

HUNGARIAN STATE PRACTICE

An Institution for a Sustainable Future

The Hungarian Ombudsman for Future Generations

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Abstract

The purpose of this article is to give an insight into the process leading up to the establishment of the Hungarian Ombudsman for Future Generations and its tasks: an almost 15-year-old, unique legal institution aiming to protect the interests of future generations. The Ombudsman for Future Generations is an example for the institutionalization of the principle of intergenerational justice. The article aims to introduce the characteristics and strengths of the current institutional design and the structural features that allow for the successful operation of the Ombudsman for Future Generations in Hungary. Following an introduction to the political and historical context in which the institution was established, the article describes in detail the Ombudsman's work, responsibilities, most important functions, elaborating on some examples of its best practices and achievements. Finally, the article touches upon how the example and experiences of the Hungarian institution may be valuable for other countries in Europe and beyond.

Keywords: intergenerational equity, rights of future generations, ombudsman for future generations, Hungary, right to environment.

1. Introduction

Initially, the idea that future generations need institutional protection emerged in the international environmental arena. Promoters of the concept of intergenerational equity advocated for the establishment of a separate institution that can call attention to harmful global processes threatening the well-being of future generations. Under the *aegis* of the UN, it was Malta that first proposed the establishment of a 'guardian for future generations', during the preparations

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for the 1992 Rio Earth Summit.¹ International efforts to implement the principles of intergenerational equity, however, often seemed insufficient and difficult to put into practice. Many believed that institutional solutions for the protection of the unborn would better work at the state level, where the effects of political decisions regarding the long-term health of the environment are most apparent. For instance, the 2002 New Delhi Declaration of the International Law Association² urges not only global, but also national institutionalization of intergenerational equity:

“The principle of integration reflects the interdependence of social, economic, financial, environmental and human rights aspects of principles and rules of international law relating to sustainable development as well as of the interdependence of the needs of current and future generations of humankind. All levels of governance – global, regional, national, sub-national and local – and all sectors of society should implement the integration principle, which is essential to the achievement of sustainable development. States should strive to resolve apparent conflicts between competing economic, financial, social and environmental considerations, whether through existing institutions or through the establishment of appropriate new institutions.”³

In 2013, the then UN Secretary General Ban Ki-Moon issued a report entitled “Intergenerational solidarity and the needs of future generations”. In this report *the Secretary General highlighted the work of eight national institutions*, from states including Canada, Finland, Hungary, Israel, New Zealand, Wales, Germany and Norway, *as playing a pioneering role in the national implementation of sustainable development and intergenerational solidarity*.⁴ At present, out of the eight model institutions named in the 2013 Report, the Hungarian and the Norwegian institutions work in the form of ombudsman offices.⁵ While the Hungarian Ombudsman for Future Generations can deal with all the issues concerning the ‘interests’ of future generations, the Norwegian Ombudsperson for Children can protect the needs of future generations only through the rights of children and

- 1 See the proposal of the Maltese government on setting up a “Guardian for Future Generations”, introduced in 1992 at the March preparatory meeting of the first UN Conference on Environment and Development in Rio de Janeiro, at <http://193.166.3.2/pub/doc/world/UnitedNations/EnviroConf/PreConfDocs/wg3l8add02>. According to para. 16 of the Maltese proposal, “The appointment of an advocate to alert the international community of threats to the well-being of future generations would be the most concrete step in the right direction to safeguard the disadvantaged members of the human species.”
- 2 ILA New Delhi Declaration of Principles of International Law Relating to Sustainable Development, 2 April 2002, UN Doc. A/CONF.199/8, 9 August 2002.
- 3 Id. paras. 7.1.-7.3.
- 4 Ban Ki-Moon, *Intergenerational solidarity and the needs of future generations – Report of the Secretary-General*, 5 August 2013, A/68/322 <https://sustainabledevelopment.un.org/content/documents/2006future.pdf>, paras. 25-31.
- 5 Gabriele Kucsko-Stadlmayer, *The Spread of the Ombudsman Idea in Europe*, IOI Publications, 2009, pp. 1-3.

young people. It is interesting to mention that, independently from their official name, the institutions of the Commissioner for Future Generations in Wales and the Parliamentary Commissioner for the Environment in New Zealand are much more similar to the Hungarian model institution than Norwegian Ombudsperson for Children. In this article we try to introduce how an ‘ombudsman-style’ institution could effectively protect the rights and interests of future generations.

2. The Way Towards the Establishment of the Office of the Ombudsman for Future Generations in Hungary

The Hungarian Ombudsman institution was born during the democratization process of the late 1980’s and early 1990’s. The first Ombudsman Act was adopted by the Parliament in 1993,⁶ and the first Ombudsmen were elected in 1995.⁷ The former Constitution adopted a model of the ombudsman system in which separate Commissioners could be elected for the protection of individual constitutional rights. Although the former Ombudsman Act directly referred to the Commissioner for Civil Rights and the Commissioner for the Rights of National and Ethnic Minorities only, Section 32/B(4) allowed for the election of additional ombudsmen for the protection of other fundamental rights. Applying this Section, in 1995 the Ombudsman for Data Protection, and later, in 2007 the Ombudsman for Future Generations were elected. All the Ombudsmen were nominated by the President of Hungary and subsequently elected by the Parliament for a 6-year term. Before the establishment of the Ombudsman for Future Generations, it was the Commissioner for Civil Rights in Hungary who was responsible for the protection of the right to a healthy environment.

There were a number of factors that resulted in the establishment of the office of the Ombudsman for Future Generations. In May 2000, the Hungarian civil society organization called ‘Védegyelet – Protect the Future!’ initiated the establishment of the institution of the Ombudsman for Future Generations in a draft bill, prepared by László Sólyom, the first president of the Hungarian Constitutional Court (1990-1998) and later President of the Republic (2005-2010). Sólyom drew on the 1993 Ombudsman Act when designing the legal framework of the new institution, and argued for independence, broad competences, and proactivity as the three most vital elements of the proposed institution.

At first, the political sphere was indifferent toward the proposal, and it was uncertain whether any political party would support and take up the cause. In parallel with their advocacy work, therefore, Védegyelet launched a public consultation campaign in order to garner further recognition and political legitimacy for the institution. In November 2000, with the cooperation of other Hungarian NGOs, they established the civil committee called ‘Representation of Future Generations’ (REFUGE) in order to start implementing the content of the

6 Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights.

