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The Role and Activity of the Deputy Commissioner for Fundamental Rights  
Ombudsman for Future Generations in Shaping Environmental Protection  
in Hungary\*\*

*Abstract*

*The study analyzes the position and the work of the Hungarian Ombudsman for Future Generations in light of the global development of the institutional protection of future generations. The Hungarian model has an outstanding role both at the domestic and international levels: not only does it influence environmental protection in the country but it could also serve as a role model for similar institutions to be established in other countries in the future. The paper gives an overview of the institutional protection of future generations in international law and introduces the historical development and the legislative framework for the establishment of the institution in Hungary, and lastly, briefly presents the different rights and duties of the Ombudsman with a particular focus on recent achievements and initiatives.*

**Keywords:** interests of future generations, protection of the environment, common heritage of the nation, institutional guarantees, ombudsman for future generations

## 1. The Protection of Future Generations – Theoretical Foundations and Institutional Framework in a Global Context

### 1.1. The Concept of Future Generations in International Law

The recognition of the importance of protecting the natural environment for the future has been an inherent part of international environmental law since the first stages of its development. The first notable legal document in the field, the 1972 Stockholm Declaration on the Human Environment, declared man's responsibility to protect and improve the environment for present and future generations.<sup>1</sup> The report of the Brundtland Commission entitled 'Our Common Future' adopted in 1987 introduced the concept of sustainable development,<sup>2</sup> which shaped environmental legal thinking ever

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<sup>1</sup> United Nations Conference on the Human Environment, Principle 1.

<sup>2</sup> World Commission on Environment and Development, 27. According to the report, sustainable development is a development that "meets the needs of the present without compromising the ability of future generations to meet their own needs".



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since: the 1992 Rio Conference on Environment and Development built upon the theoretical foundations of sustainable development laid down in the Brundtland Report;<sup>3</sup> and the 1997 Kyoto Protocol, as well as the subsequent 2015 Paris Agreement, put sustainable development in the context of climate change.<sup>4</sup>

The concept of sustainable development is founded on the principles of intergenerational and intragenerational equity. While the former principle refers to the sustainable dimension of sustainable development and implies that the environmental capital shall be transmitted to future generations in conditions equivalent to those in which it was received, the 'developmental' dimension encompasses intragenerational equity, which requires equity in the distribution of developmental outcomes within one generation at the national and international levels.<sup>5</sup> Naturally, the intergenerational and intragenerational sides of sustainable development are mutually determined: no one can dream about due care of the interests of future generations if the basic needs of vast layers of the present generation are not met. The concept of future generations is an integral component of the principle of intergenerational equity, which, according to Edith Brown Weiss, the pioneer and most prominent scholar of the rights of future generations, has three major elements: (a) the conservation of options and the diversity of choice; (b) the conservation of the quality of life comparable to that which has been enjoyed by previous generations; and (c) the conservation of comparable or non-discriminatory access to natural resources.<sup>6</sup>

Although attention has been given to the interests of future generations in several international documents,<sup>7</sup> the fact that future generations are not represented in current decision-making processes constitutes a fundamental problem for the proper implementation of such declarative provisions. The representation of people who do not yet exist<sup>8</sup> raises several questions for lawmakers.<sup>9</sup> First, assigning rights to unborn humans could be problematic because they cannot possess anything, including rights. Contrarily, considering that rights go hand-in-hand with duties, posing legal obligations to present generations while legal rights are absent may seem arguable, not to mention the difficulties in enforcing such obligations. Furthermore, the standing of future generations before courts may also challenge the existing legal framework, especially if one takes into account that the scope of who exactly belongs to future generations is still disputed: there have been (and are) continuous attempts before national courts to enforce their rights;<sup>10</sup>

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<sup>3</sup> See, inter alia, Principle 3 of the Rio Declaration on Environment and Development: "*The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.*"; art. 3.4 of the United Nations Framework Convention on Climate Change (UNFCCC): "*The Parties have a right to, and should, promote sustainable development [...]*".

