the right to a healthy environment, that is the substance of the obligation to provide protection through institutions, which serves the realisation of the right to life. According to the Court, the right to environmental protection is in fact a part of the objective institutional protection aspect of the right to life (Article 54 (1)).[32] This is a misleading reasoning, however. It is of course true that the state's obligations to protect life and to protect the environment are related to each other. Their relationship may be better characterised as having intersecting points, however. I believe that the relationship between fundamental rights and environmental protection cannot be reduced to this aspect.

At the same time it appears based on the Constitutional Court's reasoning that the right to environment is more than a mere constitutional duty or state objective, given that the curtailment of this right is only allowed under the same conditions as that of individual rights. This does raise the following question, however: if the nature of this right is identical to those of individual rights, then can the designation of legal subjects and their rights be avoided? If on the other hand the right to a healthy environment is not an individual right, but rather an "independent protection provided by institutions", then I do not know how a test regarding the restriction of rights might work in practice.

Such doubts appear to be justified by the aforementioned cases, in which the Constitutional Court had to refer to the rather vague concept of public interest in defending the right to a healthy environment by curtailing the rights of forest owners, instead of justifying the restriction of rights by requiring an environmentally sensitive application of the right to property or another human right.[33]

It is no coincidence that the Constitutional Court regards the prevailing definition of the concept of public interest as the parliament's task, and has thus refrained from undertaking such a determination itself. Naturally, the constitutional presence of this concept needs to be construed as narrowly as possible, and under no circumstances is it fortuitous to curtail human rights with reference to public interest. This is true even though such and similar grounds for the curtailment of rights are mentioned in international documents as well.[34] Furthermore, we must also add that no serious theoretical concerns arise if the concept is not used to curtail fundamental rights, but rather to undergird individual rights, for instance in the form of a public interest litigation.[35] The Act on Environmental Protection[36] itself allows for the latter, in that the statute expressly provides for the possibility of associations and civic organisations—established to assert the interest in a healthy environment—turning directly to courts in the form of a public interest litigation. Concerning this possibility, Constitutional Court decision 1146/B/2005. AB also alluded to the Court's earlier reasoning on the lacking legal subject for the right to a healthy environment, and noted that in this case Paragraph 1 of Article 98 of the law on environment provides a procedural-type individual right.[37] The Court argues that this is the case because the aforementioned organisations "are not asserting their own rights, but rather act in a communal interest—the protection of the environment—, which they voluntarily represent".[38] Evidently, regardless of the above, all those who have the legal standing of directly involved parties to the case on the basis of "Article 15 (1) of Act on the General Rules of the Public Administration[39]—that is those who have a personal interest in the case, whose rights, legal interests or legal situation are affected—have the right to seek legal remedy through administrative channels, as well as to turn to a court".[40] In other words, the public interest litigation helps the enforcement of an individual right secured by act.

FUTURE GENERATIONS AND NATURAL OBJECTS

The conclusion that on a constitutional level the right to a healthy environment only has an institutional protection aspect was based on the one hand on the specific placing of Article 18 within the Constitution, and on the other hand on the fact that in the fundamental rights chapter it is not formulated as a real right, either. But more importantly it is due to the fact that in Constitutional Court decision 28/1994. (V. 20.) the desire for the constitutional protection of entities that are difficult to define in legal terms (such as for instance future generations) appears, too.

The Constitutional Court has established: in the context of the right to life, the state's objective obli-

gation to provide protection through institutions extends to human life in general as well; and this includes an obligation to ensure the life conditions of future generations.[41] Let us review the reasoning! Referring back to its decision 64/1991. (XII. 17.), the Constitutional Court laid down concerning the objective, institutional protection of fundamental rights that their "scope may extend beyond the protection that the same fundamental right offers as an individual right. This objective protection is not only broader in scope, but is also qualitatively different than the mere sum of adding individual rights. Regarding the right to life, for instance, the state's objective institutional protection obligation extends to human life in general—to human life as a value; and this encompasses the duty to secure the life conditions of future generations.[42] Furthermore, following the Constitutional Court decision, the objective protection "is not only broader but also qualitatively different, than the mere sum of the protections provided by individual rights". Hence according to the decision it is obviously more than that, and whatever the surplus may be, this is the uncertain area wherein one will find future generations and natural objects.