7 Parliament Decree No. 84/1995. (VII. 6.).

bill and to keep the topic on the political agenda.⁸ REFUGE had been meant to act as a ‘shadow’ Ombudsman until the Parliament accepted the original proposal for the establishment of an Ombudsman for Future Generations. Its work focused on cases where the rights of future generations to a healthy environment were seriously infringed and the institution published annual reports about the legal proceedings it had concluded and those, which were still in-progress. REFUGE worked in accordance with the principles and procedural rules laid down in the original draft bill of Védegylet. It is worth mentioning that Védegylet also urged other, foreign NGOs to initiate the institutional protection of future generations in their own states. They even launched a political campaign addressing the EU to set up a European Ombudsman for Future Generations for the effective representation of the interests of the unborn in the transboundary, European context.

Following two failed attempts to submit the bill to the Parliament, a cross-party approval was finally achieved in 2007. Besides the strong societal support, the role of preeminent public figures, including President Sólyom, was indispensable for the successful realization of the proposal. It is often argued that the role of the President in parliamentary democracies is rather modest. While his political leverage may be limited, most parties try to cultivate good relations with the President. More often than not, their endorsement and patronage can go a long way in realizing a particular political project. In Hungary, the continuous support of Sólyom had been imperative for the establishment of the institution by the Parliament. In 2007, Members of Parliament voted almost unanimously for the amendment of the Ombudsman Act. Sándor Fülöp, the first Ombudsman for Future Generations, was nominated by President Sólyom, and was elected by a two-thirds majority in May 2008. Sólyom emphasized that *the Ombudsman is not a law enforcement body but serves as a representative of future generations*:

“This is why the word ‘Guardian’ in international law is so fitting. Minors and persons with disabilities have guardians or custodians. Future generations are also unable to defend their rights, and this is what the Ombudsman does on their behalf.”⁹

3. The Current Institutional Framework – Following the Adoption of the Fundamental Law

The Fundamental Law (entered into force in 2012) represented a paradigm shift in the Hungarian Ombudsman system, changing the status and constitutional role of the Ombudsman for Future Generations. With 1 January 2012 the independent Ombudsman Offices were merged into one, creating a single new

8 Benedek Jávör, ‘Institutional Protection of Succeeding Generations – Ombudsman for Future Generations in Hungary’, in Joerg Chet Tremmel (ed.), *Handbook of Intergenerational Justice*, Edward Elgar, Cheltenham, 2006, pp. 287-292.

9 László Sólyom, ‘A jövő nemzedékek jogai és ezek képviselője a jelenben’, in Benedek Jávör (ed.), *A jövő nemzedékek jogai*, Védegylet, Budapest, 2000, p. 40.

institution: the Office of the Commissioner for Fundamental Rights.¹⁰ Under the new structure, the Commissioner is responsible for the protection of human rights in general, while the two Deputies are entrusted with the protection of the rights of minorities and future generations, respectively. In questions concerning the natural environment and the interests of future generations, the Ombudsman for Future Generations (Deputy Commissioner) has the right to act independently from the Commissioner. This means that although his office is structurally incorporated under the Office of the Commissioner for Fundamental Rights and they may act as Deputy when necessary, his unit is procedurally autonomous in its own area of expertise. This is also reflected in the institution's designation: the Ombudsman for Future Generations (*a jövő nemzedékek szószólója*), an office with the power to carry out activities in its own right.¹¹ In this regard, the Ombudsman is most similar to institutions that are entrusted with the protection of children's rights,¹² which are either part of the general ombudsman system or function independently of it.¹³ The critical question is not necessarily the institutional structure but the legislative background that determines and circumscribes the powers and responsibilities of the Ombudsman.

The tasks of the Ombudsman for Future Generations are laid down in Article 30(3) of the Fundamental Law: the Ombudsman for Future Generations "shall protect the interests of future generations". *The mandate of the Ombudsman for Future Generations extends, at least in principle, to all issues which may, directly or indirectly, affect the interests of future generations.* The economy, education, health care, or state debt are all issues that inevitably affect the living conditions, financial constraints and well-being of future generations, and are subject to institutional protection. The Ombudsman is not barred from taking action in any of the aforementioned areas. Since potentially all legislation may have an impact on future generations, the Ombudsman institution itself had to restrict its scope of action, reflecting on theoretical, scholarly considerations regarding the concept and representation of future generations. Moreover, according to the Ombudsman Act, the Ombudsman may propose the adoption, amendment of

10 According to Gabriele Kucsko-Stadlmayer's classification of various powers, the Hungarian Ombudsman's Office belongs to the institutional 'Human Rights Model', where powers related to fundamental rights protection dominate the mandate of the Ombudsman. Based on the Ombudsman's powers, Kucsko-Stadlmayer differentiates between 'Basic Models', 'Rule of Law Models', and 'Human Rights Models'. The first is characterized by wide investigative powers, while the second's main priority is to monitor the lawful and proper operation of authorities. The protection of fundamental rights is prioritized in the third, Human Rights Model. See Gabriele Kucsko-Stadlmayer (ed.), *European Ombudsman-Institutions – A Comparative Legal Analysis Regarding the Multifaceted Realisation of An Idea*, Springer, 2008, pp. 59-66.

11 Section 3(4) of Act CXI of 2011 on the Commissioner for Fundamental Rights.

12 As an example, the European Network of Ombudspersons for Children (ENOC) established in 1997, links 43 offices for children from 34 states in Europe. See at <http://enoc.eu>.

13 For instance, ENOC works together with independent children's rights institutions: children's ombudspersons, commissioners for children, or focal points on children's rights in national human rights institutions or general ombudsman offices. See at http://enoc.eu/?page_id=8.

legislation on the *rights* of future generations,¹⁴ recognizing that future generations have rights protected by law and the institution of the Ombudsman.

Many states around the world already have an ombudsman-type institution, and a number of these institutions also consider environmental questions. Taking these institutions a step further, their scope of action could be extended to the protection of future generations, drawing inspiration from the Hungarian example. In the light of the current trend of cutting back on bureaucratic structures, expanding existing institutional systems seems to be a more feasible solution than establishing entirely new guardian institutions. It is characteristic of the ombudsmen's work and mandate to be closely tied with that of the Commissioner for Fundamental Rights. This form of cooperation implemented in Hungary has proven to be an effective and common design, making it for a viable option for other institutions to adopt in order to promote the rights and interests of future generations worldwide.

The fact that the Ombudsman for Future Generations works as a Deputy of the Commissioner for Fundamental Rights raises the question whether this new structural arrangement has weakened the institutional protection of future generations. The balance of their cooperation so far, however, indicates that this type of institutional structure could present considerable advantages for the legal protection of both present and future generations.

The Commissioner for Fundamental Rights protects the rights of citizens and other individuals living in the state in accordance with international standards and practice. The Ombudsman for Future Generations, on the other hand, acts not only in cases of concrete impairments of, and threats to private individuals' rights, but may also investigate legal and other matters that have the potential to jeopardize the interests of future generations. The Ombudsman can, in line with the precautionary principle,¹⁵ take action and evaluate decisions in the earliest stages of their development, and take a wide range of measures as necessary, albeit certain measures require the prior approval of the Commissioner (*e.g.* the Ombudsman could turn to the Constitutional Court only *via* the Commissioner).