<sup>4</sup> Kyoto Protocol to the UNFCCC, see e.g. art. 2, 10, 12.; Paris Agreement, Preamble, art. 2, 4, 6, 7, 8, 10.

<sup>5</sup> Szabó 2021, 77–78.

<sup>6</sup> Weiss 1992, 22–23. See also: Weiss 1989.

<sup>7</sup> See an almost exhaustive list as of 2012 in Ward, Pierce & Roderick 2012.

<sup>8</sup> See the Parfit paradox and its critical analysis in Roberts 2009.

<sup>9</sup> See: Fülöp 2021, 141–150.

<sup>10</sup> The most high-profile cases include the *Minors Oposa case* (the Philippines), *Juliana v. the US* (the United States of America), the *Urgenda case* (the Netherlands), the *Colombian Amazonas case* (Colombia), the *Neubauer case* (Germany), or the *Sharma case* (Australia). These cases appeared in

however, the link between the concrete cases and the interests of people not born yet may seem indirect for some courts. Based on the recently adjudicated cases, one may conclude that courts tend to accept the argumentation of people challenging inadequate measures addressing climate change when the group of plaintiffs includes children or young people, considering them as members of future generations.<sup>11</sup>

A possible solution for the representation of the interests of future generations could be through high-level specialized institutions that have the power to influence decisions at national and international levels. The importance of this issue was pointed out in the UN Secretary General's 2013 report, which proposed several ideas for the institutionalization of the representation of future generations at the international level. These included a High Commissioner for Future Generations, a Special Envoy of the UN Secretary-General for future generations, addressing intergenerational solidarity and the needs of future generations as a recurring agenda item in the high-level political forum, and interagency coordination concerning the needs of future generations.<sup>12</sup> Among these proposals, special attention shall be dedicated to the establishment of a High Commissioner for Future Generations, who, according to the report, could help in addressing the long-term consequences of present-day actions by drawing attention to future impacts in tangible, non-abstract terms, and supporting sustainability in planning government decisions.<sup>13</sup> However, these proposals have not yet been implemented.<sup>14</sup> Nevertheless, a high-level institution dedicated to the protection of future generations – as also pointed out in the report – could be based on the already functioning national institutions specialized in protecting their interests and needs. The report also examined certain national institutions, including the Hungarian Parliamentary Commissioner for Future Generations, as outstanding examples of the institutional protection of future generations, which could serve as a model for the establishment of a similar institution at the international level.

## 1.2. A Glance at Certain National Institutions for Future Generations

The aforementioned 2013 report of the UN Secretary-General pointed out eight offices that served or had served to protect the needs of future generations at the national level, which could also become models for similar institutions to be established in the

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front of national courts and challenged the domestic regulation relating to intergenerational equity, claiming that climate laws unlawfully prioritize present generations over future generations, as the regulations do not take into account that children and/or future generations will be more exposed to the negative impacts of climate change in the future than older generations, and thus global warming interferes with their (human) rights.

<sup>11</sup> Children were considered as part of future generations in the *Neubauer case* or the *Colombian Amazonas case*, while the legal standing of future generations was avoided to be addressed, for instance, in *Juliana v. the United States*.

<sup>12</sup> UN Secretary General 2013, notes 62–67.

<sup>13</sup> Ibid, note 56.

<sup>14</sup> The representation of future generations continues to be a high priority of the United Nations: the 2021 report of the UN Secretary-General 'Our Common Agenda' builds on the proposal of the 2013 report, and further investigates the institutional framework for future generations. See: UN Secretary General 2021, 45.

future in other countries.<sup>15</sup> The following paragraphs are dedicated to a brief introduction to these institutions in order to contextualize the Hungarian model among the few institutions that advocate for future generations in different parts of the world.