Thus according to the Court the Constitution expressly designates the state's obligation to sustain the environmental bases for human life as a separate constitutional "right". The Constitutional Court has concluded that as a result of the right to life contained in the Hungarian Constitution, the obligations relating to environmental protection could be deduced even in the absence of Article 18. Indeed, subsequently the Court did not invoke Article 18 in its elaboration on the obligation to protect the environment. Hence the examination, as I noted previously, focused on the state obligation in the context of the right to life, that is on Article 54 (1).[43] At the same time obviously other rights, too, such as a violation of the aforementioned right to health or the inviolability of private residence, can help persons who seek to assert their environmental interests. In the Constitutional Court's understanding, the right to a healthy environment thus secures the physical preconditions of the right to life. At the same time, the question arises how other fundamental rights laid down in the Constitution can be applied in a way that is sensitive towards environmental interests (environmentally conscious), and I believe that this question is left unanswered by this interpretation. It is also a matter of debate why the legislator needs to examine environmental protection in such detail only in the context of the right to life. The reasoning that all fundamental rights can be brought into some kind of relation with the right to life—since this is basis for all other rights, from whence they derive—is not acceptable. (This reasoning, which I find untenable, also appears in the practice of the European Court of Human Rights).[44] Such an argument obviously stands on a weak ground, since if it were to hold then it would be superfluous to specifically mention any other right by name in the Constitution. It would be sufficient to include the right to life in the fundamental rights chapter. And then we would still face the question of what ought to happen to the aforementioned procedural rights of environmental protection, as well as what happens if the state does not ensure access to environmental information, a right that the Hungarian Constitution does not expressly declare. It is especially problematic that through this interpretation, which later became binding, the Constitutional Court practically severed the tie between the right to a healthy environment and the individual rights aspect of the right to life. The Constitutional Court is correct in asserting that the rights specifically associated with environmental protection are primarily of a procedural kind. But from this it may precisely follow that they have an individual rights aspect, too. It is naturally true that for the most part these are rights that are only indirectly connected to the environment. Nevertheless, the Constitutional Court did not deem it necessary to analyse this relationship in the context of other rights. Indeed, it appears that the Constitutional Court could have foregone even Article 18: "In the absence of the Constitution's Article 18, the state's obligations regarding the environment could be deduced with an expansive interpretation from the Constitution's Article 54 (1) as well".

The Court saw the particularity of the right to a healthy environment in the notion that its subject is "humanity" in its entirety, meaning a unity of present and future generations, or "nature", respectively. As the decision argues, "this problem is illustrated by all efforts that seek to endow nature or, as its "representative", animals, plants, etc. with rights", and which speak of the rights of generations yet unborn. The body referred to all this as "figurative speech", adding that it was unnecessary to create such legal constructs to establish legal obligations vis-à-vis "nature" or the "present and future humanity". This leads to the counterargument, formulated by László Sólyom (the former president of the Constitutional Court and current president of the Republic of Hungary) himself, according to which a constitutionally declared state obligation must always face a right and the holder of said right.[45] This is necessary in order to ensure that the obligations

are not without any control, so that they cannot turn against those whose legal protection they are meant to serve, that is natural persons. This means, however, that either future generations or natural objects are the rights holders, or else it does not make sense to speak of a constitutionally enshrined state obligation towards them.

In reality it is not only that future generations or moss or trees have no rights today, but there is also no constitutional obligation towards them, to draw on the "figurative speech" referred to by those who wrote the decision. On the basis of our legal thinking, the real objective of legal protection is to safeguard those alive today. We may add that if we accept the Constitutional Court's train of thought, then it may also be stated that the Court could hardly have gone any further, and its reasoning harbours serious risks. After all, in its decision the Constitutional Court mentioned entities (e.g. future generations and natural objects),[46] the majority of which can neither be endowed with rights on the basis of current legal thinking, nor be designated as the objective of constitutional obligations. We may also add that based on our current legal thinking, we have certainly no legal obligations towards future generations, for the very plain reason that these generations have no clearly discernible interests (they have not even be conceived yet), and they cannot make demands against us, either. Furthermore, apart from vertebrate animals this holds for natural objects, too.[47] I think that the determination of whether future generations or natural objects could be the objectives of obligations requires a complex examination. But we could note already here that this interpretation appears to contradict the Constitution's Article 18, which refers to the right to a healthy environment as a right that everyone is entitled to, that is all individual humans alive today. In a democratic society a great deal can obviously be achieved through a majority decision, maybe even a shift authorising the state to endow future generations or natural objects with legal capacity. But—and this may not be disregarded—as of yet this has not occurred in the Hungarian legal system. Such a decision would be contrary to our current legal thinking, which may change in the future, however.[48]