Cooperation between the Commissioner for Fundamental Rights and the Ombudsman for Future Generations is most critical in areas where *the protection of a specific right is linked to both intergenerational and intragenerational justice*. The right to clean drinking water, for instance, falls under this category of fundamental rights. In Hungary, the improper management of mine pit lakes resulted in the pollution of groundwater and damage to freshwater reservoirs. This can be regarded as an intergenerational issue, which belongs under the jurisdiction of the Ombudsman for Future Generations. The intragenerational

14 Section 3(1)(g) of Act CXI of 2011 on the Commissioner for Fundamental Rights.

15 See *e.g.* Gyula Bándi, 'The Case of the Hungarian Constitutional Court with Environmental Principles – From Non-Derogation to the Precautionary Approach', *Hungarian Yearbook of International Law and European Law*, Vol. 7, 2019, pp. 49-66; Marcel Szabó, 'The Precautionary Principle in the Fundamental Law of Hungary: Judicial Activism or an Inherent Fundamental Principle? An Evaluation of Constitutional Court Decision No. 13/2018. (IX. 4.) AB on the Protection of Groundwater', *Hungarian Yearbook of International Law and European Law*, Vol. 7, 2019, pp. 67-83.

aspect of the right to clean drinking water, however, demands the joint action of the Commissioner and the Ombudsman for Future Generations. The example of events that took place in the municipality of Ózd illustrates this well. In the summer of 2013, the municipality closed down a number of public standpipes due to the outstanding debts of some poor families. In this case, the Commissioner and the Ombudsman argued that access to a minimum quantity of drinking water is a human right, which, irrespective of someone's financial capabilities, cannot be violated. In their joint report¹⁶ the Ombudsmen substantiated that in matters concerning water as an environmental resource, there is a concurrent need to protect the rights of both present and future generations. It is interesting to mention that in 2020 the Constitutional Court of Hungary also emphasized that the question of right to water could be an element of the protection of interests of future generations through Article P(1) of the Fundamental Law of Hungary and of the right to a healthy environment through Article XXI(1) of the Fundamental Law.¹⁷

Another important institutional aspect is that it being a relatively new institution, currently, the processes, functions and activities of the Ombudsman for Future Generations are not overregulated. Meanwhile, the Ombudsman works closely together with the Commissioner, whose activities and processes are strictly regulated.

4. Interests of Future Generations in the Fundamental Law

Besides the general recognition of the right to a healthy environment in Article XXI of the Fundamental Law, including the polluter pays principle,¹⁸ and the prohibition of the transport of pollutant waste into the territory of Hungary for the purpose of disposal,¹⁹ the Fundamental Law complemented the right to a healthy environment with further guarantees. The National Avowal *describes the Hungarian nation as an alliance of past, present and future Hungarians*. This constitutional provision articulates the essence of intergenerational justice: on the one hand, it expresses a commitment to receive the nation's heritage with respect and gratitude, while on the other, it is dedicated to the protection of present conditions for the benefit of coming generations. As Edith Brown Weiss pointed out,

“in all that we do, we inherently represent not only ourselves but past and future generations. We represent past generations, even while trying to obliterate the past, because we embody what they passed on to us. We represent future generations because the decisions we make today affect the

16 Joint Report No. AJB-5527/2013.

17 Decision No. 3196/2020. (VI. 11.) AB, Reasoning [11].

18 Article XXI(2) of the Fundamental Law.

19 Article XXI(3) of the Fundamental Law.

well-being of all persons who come after us and the integrity and robustness of the planet they will inherit.”²⁰

The National Avowal further adds that

“We commit ourselves to promoting and safeguarding our heritage, [...] all man-made and natural assets of the Carpathian Basin. We bear responsibility for our descendants; therefore we shall protect the living conditions of future generations by making prudent use of our material, intellectual and natural resources.”

This objective reflects the significance of long-term thinking in governmental decision-making, as well as the unique responsibility to safeguard the natural and cultural heritage of the state for the benefit of present and future generations.²¹ Beyond the National Avowal, several other provisions of the Fundamental Law refer explicitly to the protection of the interests of future generations. For instance, Article 38 on the property of the state sets out that the

“management and protection of national assets shall aim at serving the public interest, meeting common needs and preserving natural resources, as well as at taking into account the needs of future generations.”

The Fundamental Law contains a unique provision in Article P,²² enshrining the concept of the ‘*common heritage of the nation*’. This Article provides a powerful constitutional mandate to the Ombudsman for Future Generations to take action for the benefit of future generations and for the protection of the natural and cultural resources of Hungary. Generally speaking, the Fundamental Law entrusted the Deputy Commissioner with the protection of the interests of future generations, while the Act on the Ombudsman refers to the rights of future generations as the object of protection.

The concept ‘common heritage of the nation’ can be linked to the notions of the ‘common heritage of mankind’ and the ‘common concern of humanity’, already in use in international law. The ‘common heritage of mankind’ prescribes the protection of humanity’s common cultural heritage and certain natural objects, including the seabed, the Moon and celestial bodies. The concept holds that these places and natural objects cannot become the sovereign part of any one state, and that the benefits originating from the use of their resources must be

20 Edith Brown Weiss, ‘Intergenerational Fairness and Rights of Future Generations’, *Intergenerational Justice*, Vol. 2, Issue 3, 2002, p. 1.

21 Oxford Martin Commission, *Now for the Long Term – Report of the Oxford Martin Commission for Future Generations*, Oxford University Press, Oxford, 2013, p. 10; *National Policies & International Instruments to Protect the Rights of Future Generations*, World Future Council, 2010, pp. 2-3.

22 “Natural resources, in particular arable land, forests and the reserves of water; biodiversity, in particular native plant and animal species; and cultural artefacts, shall form the common heritage of the nation, it shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations.”

distributed equally and fairly among all nations of the world. The notion of mankind necessarily comprises not only present generations but also the unborn:

“If history does not end, mankind will have an eternal value [...] present generations are merely the managers of the common heritage; – they are accountable to future generations for their management.”²³

The UN Framework Convention on Climate Change²⁴ and the UN Convention on Biological Diversity²⁵ refer to biodiversity²⁶ and the climate as forming part of the common concern of humanity. This legal concept makes the nation’s irrecoverable natural heritage the subject of state concern, allowing for legitimate legal intervention for the protection of these invaluable assets. The concept common heritage of the nation is the concretization of these two international concepts.²⁷ Article P requires that the *natural resources and cultural assets that form part of the national heritage be maintained, preserved and protected for the benefit of future generations*.