The office of the *Parliamentary Commissioner for the Environment* in New Zealand<sup>16</sup> was one of the first institutions to embrace environmental protection. Taking into account that the office was established in 1986 – not long before the issue of sustainable development appeared on the agenda of the United Nations Conferences – the needs of future generations were originally not explicitly addressed by the Parliamentary Commissioner, but it is apparent from its documents that concerns for future generations and the environment are intertwined.<sup>17</sup> The primary role of the Commissioner is investigative, but he may also provide the Parliament with advice and briefings – for instance, he had a major role in the adoption of the Climate Change Response (Zero Carbon) Amendment Act of 2019<sup>18</sup> – and present his work to the public and respond to public concerns.

In 1993, Finland established the *Committee for the Future* as a parliamentary committee. The Committee, which is composed of seventeen Members of the Finnish Parliament – usually the most respected, senior members of the party sections – has a relatively limited role, given that it does not have the powers and rights of an ombudsman but it serves as a think tank for future, science and technology policy. This shows that the mandate of the Committee extends well beyond environmental sustainability and the protection of future generations. The Committee may issue a report on long-term future prospects and the Government's targets and adopt statements and draft submissions to other committees of the Parliament.<sup>19</sup>

The position of the Canadian *Commissioner of the Environment and Sustainable Development* was established in 1995.<sup>20</sup> The office is embedded within the Office of the Auditor General and mainly issues reports on assessing whether departments of the Federal Government are meeting their sustainable development objectives for air, biodiversity, climate change, environmental assessment, land, toxins, water, industry, and Sustainable Development Goals (SDGs).<sup>21</sup> Similar to the scope of the Parliamentary Commissioner in New Zealand, future generations are not specifically defined in the work of the Canadian Commissioner. However, its dedication to sustainable

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<sup>15</sup> UN Secretary General 2013, notes 39–48.

<sup>16</sup> See: Parliamentary Commissioner for the Environment: Te Kaitiaki Taiao a Te Whare Pāremata n.d.

<sup>17</sup> As an example, the Parliamentary Commissioner for the Environment deals with the issue of the protection of the needs of future generations in its report from 2002: “*But what are the needs of future generations? While specific future preferences and wants (as opposed to needs) may be hard to determine, it is reasonable to assume that basic goods such as food, clean water and energy will be future needs. Internationally, reasonably foreseeable needs have been recognised as including the right to life, property, culture and health. [...]*”, see: Parliamentary Commissioner for the Environment 2002, 43.

<sup>18</sup> See: Parliamentary Commissioner for the Environment 2017, 29–34.

<sup>19</sup> Eduskunta Riksdagen n.d.

<sup>20</sup> See: Office of the Auditor General of Canada n.d.

<sup>21</sup> See, for instance, Commissioner of the Environment and Sustainable Development Reports from the years 2018, 2019, 2020, 2021, 2022.

development may indirectly embrace a certain level of concern towards the interests of future generations.

The Israeli Parliament, the Knesset, created the *Commission on Future Generations* with a *Knesset Commissioner for Future Generations* in 2001. The main task of the Commission was to assess bills with particular relevance for future generations, to investigate, including the ability to demand information from state agencies, and to issue recommendations on issues relevant for future generations. In practice, the Commissioner had strong power in the decision-making process: the fact that it claimed the right to issue an informed opinion even when the Knesset was bound by law to make a decision within a given timeframe effectively led to the Commission having informal veto power over law-making. Furthermore, one of the key powers of the Commission was to request a reasonable time from a parliamentary committee to collect data and prepare evaluation on certain bills or secondary legislation, which could even require committee chairs to delay their discussion to allow this. Needless to say, this arrangement endowed the Commissioner with a strong bargaining position, which he did not hesitate to maintain. The first Commissioner's term ended in 2006, and in 2007, the Parliament abolished the Commission. Apart from the high cost of its operation, the fear that the Commission had received too much authority to interfere with the work of the Knesset certainly contributed to the dissolution of the entity.<sup>22</sup>