At the moment—based on the Constitutional Court's decisions—the right to a healthy environment is not an individual right, but it is not a mere state objective, either. According to the Court "the rights of animals and trees" are not mere metaphors: the state veritably has obligations to sustain the natural bases of all life and is obligated to protect all life "starting with the moss all the way to the embryo". But this protection is relative and only the human has an individual right to it.[49] I am not certain, however, that this is necessarily and always true. Of the abovementioned categories, only animals could conceivably be the targeted objectives of a constitutional-level obligation, that is the granting of a limited status as legal subjects is only possible in the context of animals or in the "case of animal rights".[50] And even as far as they are concerned, I do not find the parallel that compares the development wherein they become legal subjects with slave emancipation particularly fortunate. A catalogue of animal rights, whose adoption has been urged for a while now, should diverge from those of human rights in no small measure.

THE PARLIAMENTARY COMMISSIONER (SPECIALIZED OMBUDSMAN) FOR FUTURE GENERATIONS

The Constitutional Court does not regard the right to a healthy environment as an individual right from a fundamental rights perspective.[51] This could have an interesting impact on the future role of the environmental protection ombudsman, whose office was created in 2007. Somewhat surprisingly at first glance, the act establishing the position refers to the Commissioner for Future Generations.[52] The name presumably reflects a desire to draw attention to the future effects of today's policy decisions, a function that the ombudsman's institution is expected to fulfil. If we take seriously the Constitutional Court's interpretation that there is no constitutional level individual rights aspect of the right to environment, however, then it is not entirely clear how a parliamentary commissioner specialising in this area could discharge his duties. Let me add that following Article 2 (2) of Act LXI on the Parliamentary Commissioner for the Rights of Citizens, "the National Assembly may elect with two-thirds of its votes a parliamentary commissioner, whose position is established by law, for the protection of individual fundamental rights". But what could justify the election of a commissioner for the protection of a fundamental right that has no individual rights aspect? After all, in Hungary one turns to parliamentary commissioners with complaints connected to constitutional rights.

At the same time, there are numerous misconceptions in the public perception regarding the authority of the Commissioner for Future Generations, not only due to the rather misleading nature of the po-

sition's name, but also as a result of the original demands of the green organisations and the inflated expectations regarding the office. Prior to the adoption of the law, for instance, 68 green organisations asked the leaders of the parliamentary factions to "establish an efficiently functioning institution for the protection of coming generations and in the interest of sustainable development".[53] Nevertheless, the legislature did not satisfy the original demands of the civic organisations, as it did not create an institution to represent or safeguard the interests of future generations, but rather a new environmental protection commissioner for the protection of the environmental rights of those alive today. Thus the relevant statute does not entitle those who have not been born or not even conceived yet—people without characteristics or faces—to turn to a specialised commissioner with their complaints. The latter task would not require a massive administrative apparatus, by the way, employing one or two fortune-tellers would be sufficient—it is hardly advisable to spend public funds for such purposes, however.

The above naturally do not question the necessity of a specialised commissioner for environmental protection, which is the responsibility for which the Commissioner for Future Generations was created. Specialised ombudsman institutions can be established for the protection of any constitutionally guaranteed right that pertains to a sensitive social issue, if the everyday violation of the given right is a veritable danger to citizens' freedom. The newly created ombudsman institution, however, in fact raises further problems due to the lack of subjects for the rights it protects. Parliament chose to remedy these problems by circumventing them: the Commissioner for Future Generations was created through an amendment of the Act on Parliamentary Commissioners for the Rights of Citizens, and hence the question of how citizens can turn to the commissioner was not addressed separately in this specific context. Let me add that this particular mode of regulation cannot mean anything but the rejection of the notion that the right to a healthy environment has no subject, that is the rejection of the binding interpretation found in the Constitutional Court's decisions.[54]

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A reference in Constitutional Court decision 28/1994. (V. 20.) tied the right to environment to third generation rights. The problem with this approach is that—as we pointed out—third generation rights cannot be regarded as anything but utopias grounded in common human values.[55] And through the Constitutional Court decision uncertain—though appealing—elements of this utopia have seeped into Hungarian law. Certainly, their arrival was not taken seriously by either the Hungarian legislation or law applying organs—though they did cause some uncertainty—, indeed, maybe they could not or would not discern the real substance of the Constitutional Court's decisions.

