

ABSTRACTS

ESSAYS

Péter Sólyom's essay, "Democracy and the freedom of assembly" examines the more general, theoretical question of the right to assembly. He is making an attempt to give a more or less acceptable definition of assembly in order to deal with the most important question: what is the role of the freedom of assembly in a democratic institutional system. When answering this, he is examining the characteristics of the current institutional system, and chooses the normative position, the possible theory of democracy, which helps in judging the regulations concerning the right to assembly.

The article of Mary M. Cheh focuses on demonstrations, security zones, and First Amendment protection of special places. The first part of the article surveys the recent tactics used by the US government to contain protest and demonstrations. Then the author identifies the essential liberty interest in protecting protest and demonstrations in the streets, the people's forum. The article evaluates the effectiveness of the time, place, and manner test and the tensions arising from a facile either/or contrast with content control. The author suggests a more nuanced, intermediate scrutiny doctrine of special places, and, finally she suggests how this new doctrine would work in the example of Washington, D. C.'s Lafayette Park.

FORUM

The present column asked for the opinion of experts on the legal and social aspects of the riots of the fall of 2006. Political scientist István Schlett sees the problems not in the constitutional system or the inaccuracy of individual Acts. He does not consider neither the failure of "the third republic", nor the loophole being the change of our constitutional system proven. In his opinion the causes of the political crisis can be found in the way of thinking of our politicians, and their perception of their own role. In relation to the proposals urging the amendment of the Act on the Right to Assembly, political scientist Máté Szabó is of the opinion that the regular petitions for the amendment of Acts after great dispersings in Hungary have all failed, because of the lack of, partly a new conception, partly of continuous challenges. In his opinion in the present case it was not the text of the law to blame either, but in the heated atmosphere of political polarisation black seemed white for the government, and vice versa for the opposition. István Szikinger saw the main cause of problems in the fact that in a way a police state has been created, which does not at all mean the excessive power of the police, rather it means a much wider perception of role on the part of the state. The real framework and limits of the manifestation of our rights, that is, our freedom itself, is not set by laws, but by the current group in power. He is of the opinion that in the definition of the conditions for the practice of public power the field of participants has indeed been extended, however, only within the political elite. Former

Constitutional Justice Antal Ádám agrees with the proposal that the notion of *spontaneous assembly* should be included in the Act on the Right to Assembly: that is, citizens would have the right to react on certain happenings with assemblies or demonstrations without a three-day notification in advance, naturally only if the ban of such a demonstration or assembly was not possible in the regular procedure of notification either. That is, the police could disperse a spontaneous assembly only if it was entitled to do so because of the violation of other provisions of the Act. The writing of criminologist Géza Finszter emphasises that the government should stop treating the protection of order with a dismissive treatment of crisis, instead it should let the proper strategy supporting democracy be manifested. This strategy makes a political consensus in order to make the professional protection of order possible, it clearly differentiates between political aims and the state means of governmental control, and makes itself a subject of the institutions of the public law of law enforcement. It also places police back within the system of civilian administration, in which the individual services of law enforcement can operate in their own system of order. Social psychologist Ferenc Erős thinks that to understand the happenings – and more generally, the hectic changes of economic and social spheres in Hungary today, the shifts in and out of the political elite – we would desperately need to map the inter-relations of groups and social representations in detail, to the explore the changes in group-identity.

PRIOR TO DECISION

András Kristóf Kádár and Balázs M. Tóth's essay "The Foreign And Hungarian Rules of The Right To Assembly" gives guidelines to the evaluation of the Hungarian regulation of the right to assembly. The authors compare Hungarian legal solutions to the regulation of some other countries, and in certain cases they refer to the statements of the European Court of Human Rights and international soft law, too.

DOCUMENTS AND COMMENTARIES

Bernadette Somody comments on a court decision according to which the Minister of Justice and Law Enforcement is not compelled to hand out a draft of the Constitution to the Hungarian Civil Liberties Union when asked. The author thinks that when the court accepted that the draft of the Constitution is a preparatory document, it should have carried out the full essential review of the justification for the restriction of publicity according to the guidelines of Constitutional Court. It should have examined the reasons that make it necessary for the new Constitution of the Republic of Hungary to remain hidden and in secret in the drawer of the Ministry concerned.

AFTER DECISION

Here we are presenting a selection of the recent judgements of the European Court of Human Rights, together with the recent decisions of the Hungarian Constitutional Court.

PROTECTORS OF RIGHTS

In this column we present the report of the Hungarian Helsinki Committee. The report is an analysis of the police force used after the violent riots took place in Autumn 2006 and Spring 2007 in Budapest. The report emphasises that the police used force lawfully on March 2007. This can be interpreted in an optimistic and a pessimistic way. According to the pessimistic interpretation, the following question remained unanswered: if such a behaviour was possible on 15 March 2007, what is the reason of the ill-treatment committed by police officers in Autumn 2006? One of the reasons concerning the police misconduct during the September events can be the fact that the police was unprepared. The excessive use of force and ill-treatment of the police during the demonstrations in October 2006 however cannot be explained on that ground.

REVIEW

In his writing Máté Dániel Szabó presents the book on informational liberties, written by László Majtényi, the former Data Protection Ombudsman. Further in the column we also recommend two collection of essays on the Hungarian constitutional and governmental system and on constitutionality in private law.