In 2007, the Hungarian Parliament established the Office of the *Parliamentary Commissioner for Future Generations*.<sup>23</sup> A detailed analysis of the work of the Hungarian institution is given below. At this point, it should only be mentioned here that the office was terminated in 2011, and the institutional protection of future generations continued to operate within the institution of the Commissioner for Fundamental Rights as one of the two Deputies of the Commissioner. The position of the *Deputy Commissioner for Future Generations* or *Ombudsman for Future Generations* (hereinafter 'the OFG' or 'the Ombudsman') primarily and expressly represents the interests of future generations.<sup>24</sup>

Although the 2013 UN Secretary-General report mentioned and analyzed the *Welsh Commissioner for Sustainable Futures*, the institution was replaced in 2015 by the currently operating *Future Generations Commissioner for Wales*. Based on the Well-Being of Future Generations (Wales) Act adopted in 2015, the new Commissioner may provide advice or assistance on the issue, encourage best practices, undertake the necessary research, and publish regular reports and recommendations.<sup>25</sup>

The Norwegian *Ombudsman for Children*,<sup>26</sup> established in 1981 – well before the adoption of the 1989 Convention on the Rights of the Child (CRC) – was the world's first ombudsperson for children. Although the Norwegian Ombudsman for Children does not expressly advocate for future generations, as her main duty is to ensure the

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<sup>22</sup> Shoham & Kurre 2021, 336–339.

<sup>23</sup> See: Jövő Nemzedékek Országgyűlési Biztosa (Parliamentary Commissioner for Future Generations) 2011.

<sup>24</sup> See: Deputy Commissioner for Fundamental Rights Ombudsman for Future Generations n.d.

<sup>25</sup> Well-Being of Future Generations (Wales) Act 2015, Paragraphs 17–24.

<sup>26</sup> See: Barneombudet n.d.

proper implementation of the CRC, the recent constitutional development of Norway<sup>27</sup> created significant room for the Ombudsman to act in support of future generations.<sup>28</sup>

Finally, the *German Parliamentary Advisory Council on Sustainable Development*,<sup>29</sup> which was established in 2009 to serve as an advocate of long-term responsibility, can be considered. The Council is integrated within the parliamentary system, and its main task is to monitor compatibility with the National Sustainability Strategy. To this end, the Council may adopt recommendations and carry out an evaluation of the sustainability impact assessment. The latter encompasses four areas that are strongly related to the protection of future generations: (a) fairness between generations, (b) social cohesion, (c) quality of life, and (d) international responsibility.<sup>30</sup>

Based on the above, it would not be an exaggeration to state that the office of the Hungarian model has an outstanding role even among institutions of the future generations, as seen in the establishment of the Network of Institutions for Future Generations in 2014. Inspired by the 2013 report of the Secretary-General, the Network, which encompasses the model institutions mentioned in the report, was established upon the initiative of Marcel Szabó, the incumbent Hungarian OFG of the time. The aim of the platform was – and continues to be – to contribute to closer cooperation among the national institutions mentioned in the 2013 UN Secretary-General report for the purpose of exchanging good practices for the national implementation of sustainability and intergenerational justice. One may also observe that responsibility specifically for future generations is not given the same weight on the agenda of the eight institutions; very few, including the Hungarian one, are identified as advocates for future generations, instead of defenders of the environment, sustainable development, or children. Although all of these categories may also embrace care for future generations, in the author's view, the indirect link between the center of their concern and future generations may lead to the fragmentation of the scope of their activities.

## 2. Institutional Protection of Future Generations in Hungary

### 2.1. The Establishment and Dissolution of the Office of the Parliamentary Commissioner for Future Generations

The introduction of an advocate of the environment and future generations appeared in public discussion as early as 1990: a Hungarian civic organization, the Védegylet ('Save the Future') presented a private draft for an Act on the Ombudsman for Future Generations, authored by László Sólyom, the first President of the Hungarian

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<sup>27</sup> As a result of a series of amendments starting in 2014, the Norwegian Constitution was amended with two provisions of particular interest concerning the rights of children: the duty to create conditions that facilitate the child's development, including adequate economic, social, and health conditions (art. 104) and the right to education (art. 109), which are strongly linked to sustainable development and thus future generations.

