

# ABSTRACTS

## ESSAYS

The main topic of the current issue is the question of drug prohibitions. Douglas N. Husak, one of our essay-writers is arguing that neutralist liberals have tended to say little about the conditions that must be satisfied in order to criminalise those activities to which the neutrality constraint does not apply. In all likelihood, however, these conditions are minimal, says the author. Suppose that the state were not required to remain neutral about the satisfaction of any tastes or preferences. Suppose further that the only reason persons eat pepperoni rather than broccoli is because they prefer its taste, on this assumption, puts Husak the question, what conditions would have to be met in order to criminalise and thus imprison persons for eating pepperoni?

According to Tamás Győrfi the language of moral argument is manifold and articulated enough to differentiate between proper and legal behaviours on one hand, and improper, socially detrimental and criminal acts on the other. Since protecting the rights of drug-consumers does not mean to accept their behaviour, the condemnation of their behaviour does not involve automatically the justification of the criminal punishment. Győrfi emphasises that causing harm usually does not establish culpability.

Lorenz Boellinger in his essay argues that thought and conscience control by drug laws and coerced drug therapy transmit official values and ideologies by contrasting them with the blatant antisocialness of drug users and by vicariously punishing and scrutinising them, their subcultures and life-styles. These are envisaged not in their differential social and psychological realities, but in a stereotype scheme conveniently contrived and constructed by politics, the media, and biased experts.

Miklós Lévy emphasises that under the United Nations treaties, the member states are enabled to decide on the way of prohibiting illegal drug consumption, and the states can ensure different treatment for drug users than others being in connection with drugs. Therefore, the criminal punishment of drug consumption does not in itself result in criminalising drug use.

## INTERVIEW

Peter Singer, Professor of Bioethics at Princeton University was interviewed by Gábor Halmai. The professor reckons that his provocative views of life and death inspire people to think about these questions. According to Singer's position there are humans who are not 'persons', while some animals can be considered as persons. He says that the law should also deal with the status of 'sentient being' beside the categories of 'person' and 'thing'. It is impossible to determine which illnesses are serious enough for death and which are not, the answer depends on the attitude of the parents, of the relatives and of the society. As to the question of euthanasia, according to the professor if somebody could make a considered judgement, that because of an incurable condition he does not wish to continue to live, then it's respecting his human dignity to allow him to make that decision and to allow someone else who freely chooses to do so, to act on it. Singer otherwise says that nowadays we are much more committed to follow moral principles than the people of earlier ages.

## FORUM

In December 1998 Parliament restricted the provisions of the Criminal Code that cover drug use. The spokesman for the government said that the government sought parliamentary approval to the strictest drug law in Europe. At the end of last year Parliament adopted the national drug strategy which was elaborated by the Ministry of Youth and Sports. This strategy does not expect success by punishing drug consumers as the government did earlier. The main goals of the national drug strategy are:

The society should become more receptive for the effective solutions of the problems concerning illegal drugs, and the local communities should increase their abilities in solving the drug problems (community, co-operation).

We should help young people to create a productive lifestyle and to reject drugs (prevention).

It is necessary to help people and families who get in touch with drugs or have difficulties with drugs (social work, medical treatment, rehabilitation).

The possibilities of obtaining illegal drugs have to be decreased (reduction of supply).

In this column representatives of different sciences, experts studying the drug problem take the opportunity to write about the questions that arise in connection with the drug consumption. We sought answer for the following questions: will the social approach of drug consumption change, and what kind of changes are necessary for a more effective protection of drug consumer's rights and interests? In addition, we asked the experts about the necessity of the repression policy. In this column we publish the writings of Ákos Topolánszky, Zsolt Németh, Ágnes Frech, József Rácz, Miklós Funk, Károly Kály-Kullay and Mária Hoyer.

## DOCUMENTS AND COMMENTARIES

The authors of this column evaluate two recently passed decisions of the Hungarian Constitutional Court. One of these deals with the right to adequate housing, the other is about the patient's rights. Gábor Kardos by comparing the international interpretation of the right of habitation and the Hungarian decision asserts that the Constitutional Court while rejecting the argument under which the right to adequate housing forms a part of the right to social security, it held that the state is obliged to provide accommodation for the homeless if human life is in imminent danger. As a result, according to Kardos, the Court declared existing the consequence of the rejected right of adequate housing.

Judit Fridli in her writing evaluates the recently published decision of the Constitutional Court, in which the Court held that it was contrary to the principle of personal autonomy to restrict the right to consent to medical services and the right to refuse medical treatment in a same way in the case of an incompetent patient and a patient whose legal competency is limited.

## PRIOR TO DECISION

In December 2000 Parliament adopted an act to amend the law-decree on the execution of punishments and provisions. The President of the Republic, however, sent the amendment to the Constitutional Court for its opinion prior to proclamation.

In this column we publish the submission of the President, an article on the jurisprudence of European Court of Human Rights on the prisoners' right to free

speech and the case-law of the American Supreme Court on the relationship between the prisoners and the media. The column ends with the writing of István Szikinger. The article draws the attention of the readers to the legislative practice under which the legislature without supporting openly the censorship suggests that in some cases, in connection to some properly defined group of people preliminary control of the speech is necessary.

#### AFTER DECISION

According to the main topic of the current issue, in this column we publish the cannabis-decision of the German Federal Constitutional Court. We release the last year adopted Human Rights Charter of the European Union, on which an evaluative essay was already published in the previous issue of *Fundamentum*. The European Court of Human Rights has recently passed instructive decisions in two Hungarian cases: a judgement declaring the breach of Article 6.1 in an unreasonably long court proceedings case and a chamber judgement in an extradition case. We summarise some current fundamental rights decisions of the Hungarian Constitutional Court.

#### PROTECTORS OF RIGHTS

Társaság a Szabadságjogokért (Hungarian Civil Liberties Union) maintains legal aid service for illegal drug users. This column contains two essays on the experiences of counselling in this field. Andrea Pelle examines whether the rules of data protection currently in force and the jurisprudence makes possible for a young drug user in need to feel safe. The author concludes that it is necessary to provide these people with stronger guarantees against the unjustified disclosure of their medical data. In her view, in order to change the approach and strengthen the empathy of the society, we must declare that the incarceration of drug-consumers is not the aim of the state. After analysing cases Balázs Dénes puts the question that if the criminal punishment was not a deterrent, then why was it necessary? By summarising the opinion of HCLU he concludes that it makes no sense to make delinquents from ill people (those addicted to drugs) or people living normal life (those does not take the official rules into account when choosing medicine) with the help of expensive criminal proceedings.

#### REVIEW

In this issue we publish reviews of some recently published human rights books of Peter Singer, János Sári, Mónika Weller, Katalin Lévay. In addition, we recommend a publication dealing with the problems of migrants.