Several environmental principles and concepts are incorporated into this Article of the Fundamental Law, including *the principle of non-retrogression or non-derogation*²⁸ [as the Constitutional Court adopted it in its *Decision No. 28/1994. (V. 20.) AB*], the concept of sustainable development, intergenerational equity, the precautionary principle, the principle of integration, and the principle of participation. With this provision a hypothetical legacy is bestowed upon future generations. In practice, therefore, the exact boundaries of the notion of intergenerational justice can only be determined if they are linked with the hypothetical concept of heritage. The concept of the common heritage of the nation outlines the obligation to preserve the state’s natural and cultural resources for future generations in no worse condition than in which these had been received. Based on this principle, the protection of future generations in the

23 René-Jean Dupuy & Daniel Vignes (eds.), *A Handbook on the New Law of the Sea, Volume 1*, Martinus Nijhoff Publishers, 1991, p. 584.

24 See the Preamble of the UN Framework Convention on Climate Change, para. 1.

25 See the Preamble of the UN Convention on Biological Diversity, para 3.

26 It is worth noting that Hungary is part of the Pannonian biogeographical region of Europe, 80% of which can be found in the territory of Hungary. The fact that the Carpathian basin is home to biological values that are unique and endemic to the region justifies the concept of ‘the common heritage of the nation’, and calls for the establishment of a special legal system capable of its protection for the benefit of future generations.

27 The consequences of biodiversity loss and climatic changes pose a real and, without direct and meaningful state intervention, inevitable threat to the well-being of present and future generations. Ensuring the long-term protection of environmental resources requires long-term thinking and a concrete obligation of the state to act. Through the protection of the environmental resources to secure the biological foundations of the Hungarian nation, as well as through the safeguarding of Hungarian culture, Article P of the Fundamental Law aims to preserve humanity’s one tiny mosaic, the Hungarian population.

28 The generally accepted term is ‘non-retrogression’, see e.g. John. C. Jeffries Jr. & Daryl J. Levinson, ‘The Non-Retrogression Principle in Constitutional Law’, *California Law Review*, Vol. 86, Issue 6, 1998, pp. 1211-1249. By contrast, in Hungary the term ‘non-derogation’ is the commonly used one.

Fundamental Law can also be understood as a horizontal principle, a structural premise: a principle that should have bearing on every political and societal decision made.²⁹ Article P provides a powerful constitutional mandate to the Ombudsman for Future Generations to take action in this respect.

Article P established a direct link between the environment, the interests of future generations, and some fundamental constitutional rights, including the right to physical and mental health, and the right to a healthy environment. This strong interrelationship between the aforementioned rights was first established by the Constitutional Court, which has an exclusive mandate to provide an authoritative interpretation of the Fundamental Law and the former constitution. In its *Decision No. 28/1994. (V. 20.) AB*, the Constitutional Court elucidated the right to a healthy environment as a distinct fundamental right, which can be best described as an “independent and autonomous institutional protection.”³⁰ It implies the State’s obligation to provide adequate legal and institutional guarantees for the protection of the environment with such safeguards being elevated to the level of fundamental rights.³¹ Furthermore, *Decision No. 28/1994. (V. 20.) AB* established the requirement of an environmental *status quo* and set out that the right to a healthy environment encompasses the duty of the state to ensure that the level of environmental protection is not reduced (*principle of non-retrogression or non-derogation*). This principle can only be overruled if another fundamental right or constitutional principle would otherwise be violated. This means that the state is not allowed to withdraw or repeal any legally mandated rights or privileges that were already provided for the purpose of environment protection, unless it is strictly necessary for implementing another competing human right or constitutional principle.³²

The Constitutional Court further argued that the level of protection of the right to a healthy environment is not arbitrary: it cannot be determined by the state alone. To maintain the achieved level of protection, the state cannot retreat from the preventive measures towards protection through sanctions. It may deviate from the above obligation only in case of inevitable necessity and only in line with the principle of proportionality. The Constitutional Court emphasized that the obligation to maintain the established level of protection also stems from the state’s duty to protect the natural foundations of human life and to

29 In this regard it is worth referring to the fundamental message of Pope Francis’s Encyclical Letter *Laudato Si*, which argues that our central task is to answer the ontological question of what meaning can be attributed to our earthly existence. This task cannot be fulfilled if the future of our children and grandchildren is compromised. This ethical standard is also implied in Article P of the Fundamental Law. See the Encyclical Letter *Laudato Si*’ of the Holy Father Francis on Care for Our Common Home, Vatican Press, 2015, at http://w2.vatican.va/content/dam/francesco/pdf/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si_en.pdf.

30 Decision No. 28/1994. (V. 20.) AB, ABH 1994, 138, available in English at [http://public.mkab.hu/dev/dontesek.nsf/0/bd7d0855c0550a5bc1257ada0052749c/\\$FILE/en_0028_1994.pdf](http://public.mkab.hu/dev/dontesek.nsf/0/bd7d0855c0550a5bc1257ada0052749c/$FILE/en_0028_1994.pdf).

31 See Balázs Majtényi & Gábor Győri, ‘A Right Without a Subject? The Right to a Healthy Environment in the Hungarian Constitution and the Practice of the Hungarian Constitutional Court’, *Fundamentum*, Vol. 12, Issue 5, 2008, p. 27.

32 Decision No. 28/1994. (V. 20.) AB, ABH 1994, 134.

develop the institutions that manage the finite resources, since environmental damage is often irreversible. The Decision established that the state's duty in relation to the institutional and objective protection of human life ensures the protection of human life in general, including the life and well-being of future generations. All this requires that, compared to other rights, the protection of the right to a healthy environment by legislative instruments be particularly strict.³³

In its more recent jurisprudence, the Constitutional Court aimed to enforce the non-retrogression (non-derogation) principle in a consistent manner.³⁴ In *Decision No. 16/2015. (VI. 5.) AB*, the Constitutional Court linked the National Avowal, Article P and Article XXI of the Fundamental Law to interpret the intrinsic meaning of environmental protection as the duty of the state and its citizens. Elements of this duty include ensuring the protection, maintenance, and preservation of environmental resources for future generations. Accordingly, the state's duty towards protecting the environment gained emphasis and independent regulation in Article P. In addition, the Fundamental Law extends the scope of subjects who are obliged to protect the natural environment. While the former Constitution underlined only the state's obligations in the field of environmental protection, the Fundamental Law underlines that this is everyone's duty, including civil society actors and citizens.³⁵ The Constitutional Court argued that environmental and economic considerations are necessarily in competition, because the implementation of environmental protection requires certain forms of self-restriction from the state, which cannot be expected from profit-oriented organizations. The Constitutional Court also stated that the inadequate protection of the natural environment could result in long-term negative externalities, social costs, and harm that are incompatible with the state's obligation to preserve natural resources and cultural assets for future generations. It could also violate the right to a healthy environment enshrined in Article XXI of the Fundamental Law. Moreover, the decision emphasized that changes in the institutional system of nature protection could, in themselves, result in a lower level of environmental protection, in case specific amendments to applicable legal provisions are not made.³⁶

According to the logic of the Constitutional Court, *the concept of the environment is not limited to the natural environment*. It encompasses our physical surroundings in general, both natural and man-made.³⁷ Consequently, the non-retrogression (non-derogation) principle applies not only to nature preservation, but also to the protection of the built environment.³⁸ *Decision No. 3104/2017. (V. 8.) AB* extended the *ratione materiae* of the non-derogation principle to national monuments as well, which form the most valuable part of the built environment.