Translated by Gábor Győri

NOTES

1. Erika Elisabeth Orth, 'Umweltschutz in den Verfassungen der EU-Mitgliedstaaten' [2007] 29 Natur und Recht 229.
2. For more details on the provisions of the German Basic Law see: Dr Dieter Hörnig (ed), *Grundgesetz für die Bundesrepublik Deutschland* (Nomos, Baden-Baden 2007) or Edmund Brandt, Ulrich Smeddinck (eds), *Grundgesetz und Umweltschutz* (Berliner Wissenschafts-Verlag, Berlin 2004) as well as Hans D Jarass, Bodo Pieroth, *Grundgesetz für die Bundesrepublik Deutschland* (C. H. Beck, München 2007).
3. The Brundtland Commission's renowned 1987 report has defined the concept as saying that it satisfies the needs of the current generation without endangering the like needs of future generations. Hence the concept entails the desire for intergenerational equality. This "equality" is undoubtedly a creation of international law from whence it found its way into the national legal systems. See Edith Brown Weiss, *Fairness to Future Generations* (Dobbs Ferry, New York 1989).
4. Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community.
5. Act LXXXI of 2001 on the Proclamation of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, adopted on 25th June 1998 in Aarhus.
6. The concept of sustainable development has played a decisive role in the evolution of international law and environmental policy since the 90s, and after Rio it also began to appear in national legal systems. As far as the concept's international law presence is concerned, it no longer appears only in conventions, but also for instance in the International Court of Justice's decision in the Gabčíkovo—Nagymaros case. It is nevertheless doubtful whether it can be regarded as a legal principle, and the possibility of applying it normatively is even more doubtful. The most common criti-

cism of the right to development is that since in reality it is not a right, it can neither contribute sufficiently to development nor to the promotion of human rights protection. For more details on sustainable development see: Alan Boyle, David Freestone, *International Law and Sustainable Development* (Oxford University Press, New York 1999).

7. Arjun Sengupta, 'On the theory and practice of the right to development' [2002] 24, 4 Human Rights Quarterly 837–889.
8. Constitutional Court decision 1347/B/1996, ABH 1994, 197, 203; as well as Constitutional Court decision 8/2000. (III. 31.), ABH 2000, 58.
9. As far as vertebrate animals are concerned, the reason is that in our national legal systems they are practically on the verge of acquiring rights.
10. Sólyom László, *Az alkotmánybíráskodás kezdetei Magyarországon* [The Beginnings of Constitutional Adjudication in Hungary] (Osiris, Budapest 2001) 611.
11. In Hungarian legal literature, László Fodor undertakes a detailed analysis of this article as well as the Constitutional Court's decisions regarding the right to a healthy environment. See further Fodor László, *Környezetvédelem az alkotmányban* [Environmental Protection in the Constitution] (Gondolat—DE Állam- és Jogtudományi Kar, Budapest—Debrecen 2006).
12. Article 70/D (1) People living within the territory of the Republic of Hungary have the right to the highest possible level of physical and mental health.

(2) The Republic of Hungary implements this right through arrangements for labour safety, with health institutions and medical care, through ensuring the possibility for regular physical training, and through the protection of the built-in a natural environment.

13. Previously the Constitution contained the following formulation: Article 57 (1) Citizens of the People's Republic of Hungary have a right to the protection of life, physical safety and health.

(2) The People's Republic of Hungary implements this right through arrangements for labour safety, with health institutions and medical care, and through the protection of the environment.

