

# ABSTRACTS

## ESSAYS

Károly Bárd's essay, "The Right To Be Silent" talks about the right which has been recognized by many human rights and other international instruments, born in the second half of the 20<sup>th</sup> century. The right to be silent as a procedural guarantee that is widely accepted, has been surrounded by scepticism from the very beginning, and the debates do not only concern the field and limits of the right. The threat of international terrorism, however, has increased voices that demand the further restriction of the right to be silent. With the Funke decision of 1993 the European Court of Human Rights raised the right to be silent among the elements of rightful procedure. At the same time both the Strasbourg Court and the Hungarian Constitutional Court pointed out that the right to be silent is not an absolute right. Being silent can thus have its price. To what heights this price can be raised is a question that in the author's opinion the Hungarian Constitutional Court and the European Court of Human Rights will have time to answer.

Sanford Levinson, in his essay on constitutional norms in a state of permanent emergency emphasises that American constitutional development is at a crossroads. The US and its citizenry justifiably feel threatened by attack, and the Bush Administration is stunningly ambitious with regard to its view of executive power. It is naive—says the author—to regard the Constitution as speaking clearly about the resolution of such dilemmas.

In his essay Gábor Sulyok seeks an answer to the question whether public international law currently in force makes the use of force justifiable in the case of civil aircraft that has supposedly been used for a terrorist action, and presents the relations of the problem in Hungary in short. The analysis is of purely legal nature, and as far as possible it neglects the moral points of view that are otherwise so important.

## INTERVIEW

In his interview Péter Tálas says that terrorism has become an integral part of today's political marketing in the western part of the world. This is part of the reason that he does not show too much optimism for the future either. At the same time he does not exclude the possibility of those speaking for safety as opposed to human rights now, in time realizing that all essential restrictions of democratic freedoms and rights are the fulfilment of terrorists' purposes.

The new book of the Italian philosopher, Giorgio Agamben: *State of Exception* has raised serious debates. In the author's opinion a state of exception or that of emergency is becoming an increasingly dominant paradigm of contemporary politics. The phenomenon that had once been considered as a sort of exception, a special situation that could be in force only for a limited period, has become an everyday form of government with history. Among others, the interview speaks about how this affects the state of democracies.

## FORUM

Is the restriction of fundamental rights justifiable for the fight against terrorism, and is it an effective way of reducing its threat? This is the question that concerned the authors of Forum this time. According to István Szikinger the arsenal of weapons for the fight against terrorism has to be based on a view of human safety.

The respect for constitutional rights, their protection and manifestation is not the barrier, but the aim of safety politics, and thus of the organization of the protection against terrorist threat as well. Péter Deák agreed with the opinion that counter-measures against terrorism, that are born for the sake of protecting democracy should not be ones that restrict democracy in turn. Balázs Gellér examines the problem whether a civil airplane that has become means of terrorist attack could be shot down, and what criminal consequences this action would involve. His final conclusion is that—with resolutorial authorization—he soldier shooting down the airplane could not be drawn to criminal responsibility, because of justifiable protection, and because of emergency he would also be unpunishable in relation to terrorists, and—with resolutorial authorization—in relation to the passengers as well. Supposing, he adds, that extinguishing three hundred lives means a smaller loss than putting out five hundred lives.

### PRIOR TO DECISION

Balázs M. Tóth writes about the *ex ante* presidential petition to the Constitutional Court regarding the new Act on Higher Education and the Court's decision on the reform of high school final exam. He argues that the new system of institutional operation with regard to the powers of the Institutional Council does not violate the constitutional principle of institutional autonomy. Nevertheless, the legislation did not provide adequate remedies against the *ultra vires* decisions of the Council. In the decision regarding the reform of high school final exam, the Court formulated hardly enforceable new requirements regarding the legislative process. He also argues that the Court has departed from its earlier conception of equal opportunity in a way that makes it highly problematic for the Government to comply with expectations of the decision.

### DOCUMENTS AND COMMENTARIES

Mihály Filó's essay evaluates on the question what international legal, constitutional and criminal concerns are raised by official inquisition used for the sake of the protection of citizens' lives and physical safety.

József Kárpáti's writing analyses the decision of the second instance on *Háttér Society versus Károli University*. He concludes that the decision is progressive in stating that sexual orientation is an integral part of human personality. At the same time by referring to the reasonability excuse it provides a relatively wide possibility for escaping discrimination, so the decision gives reason for constitutional concerns.

Balázs Majtényi comments on the recent amendments regarding the election of the self-governments of ethnic and national minorities. The President of the Republic vetoed the law and referred it to the Constitutional Court. The Court agreed with presidential objections and held that the regulation which enables the minority representative elected by the utmost number of votes to become a member of the (majority) municipal self-government violates the principle of one man - one vote. Balázs Majtényi argues that the amendments do not remedy the abuses regarding the election of minority self-governments and do not react to the appearance of migrant minorities.

In Gábor Kardos' opinion the willingness to participate in the election of the self-governments of ethnic and national minorities would have been threatened by the institution of registration, and it would not even have guaranteed that only members of the given minority community would have taken part in the elections.

## AFTER DECISION

András László Pap's writing, "Ethnicity and the Fight Against Terrorism" presents two aspects of the evaluation of ethnicity by (constitutional) law, that arose in a new light in connection with the fight against terrorism: the problematics of the strategies based on ethnic profiling with purposes of protecting order and national security, by armed forces; and the field of financial and other sanctions used in relation with supporting terrorist forces.

Besides, we give a selection of the decisions of the European Court of Human Rights, and sum up briefly some of the recent decisions of the Hungarian Constitutional Court.

## PROTECTORS OF RIGHT

In 2004 the Hungarian Civil Liberties Union decided to create a database, a map with the help of which citizens can get information on public cameras, their operation, location and the related practice of the police and local governments. So they asked for information from the official bodies in question, but since not all local governments were willing to fulfil their legal duties to provide information, in some cases they brought their case to trial. Their writing here presents some of the experience they gained in the given cases, the most important of which is that different courts react in different ways to petitions that are the same in content and legal ground, in cases concerning the manifestation of the freedom of information. In the authors' opinion this means a serious danger for the basic constitutional principles of legal certainty and the equality in law.

## REVIEW

Here you can find the writing of Zoltán Miklósi, who presents the suggestion of Bruce Ackerman, as to how liberal democracies should modify their constitutional systems in relation to the constant threat of terrorism. The proposal gave way to great debate in the United States of America, and Miklósi presents the main arguments of the debate. We also give a longer presentation of András Sajó's work: *The Handbook of the Freedom of the Press*.

Besides, we recommend the book of Szilvia Köbel on the relationship between the state and the church and the volume edited by Péter Paczolay on constitutional theory and European integration.