33 Id. 140.

34 Majtényi & Gyóri 2008, p. 34.

35 Decision No. 16/2015. (VI. 5.) AB, Reasoning [92].

36 Id. Reasoning [110].

37 László Fodor, 'A környezethez való jog dogmatikája', *Miskolci Jogi Szemle*, Vol. 2, Issue 1, 2007, p. 16.

38 Zsolt Balogh & Barnabás Hajas, 'Rights and Freedoms', in Lóránt Csink *et al.* (eds.), *The Basic Law of Hungary – A First Commentary*, Clarus Press, Dublin, 2012, p. 95.

According to the Constitutional Court, when it comes to listed buildings, the withdrawal of legal protection requires specific justification. This means that, in a constitutional sense, national monuments fall under the non-retrogression (non-derogation) principle established in relation to the right to a healthy environment.³⁹ The above reasoning of the Constitutional Court supports the view of the Ombudsman for Future Generations, according to which the non-retrogression (non-derogation) principle intrinsically requires that natural and cultural assets listed under Article P be preserved under conditions similar to those applicable to natural resources.⁴⁰ Thus, in the past few years *the Hungarian Constitutional Court developed a uniquely strong concept of the constitutional protection for the common heritage of the nation and future generations.*

5. The Powers of the Hungarian Ombudsman for Future Generations

The framework of functions of the Ombudsman for Future Generations is laid down in Article 30(3) of the Fundamental Law. Pursuant to the Fundamental Law, the Ombudsman for Future Generations “*shall protect the interests of future generations*”. At the time of its establishment, the mandate of the Ombudsman was primarily geared towards the protection of the right to a healthy environment, leaving the institution with a narrower focus and authority.⁴¹ However, from 2012, the mandate of the Ombudsman for Future Generations is not restricted to the enforcement of this right only. Institutional protection is extended to all fundamental rights which can, directly or indirectly, affect the interests of future generations. Since the Fundamental Law considers the protection of the common heritage of the nation to be part of the interest of future generations, the Ombudsman can undertake action in all questions that concern the nation’s common heritage. This way, the Fundamental Law provides real power to the Ombudsman, for in practice, nearly all decisions can be considered to have an impact on the interests of the unborn. The economy, education, health care, or state debt are all issues that inevitably affect the conditions, financial burden, and wellbeing of future generations, and are therefore in need of institutional protection. Hence, according to Article P, consideration for future generations should become a part of every decision taken by the Hungarian legislature and enforcement bodies. There are no conceptual obstacles to prevent the Ombudsman from taking action in any of the aforementioned questions. However, acting upon such a broad interpretation of its mandate will only be possible after the institution’s further consolidation in the Hungarian political and institutional system.

39 Decision No. 3104/2017. (V. 8.) AB, Reasoning [40].

40 See, *inter alia*, the statement of the Ombudsman for Future Generations entitled “National Parks as safeguards of natural and cultural values for future generations” (in Hungarian), issued on 16 December 2014 at www.ajbh.hu/documents/10180/12318/Nemzeti_Park_JNBH_%C3%A1ll%C3%A1sfogal%C3%A1s.pdf/05d1d19b-18f6-4154-bf55-3fa8b8d0a349.

41 Section 27/B(1) of Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights.

One of the most powerful features of the Office of the Commissioner for Fundamental Rights is its publicity and transparent operation. As Ewa Letowska, former Ombudsman and Constitutional Judge from Poland, noted: “For the ombudsman the measure of success was by no means whether she won or lost before the Tribunal, her success was in raising general interest in the problem.”⁴² Every year, the Commissioner and the two Ombudsmen report on and prepare a statistical analysis of the cases and petitions they handled. These reports serve as important indicators of environmental policy-making and are highly relevant for the future work of the Office. The complaints are grouped into categories reflecting the lack, abuse, or violation of laws in certain environmental matters. This, on the one hand, can point to systemic anomalies of the judicial regime in environmental matters, while on the other, it can ensure that the public’s view on environmental issues is better reflected in environmental governance.⁴³

Pursuant to the new Act on the Ombudsman adopted in 2011,⁴⁴ the Ombudsman for Future Generations can draw the attention of the Commissioner, other affected institutions, and the public to any suspected infringement of the interests of future generations.⁴⁵ This direct channel to the public can help influence the public perception of risks and long-term consequences. In order to enhance the efficiency of its work, the Ombudsman can use various communication tools, including patronage of noble causes, operation of an official Facebook page,⁴⁶ and extensive media coverage that can reach wide segments of the population. A successful example for the latter was raising public awareness for air quality standards through the Ombudsman’s cooperation with civil society organizations, governmental bodies, and local municipalities.

According to the Ombudsman Act, only the Commissioner for Fundamental Rights has the right to carry out investigations (based on *ex officio* proceedings, public complaints or individual petitions), but the Ombudsman for Future Generations can also initiate and partake in the inspections.⁴⁷ If an investigation initiated by the Ombudsman is rejected by the Commissioner, the Commissioner must note the refusal and provide an explanation for it in his annual Parliamentary report. This provides an important safeguard mechanism for *ex officio* proceedings of the Ombudsman for Future Generations. Reflecting the excellent professional and institutional relationship between the Ombudsman

42 Excerpt from the lecture of Ewa Letowska, former Polish Ombudsman and Constitutional Judge, entitled “Constitutional doubles: the interplay between ombudsmen and constitutional courts in the protection of human rights” held at Central European University in September 2012, cited by Attila Láposy, ‘Közvetve és közvetlenül: az alapvető jogok biztosának indítványozási jogköre az alkotmánybíráskodás és alapjogvédelem szemszögéből’, *Kodifikáció és Közigazgatás*, Vol. 5, Issue 1, 2012, p. 39.

43 The annual reports (in Hungarian) can be found at the official website of the Commissioner, at www.ajbh.hu/eves-beszamolok.