14. Before regime transition this article probably had an interpretation—due to the lack of the right to a healthy environment laid down in Article 18—which limited environmental needs to the realisation of the right to health.
15. Hungarian legal literature nevertheless has a proclivity to debate this, criticising the Constitutional Court for using both terms, the right to environmental protection and the right to environment, even thoughin their view—based on its literal meaning the right to environmental protection can only designate the individual rights aspect of the fundamental right and cannot refer to the institutional aspect thereof. See for example Fodor (n 11) 61.
16. Sólyom (n 10) 60.
17. For a comparative analysis of Hungarian Constitutional Court decisions and German constitutional provisions see Fodor (n 11) 71–101.
18. In its decision 11/2005. (IV. 5.), for example, the Constitutional Court, proceeding ex officio, determined that an unconstitutional dereliction had occurred when in the context of protecting the lake basin of Lake Balaton, the legislator had failed to formulate safeguard provisions meant to enforce the right to a healthy environment pursuant to Article18 of the Constitution. The statute examined by the body did not establish the legal restrictions—necessary for protecting the water and the aquatic wildlife—on interfering with the lake basin. (Before submitting its decision, the Constitutional Court examined whether in the case of Lake Balaton, which in its kind is a singular natural treasure of Hungary, the existing legal regulations provide sufficient guarantees against interferences that would result in a violation of the right to environment laid down in Article 18. That is whether the legal regulations are sufficient to safeguard the lake's basin, as well as the living resources of the lake basin and the shore. The Court's reasoning contains no new dogmatic elements as compared to decision 28/1994. (V. 20.), ABH 1994, 134.
19. ABH 1993, 533, 535.
20. By this concept the German legal literature refers to the natural environment surrounding man, essentially providing a list of the legal objects that need to be protected in the environment: it refers to the entirety of the natural environment surrounding man, even if it has already undergone significant changes, and furthermore also extends to the elements of the environment, the landscape, as well as to the flora and fauna and micro-organisms. It also includes the relations between these elements but does not extend to built-in environment, such as for instance a housing project. It protects future generations against long-term risks through the principle of precaution and sustainability. See Jarass (n 2) 513.
21. ABH 1993, 533, 535.
22. A particular means of influence is the examination analysis, which is a type of impact assessment investigating the anticipated environmental effects of planned legal regulations. It is provided for by Article 43 of the environmental law (Act LIII of 1995).
23. Halmai Gábor, Tóth Gábor Attila 'Az emberi jogok rendszere' [The System of Human Rights] in Halmai Gábor, Tóth Gábor Attila, *Emberi jogok* [Human Rights] (Osiris, Budapest 2003) see especially 98–107.

24. What preceded this decision was a request to the Constitutional Court to examine the constitutionality of the provisions that had lifted the ban on privatising certain protected environmental areas or using them for the purposes of providing restitution to those whose property had been seized under the previous regime. The Constitutional Court asserted that the state is obliged to preserve the "status quo" in the area of environmental protection. According to the Court, the obligation to maintain the established level of protection also stems from the notion that the natural bases for life are finite and environmental damage is generally irreversible. The Constitutional Court subsequently sought to consistently enforce this principle, and there was an instance when it saved an ecological corridor between two municipalities by striking down a decree ending its protection. Subsequently, in examining the regional development law, the Constitutional Court laid down as a constitutional requirement that the various sectoral strategies do not enjoy primacy over environmental interests.
25. Constitutional Court decision 28/1994. (V. 20.), ABH 1994, 134.
26. Constitutional Court decision (n 25) 138.
27. Constitutional Court decision (n 25) 138.
28. Constitutional Court decision (n 25) 138.
29. Constitutional Court decision (n 25) 138.
30. See for example the cases of *Hatton and Others v the United Kingdom* [GC], no. 36022/97, § 99, ECHR 2003-VIII and *López Ostra v Spain,* judgment of 9 December 1994, Series A no. 303-C. In the first case, eight citizens residing adjacent to Heathrow Airport in the United Kingdom requested indemnification on the grounds of sleep deprivation. Harry Post, 'Hatton and Others: further clarification of the "indirect" individual right to a healthy environment' [2002] 2, 3, S. Non-State Actors and International Law 259–277.
31. *Guerra and Others v Italy* 116/1996/735/932, judgment of 19th February 1998.
32. Article 54 (1) In the Republic of Hungary everyone has the inherent right to life and to human dignity. No one shall be arbitrarily denied of these rights.
33. Constitutional Court decision 1347/B/1996, ABH 1994, 197, 203; as well as Constitutional Court decision 8/2000. (III. 31.), ABH 2000, 58.
34. The Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, for example, allows for limiting first generation rights with reference to public order or public morals.
35. Sólyom (n 10) 406.
36. Act LIII of 1995 on the General Rules of Environmental Protection.
37. Pursuant to the environmental law, associations and civic organisations established for the representation of environmental protection interests have the legal status of being parties to the case in proceedings before environmental administrative authorities, if the given proceedings pertain to their area of operation. On the interpretation of this provisions see Constitutional Court decision 1146/B/2005 ABH, 2006. 1849, 1852-1853.
38. Constitutional Court decision (n 37).
39. Act CXL of 2004 on the General Rules of the Public Administration Authority Procedure and Service.
40. Act CXL (n 39).
41. Constitutional Court decision 64/1991. (XII.17.), ABH 1991, 297, 303.
42. Constitutional Court decision (n 25) 137.
43. Article 54 (1) In the Republic of Hungary everyone has the inherent right to life and to human dignity. No one shall be arbitrarily denied of these rights.
44. *Guerra and Others v Italy* (n 31).
45. Sólyom László, 'A jövő nemzedékek jogai és ezek képviselete a jelenben' [The Rights of Future Generations and the Representation of these Rights in the Present] in Jávor Benedek (ed), *A jövő nemzedékek jogai* [The Rights of Future Generations] (Védegylet, Budapest 200).
46. See the ethical arguments in favour of protecting these categories. Lányi András (ed), *Természet és szabadság* [Nature and Freedom] (Budapest, Osiris 2000). Molnár László (ed), *Legyenek-e a fáknak jogaik?* [Should Trees Have Rights?] (Budapest, Typotex 1999).
47. The legislator treats vertebrate animals separately from other categories, acknowledging their heightened ability to experience pain and suffering.
48. In international law today, humanity, that is the community of people currently alive and those to be born in the future, can already be a legal subject. On this issue see for example Nagy Boldizsár, 'Az emberiség közös öröksége: A rejtőzködő jogosított' [Humanity's Common Legacy: The Hidden Subject] in Herczegh G, Bokorné Szegő H, Mavi V, Nagy B (eds), *Az államok nemzetközi közösségének változása és a nemzetközi jog* [International Law and Changes in the International Community of States] (Akadémiai, Budapest 1993) 113–143. A comparison of the two legal systems in this respect is not worthwhile due to the fundamentally different legal nature of international public law and domestic law. Even though treating humanity as a legal subject internationally can potentially be justified already today, in domestic law it can nevertheless certainly not be regarded as a legal subject. This can be illustrated with the following example, which on the cause of its historicity illustrates the immutability of legal thinking: the novelist Lev Nikolayevich Tolstoy expressly wished that his literary inheritance be left not to his legal heirs, but rather

