

# ABSTRACTS

## ESSAYS

In his essay Gábor Attila Tóth strives to disprove the public opinion that a moral interpretation is right in relation to fundamental rights, whereas in other cases it is not. His hypothesis is that in the case of the procedural constitutional provisions, and those of substantial provisions there is no difference in the methods of interpretation. In his opinion the interpretation is false in both cases, that it is not the Constitution, but the lower rank legal rules that set the scale for their own constitutional judgement. Whichever field is affected by the interpretation, it is unavoidable for supplementary items relating to the Constitution to be included in the chain of argumentation, „to answer substantial, but also procedural questions it can be necessary for the interpreter of the Constitution to explore the underlying moral principles justifying constitutional dispositions, and to make a decision on their bases.“

In his essay „War Against Terrorism, and Human Rights“ Zoltán Miklósi is of the opinion that it is not indifferent whether the state considers terrorists combatants or criminals. Although in both cases the state has the duty to protect its citizens, it can act in very different ways in relation to the two kinds of threat. The sentence of punishment has to be preceded by a production of evidence, whereas in times of war there is no opportunity for the same. Miklósi is for it that terrorists are not combatants but criminals, and though we naturally have to fight terrorism, the right way to do so is not war.

With the permission of the New York Review of Books, Fundamentum reprints Ronald Dworkin's article, „What the Court Really Said“. In this article Dworkin comments on the Supreme Court's long-awaited decisions in which the Court rejected the Bush administration's claim that the President had the power to jail people accused of terrorist connections without access to lawyers or the outside world, and without any possibility of significant review by courts. Dworkin argues that the government may well be able to satisfy the Court's lenient procedural standards (review by a neutral tribunal, rules of procedure for such review) without actually altering its morally dubious detention policies.

## INTERVIEW

This issue presents an interview with philosopher János Kis. In it, and in relation to the state of constitutional organs Kis states that the parliamentary democracy outlined by the Constitution of 1989 is operational; it continues the liberal and plebeian traditions of Hungarian history, and it would be greatly irresponsible to attack it. He also emphasises: the constitution maker has to accept it that the basic structure of our Constitution is similar to the one created by the Round-Table Talk corrected by a referendum, and that Round-Table Talk and referendum are legitimate sources of a final Constitution. He calls it conservative constitution making, because its purpose is not to create a new statute, but the conservation of the old one. The philosopher is of the opinion that this procedure is still before us: however, this does not mean that it can be performed in the near future. Until we reach this, we will have to face efforts to destroy the Constitution of 1989 again and again, and we will always have to act against them.

## FORUM

The invited authors debated the judgement of domestic violence and the ways to fight it. Péter Somlai states it, criminal law is not an adequate medium for methods that strengthen understanding and trust among family members. The tunnel vision of radical feminists does not make it possible to consider this relation. According to him in flagrant cases the prevention of fatal consequences of a series of conflicts can be needed, but the most important would be for the duties of the state to concentrate on crime prevention, information and psycho-social services. György Virág believes that the restriction of domestic violence only has a chance if its strategy uses a differentiated set of means, plans on the long term, protects the defenceless, and imposes sanctions on the violators of norm. It also has to strive to win others for the sake of respecting others' dignity, and solving conflicts in a non-violent way. Those who really want peace has the only chance to send a word of peace. If acting against violence is itself intolerant, and shows a violent and intolerant example, communicates hatred and contempt, it has no chance. Erzsébet Tamási's writing points out that not only television, but also international legal recommendations echo one thing: that women are in a greater danger from men in their family than in the street. Facts however are obstinate things. Yes, men are more violent towards women in their homes than outside it. Yes, women are more violent towards men in their homes than outside it. Women and men are more violent towards children in their home than outside it. She is of the opinion that if we could find people's universal, ordinary desire, we would realize that we cannot give quiet, peace and an ability to solve conflicts by crucifying one (in this case the male) half of humanity.

Analysing the differences between the two marked standpoints Mária Herczog points it out that there is no one right way and no one possible solution. There is agreement on that domestic violence is insupportable and intolerable, but also on that it cannot be prevented or solved fully, but it can be greatly reduced and prevented by good methods and work. Necessary measures, actions, methods have to be discussed by all participants in political, social and professional debate.

## DOCUMENTS AND COMMENTARIES

In his essay „Learning Co-operative Constitutionalism the Hard Way“ András Sajó writes about the problematics of the role of the Hungarian Constitutional Court and the supremacy of European law. The author argues that the understanding of EU law supremacy and the whole new thinking about national sovereignty is part of an evolutionary process in the 'old' member states, a process that is still not at its compelling end. To acquiesce to these new concepts requires a complete quiet revolution in the courts of the new member states and among the general public. These problems also arose in the first case of the Hungarian Constitutional Court relating to joining, in which European law should have been applied directly. It was the Act „On measures concerning agricultural surplus stocks (hereinafter the Surplus Act), several resolutions of which have been found unconstitutional, so the Act could not be promulgated. Analysing the case András Sajó points it out that there are other constitutional courts which learn the rules of horizontal constitutional co-operation slower. After all, the Hungarian Constitutional Court finds itself in a new situation and it takes quite some time to go through the organic development that took (still with hesitations) the courts of the Community of Fifteen to a more co-operative understanding of their role vis à vis European law and the ECJ.

Balázs D. Tóth's writing examines the decision of the Constitutional Court on the referendum relating to a Parliament with a smaller membership. In relation to this he tries to find an answer to what the consequence may be if there is no plurality opinion behind the head note of the constitutional court decision. He also explores „which problems arise from the test to judge the unambiguity of questions on referendum, and whether the judgement of the unambiguity of the question on referendum is reconcilable with the role of the Constitutional Court in the separation of powers.

#### PRIOR TO DECISION

Balázs Dénes and Tamás Fazekas, from the team of Hungarian Civil Liberties Union explore questions of law concerning drugs. They are concerned with the petition filed with the Constitutional Court, which attack the paragraphs of the Criminal Code regulating the misuse of drugs. The essay makes an effort to state whether it is really necessary to change existing legal provisions, and if yes, precisely where the corrections would be needed.

#### AFTER DECISION

In this column we present the summary of some decisions of the Constitutional Court made in the last three months. Furthermore, we present some of the latest decisions of the European Court of Human Rights with a short commentary.

#### PROTECTORS OF RIGHTS

In this column we present the summary of Krisztina Morvai on the history of the movement urging state action against domestic violence, and, together with documentation the short description of the case where- in András Schiffer' opinion getting in a confusion of role - the deputy ombudsman declined inquiry in the case of a petition aggrieved at the ban of a demonstration with a rather strange reasoning.