<sup>28</sup> Fauchald & Gording Stang 2021, 358–362.

<sup>29</sup> Parliamentary Advisory Council on Sustainable Development n.d.

<sup>30</sup> Reimer 2021, 391–394.

Constitutional Court (1990–1998) and later President of the Republic (2005–2010).<sup>31</sup> At the political level, however, it took almost ten years of debate that the position of the *Parliamentary Commissioner for Future Generations* was established in 2007<sup>32</sup> under the presidency of Sólyom. The so-called ‘green ombudsman’ operated as a separate ombudsman, along with three other independent ones.<sup>33</sup> The Parliamentary Commissioners were elected for a six-year term by the Parliament. Regarding the green ombudsman, the law described specific criteria, namely, to be an outstanding scholar or have at least ten years of practice in environmental and nature protection law, and significant experience in conducting and supervising procedures relating to environment and nature protection or in the enforcement of the right to a healthy environment.<sup>34</sup>

Although the Parliamentary Commissioner was labelled as the Commissioner for Future Generations, the constitutional and the legal framework in force at the time implies that the Ombudsman was responsible for the protection of the environment.<sup>35</sup> The Constitution – Act XXXI of 1989 – declared everyone’s right to a healthy environment, and the protection of the built and natural environment as a state task for the realization of the right to the highest possible physical and mental health. However, it did not contain any reference to the interests or needs of future generations. Furthermore, the law establishing the position expressly stated that the Parliamentary Commissioner for Future Generations should ensure the fundamental right to a healthy environment.<sup>36</sup> The law further specified two values to be protected by the Commissioner: the quality of life of future generations in the frames of evaluating the long-term planning of local governments and the common heritage of humankind in connection with competencies relating to international obligations of the country.<sup>37</sup> As for the interpretation of the protected values at the time of the establishment of the position, it shall be taken into account that the right to a healthy environment had already been elaborated precisely in the practice of the Constitutional Court – especially by Decision no. 28/1994 (V.20.) – but the interests of future generations were discussed in detail by the Court only after the adoption of the Fundamental Law in 2011.

Besides the subject matter of this office, the distinctive attributes of the Commissioner also lie in his competencies; in addition to the general powers of an ombudsman – activities relating to the control over authorities concerning fundamental rights – the green ombudsman had the power to call upon a person or organization illegally endangering, polluting, or damaging the environment to cease such activities, and to call the competent authority to take measures to protect the environment.<sup>38</sup> Furthermore, in case such measures were not found satisfactory, he may ask the court to

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<sup>31</sup> See: Jávör ed. 2000. For the discourse on the institution building of the ombudsman, see also: Sólyom 2001.

<sup>32</sup> Act CXLV of 2007 on the modification of Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights, art. 10.

<sup>33</sup> The other Parliamentary Commissioners were responsible for civil rights, data protection, and the rights of national minorities.

<sup>34</sup> Act CXLV of 2007, art. 10 (27/A (2)).

<sup>35</sup> Fodor 2008, 47–48.

<sup>36</sup> Act CXLV of 2007, art. 10 (27/A (1)).

<sup>37</sup> Act CXLV of 2007, art. 10 (27/B (3) f, g)).

<sup>38</sup> Act CXLV of 2007, art. 10 (27/B (3) a b)).

prohibit the person or organization from damaging the environment, to oblige them to take the necessary measures to prevent damage, and to restore the environmental condition prior to the environmentally damaging behavior.<sup>39</sup>

This competence is particularly interesting in light of the current legal environment: Article XXI (2) of the Fundamental Law provides that “*Anyone who causes damage to the environment shall be obliged to restore it or to bear the costs of restoration [...]*.” Given that the provision mentions ‘anyone’, it cannot undoubtedly be deduced that the term also encompasses legal persons, non-state actors, the State, or only natural persons, thus, the scope of liable subjects under this provision is questionable. The comparison of the competencies of the former green ombudsman and of the current Deputy Commissioner for Future Generations may help in the clarification of the problem. Contrary to the former constitutional framework, the current Deputy Commissioner does not have the competency to call legal persons to cease an environmentally harmful activity, and consequently, it is questionable whether the scope of liable subjects would encompass the State or legal persons under the current legislative framework.