44 Act CXI of 2011 on the Commissioner for Fundamental Rights.

45 Id. Section 3(1)(a).

46 See at www.facebook.com/J%C3%B6v%C5%91-Nemzed%C3%A9kek-Sz%C3%B3sz%C3%B3l%C3%B3ja-885959088173953/?fref=ts.

47 Section 3(1)(c)-(d) of Act CXI of 2011 on the Commissioner for Fundamental Rights.

and the Commissioner, the Commissioner never rejected any investigations initiated by the Ombudsman.

Should the Commissioner and the Ombudsman for Future Generations find an instance of maladministration, they issue a *joint report*. The joint reports present the results of the investigation, reveal the noted maladministration, and if necessary, formulate general or specific recommendations to remedy the harm done. Reports of the Commissioner for Fundamental Rights and the Ombudsman for Future Generations are not binding upon the Parliament nor the Government or any other addressee. However, when an infringement constitutes the violation of the Fundamental Law, *i.e.* the adopted regulation is not only harmful to the interests of future generations but also constitutes a breach of the Fundamental Law, the Ombudsman for Future Generations may turn to the Commissioner for Fundamental Rights to propose the submission of a petition to the Constitutional Court, requesting the annulment of the legal provision in question.⁴⁸ Joint reports are especially important when the remedy of the cases concerned can ensure the realization of both intergenerational and intragenerational justice. In 2020, the Ombudsman and the Commissioner published 13 joint reports that concerned, in particular, the issue of noise pollution, waste management, air quality control and damage to the environment.⁴⁹

The Ombudsman for Future Generations can issue non-binding statements and make proposals to any public authority, including the Government. Besides revealing instances of maladministration in individual cases, the Ombudsman's proposals provide an opportunity to highlight policy developments that threaten the protection of the current state of the environment, jeopardizing the interests of future generations. For instance, in 2015 the Ombudsman for Future Generations called upon the Government to save one of the last habitats of a critically endangered endemic mammal, the mole-rat.⁵⁰ This species is on the brink of extinction, with an estimated number of about 400 individuals left in the wild. Mole-rats are only known to inhabit three regions: one in northern Serbia, one in Hungary and one on the border of the two countries. In line with the recommendation of the Ombudsman, the competent National Park Directorate issued a proposal to designate the biggest Hungarian reservation area of the species as a so-called 'protected natural area with national significance'. The case provided an opportunity for the Ombudsman to disseminate scientific information and concepts about the general role of biological diversity for human

48 See *e.g.* Decision No. 14/2020. (VII. 6.) AB, in which the Constitutional Court stated that several elements of the 2017 amendment of the Act on Forests is unconstitutional. The case was initiated by the Commissioner for Fundamental Rights, in agreement with the Ombudsman.

49 Joint Reports No. 540/2019, 94/2020, 385/2020, 642/2020, 669/2020, 1025/2020, 1026/2020, 1073/2020, 1100/2020, 1365/2020, 1371/2020, 2037/2020, 4642/2020. All the Joint Reports are available (in Hungarian) at the website of the Office of the Commissioner for Fundamental Rights.

50 See the Statement of the Ombudsman for Future Generations on the conservation of the highly protected mole-rat for future generations (in Hungarian) at www.ajbh.hu/documents/10180/1957691/D%C3%A9lvid%C3%A9ki+f%C3%B6ldikuty%C3%A1ll%C3%A1sfoglal%C3%A1s/53ba0e75-dfdb-440a-ac8a-ed6373932906.

and non-human life on Earth and helped strengthen the social reception of these concepts. In 2016, the Ombudsman issued proposals for the protection of the soil,⁵¹ in which he made recommendations to stop the qualitative and quantitative deterioration of soil and urged the Government to create a national strategy for soil protection. The Ombudsman aims to develop its proposals relying on the latest nationally and internationally available scientific findings and positions. The Ombudsman (together with the Commissioner) also called the attention of the lawmaker to the importance of the protection of groundwater in 2021.⁵² Groundwater is an element of the ‘common heritage of the nation’ under Article P of the Fundamental Law, and for this reason it is the obligation of the Hungarian State and everyone to protect, maintain and preserve it for future generations, as it flows from the ‘public trust’⁵³ doctrine.

6. Beyond the Powers – Why is the Role of the Ombudsman of Future Generations so Important?

Early warnings are one of the most effective tools in the hands of the Ombudsman: the Ombudsman can draw the attention of the public and decision-makers to the potential dangers that a planned investment poses to the cultural and natural heritage of the state. If the Ombudsman receives enough support from the public, this may have a significant impact on the implementation or the repeal of the planned activity. Early warnings are, in effect, the practical application of the precautionary principle. An apt example of how early warnings change the public’s, and through that, the Government’s perception about a planned investment, is from 2013. The local Government of Budapest prepared plans to build a mobile dam on the northern side of the Danube. This section of the riverbank is covered with alluvial gallery forests and is one of the ecologically most sensitive areas of the river. Through press releases, public events and consultations, as well as with the continuous support of a number of civil society organizations, the Ombudsman was able to call attention to the potential loss of valuable forest coverage that would have resulted from the construction of the mobile dam system. The Ombudsman asserted that the removal of trees from this area would not be necessary as other technological solutions could more effectively solve the question of flood protection.⁵⁴

The Ombudsman for Future Generations also *could monitor all the legislative proposals*, to make sure that these bills do not pose a severe or irreversible risk to the environment and harm the interests of future generations. The Ombudsman,

51 See at www.ajbh.hu/documents/10180/2762244/talaj_allasfoglalas_vegleges_melleklet_nelkul.pdf/bb275681-70f8-9cdb-e886-aeb5d52b9ac9.

52 See the joint statement of the Commissioner and the Ombudsman on World Water Day (in Hungarian), at www.ajbh.hu/-/az-alapveto-jogok-biztosa-es-a-jovo-nemzedek-szoszolojako-koz-kozlemenye-a-viz-vilagnapja-kalkalmabol.

53 See e.g. Katalin Sulyok, ‘The Public Trust Doctrine, the Non-Derogation Principle and the Protection of Future Generations: the Hungarian Constitutional Court’s Review of the Forest Act’, *Hungarian Yearbook of International Law and European Law*, Vol. 9, 2021.

54 2013 Annual Report of the Commissioner for Fundamental Rights, AJBH, 2014, pp. 274-275.

through the Commissioner for Fundamental Rights, can deliver his opinion on draft laws, long-term land-use planning and development policies, as well as other initiatives that directly influence the quality of life of future generations.⁵⁵ In case the Commissioner's opinion is not taken into account by the legislature, the draft can later be challenged before the Constitutional Court.