to humanity as a whole. His legal advisers cautioned him not to include this wish in his testament, and emphasised that the author could leave his assets only to a clearly defined natural or legal entity. As a result, the writer changed his will and in his testament he left his literary inheritance to his daughter Alexandra.

49. This pronouncement was made in the Constitutional Court decision abolishing the death penalty.
50. Cass R. Sunstein, Martha C. Nussbaum (eds), *Animal Rights. Current Debates and New Directions* (Oxford University Press, Oxford 2004´); Elekes Máté, 'Az állatok jogi státusa' [The Legal Status of Animals] [2006] 11 Rendészeti Szemle 17–29.
51. Though Constitutional Court decision 28/1994. (V. 20.) qualifies this position somewhat, it does maintain the stance excluding the fundamental rights aspect.
52. Védegylet (Protect the Future—a Hungarian civic environmental organisation) drew up the original proposal for the creation of a separate commissioner position seven years ago, and has urged the establishment of the new agency ever since. Jávor (n 45). The National Assembly ultimately decided to adopt the proposal, and in implementing it parliament opted for changing the current system of commissioners through partially cutting back the existing structure—it abolished the post of General Deputy Ombudsman, so that at least in terms of funding it could be replaced by the Commissioner for Future Generations. On 8th October 2008 representatives of the five parties in parliament signed and introduced the bill on the Parliamentary Commissioner for Future Generations. Finally, on 26th November the National Assembly adopted Act CXLV of 2007 amending Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights.
53. '68 zöld szervezet egy új szószólóért' [68 Green organisations for a new ombudsman] <http://www.vedegylet.hu/modules.php?name=News&file=article&sid=618> accessed 4 January 2009.
54. At the same time, the functions of the new commissioner may lead to a surprisingly wide range of fundamental rights restrictions. Pursuant to Article 27/H Paragraph 3, for example, in carrying out his duties the Parliamentary Commissioner for Future Generations may "enter into any such locality or real estate where activities are ongoing that threaten irreversible environmental damage—if acquiring the necessary information or learning about the relevant facts and circumstances is not possible in other ways".
55. On occasion specific utopian ideas were formulated in the context of these rights. Such are for instance the concepts relating to "ecotopia", that is most ideal societies living in harmony with the environment. For the emergence of the designation see: Ernest Callenbach, *Ökotopia* (Berlin, Rotbuch 1984).