Furthermore, the above constitutional provision also raises the question of whether it expresses the polluter pays principle, which would be a broader concept than liability, as it encompasses the entirety of the behavior of the polluter, and thus his responsibility does not only manifest at the time of the occurrence of the damage, but from the beginning of using the environment until the elimination of the dangers and damages.<sup>40</sup> However, as Gyula Bándi, the current Deputy Commissioner for Future Generations, suggests, it is rather interpreted as a ‘narrow understanding’ of the polluter pays principle,<sup>41</sup> also because the constitutional text itself does not provide *expressis verbis* the requirement of precaution and prevention, which are equally important components of the above-mentioned principle. The former green ombudsman also expressed his opinion during the process of drafting the Fundamental Law. In his proposal, Sándor Fülöp suggested the *expressis verbis* formulation of the principle of precaution, prevention, integration, as well as the polluter pays principle in the constitutional text,<sup>42</sup> but finally, they were not included in the Fundamental Law. In a resolution issued the same day as the adoption of the Fundamental Law, he highlighted that *one side* of the polluter pays principle was raised to the constitutional level under Article XXI (2).<sup>43</sup> Therefore, one may conclude that the competency to investigate and take action against natural and legal persons illegally damaging the environment was one of the strongest powers of the green ombudsman, which is not provided to the Deputy Commissioner under the current regulation.

The Hungarian constitutional framework essentially changed with the adoption of the Fundamental Law in 2011:<sup>44</sup> not only did the constitutional text introduce more

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<sup>39</sup> Act CXLV of 2007, art. 27/C (3).

<sup>40</sup> Bándi 2020a, 20–21.

<sup>41</sup> Bándi 2020b, 16.

<sup>42</sup> Draft law no. T/2627 on the Fundamental Law of Hungary, pp. 1–2.

<sup>43</sup> Parliamentary Commissioner for Future Generations, JNO-258/2011, 3–4.

<sup>44</sup> For further information on the drafting and adoption of the Fundamental Law in light of the provisions relating to the environment, see: Raisz 2012.

provisions on the protection of the environment<sup>45</sup> and sustainability,<sup>46</sup> but it also contained unique provisions for future generations, which constituted a solid basis for the mandate of the Ombudsman. The Preamble declares the responsibility for our descendants, and therefore, the obligation of protecting the living conditions of future generations “*by making prudent use of our material, intellectual and natural resources.*” Further, Article P (1) provides that “*natural resources [...] 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.*” Third, according to Art. 38 (1), the “*needs of future generations*” shall be taken into account in the management and protection of national assets.

The new ombudsman system was introduced by Article 30 of the Fundamental Law, which established the position of the Commissioner for Fundamental Rights and the two Deputies: the Deputy Commissioner for Future Generations and the Deputy Commissioner for the Rights of National Minorities. Act CXI of 2011 on the Commissioner for Fundamental Rights entered into force on January 1, 2012, the same day as the Fundamental Law, and dissolved the previously functioning ombudsman structure. The Commissioner for Fundamental Rights became the legal successor of the Parliamentary Commissioners for Civil Rights, Rights of National Minorities, and Future Generations.<sup>47</sup>

## 2.2. The Green Ombudsman and the new Fundamental Law

The introduction of the new ombudsman model was heavily debated among state actors. The incumbent green ombudsman at the time issued an opinion concerning the ombudsman structure during the process of drafting the Fundamental Law,<sup>48</sup> arguing that the dissolution of the separate ombudsman’s office would result in the derogation of the previously achieved level of institutional protection. According to him, given that environmental protection requires a wide range of interdisciplinary expertise, including different fields of law and policies (traffic, spatial planning, rural development, energy policy, etc.), its complexity may not be properly analyzed in a system where the respective ombudsman is integrated into a hierarchical structure.<sup>49</sup> Due to his power to initiate Constitutional Court proceedings, the green ombudsman also initiated an ex-post norm control for the dissolution of the former ombudsman system. However, given the fact that its legal successor, the Commissioner for Fundamental Rights, did not intend to

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<sup>45</sup> See, for instance, liability for the damage caused to the environment, and the prohibition of the transport of pollutant waste to the territory of Hungary (art. XXI (2)–(3)).