The Ombudsman for Future Generations may recommend that new legislation be drafted or existing laws affecting the *rights* of future generations be amended. Based on this mandate, the Ombudsman can successfully represent the rights and ecological interests in the process of national and local law-making. For example, in 2016, the Ombudsman for Future Generations initiated the "Seedling-Sibling" nationwide tree-planting campaign,⁵⁶ which builds on long-standing national traditions, and on other international models adopted for instance in Wales.⁵⁷ The goal of the Seedling-Sibling project was to celebrate the birth of every newborn in the country by planting a seedling of a native tree species in the birthplace of the child. The project would have served a number of goals and has both symbolic meaning and ecological significance. While the Parliament did not accept the draft resolution of the Ombudsman for Future Generations, in 2020 the Government officially announced that 10 trees will be planted for every baby born.

In connection with its afore-mentioned powers, the Ombudsman for Future Generations also has *the right to speak before the respective committees of the Parliament*. On many occasions, it is the competent committees themselves who ask the Ombudsman to speak to the legislative process relating to the rights and interests of future generations. This is a very powerful instrument, since decisions on the adoption or amendment of laws are made within the framework of the parliamentary commissions. Through active lobbying and promoting proposed amendments that take the interests of future generations into consideration, the Ombudsman can steer legislation in a new, more environmentally friendly direction. When in 2017, a major amendment to the forest law was put on the Parliament's agenda that emphasized the economic functions of forests rather than their role in environmental conservation, the Ombudsman expressed its position in a number of parliamentary committee meetings. He argued that forests are the most complex terrestrial ecological systems receiving the highest level of constitutional protection (afforded to elements of the national heritage under Article P of the Fundamental Law), and that he was convinced that the bill is unconstitutional. Following the adoption of the bill in its original form, the Ombudsman asked the Commissioner for Fundamental Rights to turn to the Constitutional Court (*see* Section 7 below).⁵⁸

55 Section 2(2) of Act CXI of 2011 on the Commissioner for Fundamental Rights.

56 *See* the recommendation of the Ombudsman for Future Generations (in Hungarian) at www.ajbh.hu/documents/10180/2584047/Fatestv%C3%A9r+Program_OGY+hat%C3%A1rozat-javaslat.pdf/ad71d370-4c13-4ff7-9cc9-b47ee5d160a3.

57 For more information on the Welsh "Plant!" program, *see* at <https://sizeofwales.org.uk/about-us/plant-scheme/>.

58 Decision No. 14/2020. (VII. 6.) AB.

7. The Legal Relationship between the Ombudsman and the Constitutional Court

The Ombudsman for Future Generations and the Constitutional Court have a multi-faceted relationship. As outlined above, the Ombudsman often refers to the decisions of the Constitutional Court for normative guidance. In general, presenting the Constitutional Court's practice constitutes a central part of the Ombudsman's individual proposals and joint reports, providing a critical foundation for the Ombudsman's assessment of questions relating to fundamental rights.

The Ombudsman for Future Generations turned to the Constitutional Court in several cases *via* the Commissioner for Fundamental Rights to contribute to the protection of Hungary's natural resources. For example, in *Decision No. 14/2020. (VII. 6.) AB* the Constitutional Court stated that several elements of the 2017 amendment of the Act on Forests are unconstitutional. The case was initiated by the Commissioner for Fundamental Rights, in agreement with the Ombudsman for Future Generations. The Constitutional Court fully agreed with the petition that the amendment to the Forest Act primarily served the interests of forest owners by overshadowing key environmental considerations.⁵⁹

The Ombudsman for Future Generations also assists the Constitutional Court by filing *amicus curiae* briefs. *Amici curiae* may help the Constitutional Court develop its interpretation regarding the environmental provisions of the Fundamental Law. The Ombudsman can act as a guardian for future generations representing their long-term interests and influencing the decisions of the Constitutional Court by providing important legal interpretations and reasoning. In a landmark decision taken in 2015, the Constitutional Court annulled certain clauses of an Act, which had not been promulgated at the time. The clauses in question would have made it possible for government-run authorities, whose primary responsibility was not environmental protection, to take over the management of nature conservation areas from the national park directorates. Following an extensive investigation, the Ombudsman for Future Generations issued an independent statement entitled 'National Parks as safeguards of natural and cultural values for future generations'.⁶⁰ His statement concluded that pursuant to the Fundamental Law, the protection and maintenance of biodiversity, and its preservation for future generations was, among others, the obligation of the state, which responsibility is best fulfilled by the existing national park directorates. The Ombudsman highlighted that the land management activities of national parks are characterized by the highest standards of preservation, stemming from their primary task to protect the natural environment. Deviating from this arrangement, therefore, would be

59 About the decision *see e.g.* Sulyok 2021; Attila Pánovics: 'Decision No. 14/2020. (VII. 6.) of the Hungarian Constitutional Court on the Protection of Forests', *Hungarian Yearbook of International Law and European Law*, Vol. 9, 2021.

60 "National Parks as safeguards of natural and cultural values for future generations", Statement of the Ombudsman for Future Generations (in Hungarian), issued on 16 December 2014, p. 2.

unconstitutional.⁶¹ This statement influenced the decision of the Constitutional Court, which referred to the Ombudsman's brief as a persuasive source on the constitutional protection of the environment.

Besides *amici curiae*, based on Section 57(3) of the Act on the Constitutional Court, the Constitutional Court has the right to invite state bodies and authorities to make a declaration, send documents or give an opinion in pending cases. In 2017 the Hungarian Constitutional Court took a huge step towards the general recognition of the protection of the interests of future generations in the Hungarian legal system in a posterior norm control case initiated by Members of the Parliament. In this case, the Constitutional Court had to evaluate whether the privatization of certain Natura 2000 sites without sufficient environmental guarantees may be considered a violation of the core obligation of the state under the Fundamental Law to preserve natural resources, including biodiversity. Applying Section 57(3) of the Act on the Constitutional Court, this was the very first case when *the Constitutional Court invited the Ombudsman to submit his detailed opinion*.⁶² In its landmark decision, the Constitutional Court stated that

the core obligation to protect biodiversity as the UN Convention on Biological Diversity (ratified by 196 parties, including Hungary) prescribes, is a peremptory norm of general international law accepted and recognized by the international community of States as a whole from which no derogation is permitted.⁶³

Through the Commissioner, the Ombudsman can initiate constitutional court proceedings in cases, where it is reasonable to believe that a national or local piece of legislation is in violation of the Fundamental Law or an international agreement. Similarly, the Ombudsman can recommend that the Commissioner request an interpretation of a provision of the Fundamental Law from the Constitutional Court.⁶⁴ It should be noted, that in case the Commissioner rejects the recommendation, he must note and provide reasoned justification for the refusal in his annual report to the Parliament.⁶⁵ This provision is an important guarantee for the success of the Ombudsman's new initiatives.

