ABSTRACTS

ESSAYS

Gábor Kardos in his article identifies the three main characteristic features of the European Charter for Regional or Minority Languages: the Charter protects minority languages and not minority rights, provides an a la Carte system of obligations and its supervision is based on government reports. Although the Charter may be seen as a clear manifestation of the cultural conservationist ideology and its main purpose of the Charter as it is to remove minority language protection from the highly politicised world of minority rights, this benevolent effort is a mission impossible.

The Charter itself, especially its implementation is a very political issues area. The author addresses the problems of supervision over the implementation, and emphasizes the most important part of the evaluation work of the Committee of Experts is that where the language of the obligation gives this opportunity, it insists on actual practice and is not satisfied with the fact that only the law is in line with the Charter. Experience has shown that transforming domestic law is always a simpler task than creating the material-technical conditions for the actual use of minority languages. A serious problem with the control system is that the Expert Committee has very limited scope for action between two reporting rounds.

János Fiala-Butora analyzes reports on the implementation of the Framework Convention for the Protection of National Minorities and argues that solutions to minority-related problems are not hampered simply by inadequate enforcement. Instead, they flow from structural problems inherent to the Framework Convention. The article demonstrates these in three areas: the structure of minority rights norms as human rights norms; the transparency of monitoring; and the impact of the conflict-prevention approach on human rights mechanisms.

Zsolt Körtvélyesi explores how courts can create a venue for group claims raised by certain minority groups, defined along linguistic, religious, ethnic, national or racial lines. He argues that using class action or a similar tool to aggregate claims in a court procedure will in itself fulfill certain embedded claims and, as a result, contribute to achieving the goal of providing adequate remedy, a basic legal standard also recognized by international law.

Renáta Uitz examines how European institutions reacted to the gradual deterioration of rule of law in Hungary and Poland. She argues that the institutional practice of dialoguing about rule of law issues in the majority of cases results not in restoring the rule of law, but in realizing illiberal goals of the governments, with the active contribution of European constitutional actors.

FORUM

Mátyás Bencze argues that lawyers in Hungary had missed the signs of the danger of an autocratic turn, and they should now recognize the importance of their commitment to the rule of law. He maintains it is an illusion to separate law from politics and calls for engagement by members of the legal profession that sometimes goes beyond legal activities strictly speaking, overcoming the anti-political attitude shared by many.

In recent years, the number of cases brought before the courts by the Hungarian Civil Liberties Union has increased significantly which shows that litigation has become a particularly important activity of the HCLU. *Máté Szabó* explores the various benefits of human rights litigation under authoritarian rule and claims that even individual lawsuits can be used to challenge the entire political system.

In her essay *Judit Tóth* argues that the prosperity and the creation of the rule of law have been missed in Hungary because of the deterministic nature of history or due to unpredictable events. The rule of law is already in ruins in Hungary, and the deteriorating results of the World Justice Project Survey in 2019, the Venice Commission's, the EU's, and the judiciary's professional bodies, prove this quite well.

Attila Antal claims that the post-2010 Hungarian political system is, arguably, an autocracy and there is a permanent "state of exception" which cannot be challenged through traditional legal means and legal reforms. The author argues that we should learn the lessons of the 1989 democratic transition which had built on compromises but ultimately failed as legality could take precedence over justice.

DOCUMENTS AND COMMENTARIES

Júlia Mink examines the 2019 Spring amendments to the controversial law on churches which was found violating the Convention by the ECtHR in 2014. The author examines whether the four different legal statuses in the law can be justified by objective and reasonable criteria; whether the content of the statuses is determined arbitrarily and inconsistently; and the mechanisms by which statuses are assigned conform to standards of due process and right to remedy. The essay finds that the amended system still grants arbitrary powers and lacks procedural guarantees, resulting in discrimination and political influence over the autonomy of churches.

In 2011 the Hungarian National Assembly changed the rules of the pension for disabled persons which resulted a dramatic decrease of the disability pension in several cases. The petitions submitted to the Constitutional Court stated the violation of right of property and referred to the principle of rule of law. In his essay *Krisztián Enyedi* critically analyzes the relevant decisions of the Constitutional Court, he points out that these decisions are divergent and also makes it clear that the Constitutional Court is unable to protect the fundamental rights of disabled persons.

Bence Kis Kelemen's essay is a critique of the Israeli Supreme Court's decision on the case of Yesh Din – Volunteers for Human Rights v. The IDF Chief of Staff. The spring of 2018 was eventful next to the border fence between the Gaza Strip and Israel, due not only to the mass-demonstrations taking place in the shadow of the fence, but also to the legal debate concerning the use of lethal force by the Israeli Defense Forces. Although the Court rejected the petitions the author argues that there are several questionable statements in the decision. Bence Kis Kelemen criticizes the Court's classification that the mass-demonstrations are part of the ongoing armed conflict between Israel and Hamas since Hamas is not a state. He also asserted that complex situations such as mass demonstrations require complex solutions. The paper finally shows that the decision is clearly inconsistent with the jurisprudence of the European Court of Human Rights.

Ágnes Kovács examines Decision 23/2018. (XII. 28.) of the Hungarian Constitutional Court and argues that in order to understand the real risks of the findings of the Court to Hungarian constitutionalism we should abandon the traditional rule-of-law framework and analyse the Court's judgment within the context of states with authoritarian tendencies. The essay finds particularly dangerous the arguments of the Court about standards of statutory interpretation which can push ordinary judges to enforce the morally repugnant intent of the legislator.

AFTER DECISION

In this column summaries of some of the recent decisions of the European Court of Human Rights, and the Hungarian Constitutional Court are presented.

REVIEW

Péter Sárosi reviews the human rights literature on the justification and the efficiency of the human rights movement.

In its decision of 4 June, the Hungarian Constitutional Court found section 178/B of the Act on Misdemeanors – making "residing in public spaces as habitual dwelling" a punishable act – conform to the constitution. In her article, *Noémi Molnár,* lawyer of a Hungarian NGO (Streetlawyers' Association), puts the decision in a broader context. She analyses the challenged law and the relevant practice of ordinary courts, briefly discusses the review process before the Constitutional Court and evaluates the final outcome of the case.

In their co-authored essay, *Judit Gellér* and *Lídia Balogh* present two recent strategic litigation cases from Hungary: both are about discrimination against Roma women in the field of maternity health care, and both are connected to the European Roma Rights Centre. The authors aim to explain the broader context and the significance of the cases, and to highlight the importance of applying the concept of intersectionality.