61 Id.

62 In 2018 the Constitutional Court invited the Ombudsman again to submit his opinion in a preliminary norm control case, in which the President of Hungary stated that an adopted but not yet promulgated Act on groundwater is unconstitutional; *see* Decision No. 13/2018. (IX. 4.) AB. About the Decision, *see e.g.* Marcel Szabó, 'The Precautionary Principle in the Fundamental Law of Hungary – Judicial Activism or an Inherent Fundamental Principle? An Evaluation of Constitutional Court Decision No. 13/2018. (IX. 4.) AB on the Protection of Groundwater', *Hungarian Yearbook of International Law and European Law*, Vol. 7, 2019, pp. 67-83; Gábor Kecskés, 'The Hungarian Constitutional Court's Decision on the Protection of Groundwater – Decision No. 13/2018. (IX. 4.) AB of the Constitutional Court of Hungary', *Hungarian Yearbook of International Law and European Law*, Vol. 8, 2020, pp. 371-382.

63 Decision No. 28/2017. (X. 25.) AB, Reasoning [38].

64 Sections 2(3) and 3(1)(e) of Act CXI of 2011 on the Commissioner for Fundamental Rights.

65 Id. Section 3(3).

8. The Ombudsman at International Level

On the basis of his special responsibility in promoting the needs of the unborn, the Hungarian Ombudsman for Future Generations wished to contribute to a closer cooperation between these national institutions. To this end, he initiated, together with the other institutions for future generations, the establishment of an international network that could enhance the concept of sustainable development and intergenerational solidarity on a global level. As a first step, the Ombudsman aimed to bring together representatives of the eight institutions as well as a number of international scholars and NGOs to lay down the theoretical and practical foundations of implementing intergenerational justice. The first meeting, which was entitled “Model Institutions for a Sustainable Future” after the reference made in the former UN Secretary General Ban Ki-Moon’s report, was held in the Hungarian Parliament in April 2014. As a part of this conference, the participants adopted the Budapest Memorandum,⁶⁶ which aims to spread tested institutional solutions and best practices worldwide. The Memorandum was signed by representatives of 44 institutions.⁶⁷ With the aim to formalize and further enhance their future cooperation, participants also agreed to establish the Network of Institutions for Future Generations.⁶⁸

9. Concluding Remarks

There is a general agreement among scholars that the institutional representation of future generations should not be uniform across different countries and regions. It is argued that such efforts must be tailored to the specific characteristics of the intergenerational issues at hand, and to the cultural and legal specificities of each country.⁶⁹ The effectiveness of the institutional representation of future generations depends on a large number of factors, only one of which is the institutional framework. This framework can be filled with substance on the basis of the perspectives, available tools, and opportunities for cooperation between individual representatives. The model institutions that enjoy the most freedom to interpret their own mandate are usually Ombudsman institutions. Therefore, in the case of this establishment, it is particularly important how the holder of the office interprets the norms regulating its

66 Budapest Memorandum adopted at the Conference of Model Institutions for a Sustainable Future held in Budapest, 24-26 April 2014, at www.ajbh.hu/documents/14315/121663/Budapest_Memorandum.pdf/29f4b867-0afa-4d15-b3c4-4383ad732f73.

67 The proposal for such a memorandum also gained support from the UN Secretary General Ban Ki-moon, who addressed the aforementioned conference and called upon the participants to deliver “a powerful message to all countries about the need to create effective institutions that will maintain a robust focus on our common future.”

68 The official page of the network is available at <http://futuresroundtable.org/en/web/network-of-institutions-for-future-generations/welcome>.

69 Boldizsár Nagy, ‘Speaking Without a Voice’, in Emmanuel Agius & Salvino Busuttil (eds.), *Future Generations and International Law*, Earthscan, 1998, p. 62.

powers, and how it makes use of the opportunities afforded to it.⁷⁰ So far, all Ombudsmen for Future Generations sought to take advantage of the broad spectrum of opportunities, exploiting the potential in this unique institution. They truly aspired “to make human responsibility felt in all [areas] of state and civil life, with respect to the conservation of natural values [...] for the sake of protecting the next generations.”⁷¹

One of the most important guarantees of the Ombudsman for Future Generations’ success is the support and participation of the public in its activities. Environmental concerns raised by the Ombudsman are often met with a strong response from the public, urging decision-makers to re-think the problem and potential solutions. It is important to point out, however, that the intensity of the public response is in direct connection with the amplification of the Ombudsman’s message by the media. Since long-term thinking is not a typical feature of the press, it is difficult to publicize issues concerning the interests of the unborn. It is mostly issues that have a day-to-day relevance that are taken up by the media. In cases, where no acute event draws attention to the importance of a cause, the biggest supporter of the Ombudsman is the scientific sphere. If the Ombudsman wants to prove that certain decisions and processes cause permanent damage to the environment, it is much easier to achieve progress, if the Ombudsman works in close cooperation with the Hungarian Academy of Sciences and professional NGOs. Supported with sufficient scientific evidence, it is harder for the political sphere to disregard the assertions of the Ombudsman.

The change in the institutional set-up of the Office of the Commissioner for Fundamental Rights in 2012 resulted in a number of positive changes. With the adoption of the Fundamental Law, the constitutional powers of the institution were widened considerably. The Fundamental Law entrusted the Ombudsman for Future Generations with protecting the interests of future generations, while the Ombudsman Act refers to the rights of future generations as the object of protection. Cooperation with the Commissioner for Fundamental Rights is critical in a number of cases, when the given problem only partially concerns the protection of future generations. Coordinated, joint action can therefore be valuable, or may even become an important source of legal protection. In accordance with the precautionary principle, the Ombudsman for Future Generations frequently relies on early warnings and presents its position in the earliest stages of a potentially unlawful activity, when the Commissioner is not yet entitled to act.

The example of the Hungarian Ombudsman for Future Generations shows that while the protection of future generations could potentially affect all policies, their representation cannot be effectively expanded to all fields of legislation and governance. No national institution for the protection of future

70 Bernadette Somody, ‘Jogállami paradoxon – A sikeres ombudsmani jogvédelem sajátosságai’, in Éva Heizerné Hegedűs (ed.), *Az ombudsman intézménye és az emberi jogok védelme Magyarországon*, OBH, Budapest, 2008, pp. 101-106.

71 See the Comprehensive Summary of the Parliamentary Commissioner for Future Generations of Hungary, at http://jno.hu/en/pdf/Comprehensive_Summary_2009.pdf.

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generations will ever be mandated to act as a branch of power taking action on behalf of future generations. Therefore, the activities of future generation institutions should mainly focus on the 'conservation of options' as Brown Weiss put it. That is to say, they must concentrate their efforts on helping maintain the quality of the environment and the ecology to the degree possible, acting for the preservation of biodiversity, clean air, soil, water and other natural resources.