<sup>46</sup> Sustainable development expressly appears in art. Q; and sustainable budget management is regulated in art. 36 (4). The latter provision determines the maximum limit of government debt, which implicitly protects the interests of future generations by aiming to avoid indebtedness which would pose an intolerable burden on them by excessively prioritizing the needs of present generations. See: Explanatory Memorandum of Article 36 of the Fundamental Law.

<sup>47</sup> Act CXI of 2011 on the Commissioner for Fundamental Rights, art. 45 (1).

<sup>48</sup> See: Recommendation of the Parliamentary Commissioner for Future Generations for the elaboration of the new Constitution.

<sup>49</sup> Opinion of the Parliamentary Commissioner for Future Generations in connection with the operation of the ombudsman structure, 2010.

continue the procedure, the court rejected the motion.<sup>50</sup> Although the Explanatory Memorandum of Article 30 of the Fundamental Law does not clarify why such a comprehensive structural change was necessary, the literature points out that the establishment of newer ombudsmen would result in fragmentation and may lead to different interpretations, and consequently, huge conflicts among the ombudsmen.<sup>51</sup> The institutional development of the ombudsman's office brought greater independence for the deputies within the monocratic model, which is shown by the extension of competencies,<sup>52</sup> the changes in the internal structure (i.e., the establishment of the Secretariat of the Deputy Commissioners),<sup>53</sup> the growing number of employees, and their increased media representation in the last few years.<sup>54</sup>

The green ombudsman played a significant role in the formation of other constitutional provisions regarding environmental protection.<sup>55</sup> In his proposal, Sándor Fülöp pointed out that the right to a healthy environment was first declared at the constitutional level in 1989, and since then, the importance of environmental protection and the requirement of sustainable development became more prominent. Thus, according to him, the already achieved level of protection shall certainly be preserved, and the development of the interpretation of the right by the Constitutional Court shall be reflected in the new Constitution through the explicit declaration of the principles of non-derogation, precaution, prevention, and the polluter pays principle. Although the Fundamental Law does not mention any of these principles in this form, the right to a healthy environment was supported by two provisions: the responsibility for the damage caused to the environment and the prohibition of the transport of pollutant waste to the territory of the country. Although the Constitutional Court emphasized the objective, institutional side of the right to a healthy environment, it also entails certain subjective elements, which are, for instance, access to information and participation in the decision-making process in environmental matters, which were not guaranteed by the former constitutional text. However, these rights are still not included in the Fundamental Law.

The proposal also highlighted that in several European constitutions, the protection of the environment is perceived not only as a right but also an obligation, given that its protection is a common interest, and therefore, a common responsibility. This obligation is provided in Article P in relation to the common heritage of the nation, as "*it shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations.*" Furthermore, the green ombudsman proposed the expressis verbis mention of the interests of future generations in connection with the right to a healthy environment and in the preamble as a general value for the Fundamental Law and the entirety of the legislation. This proposal was undoubtedly successful, as future generations appear directly and indirectly in the constitutional text several times. Thus, one may conclude that the green ombudsman contributed to the formulation of the

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<sup>50</sup> Order no. 3002/2012. (VI.21.) [44], [47].

<sup>51</sup> Varga Zs 2012, 136–137.

<sup>52</sup> See Act CCXXIII of 2013 on the modification of Act CXI of 2011.

<sup>53</sup> Order no. 1/2012 (I.6.) of the Commissioner for Fundamental Rights.

<sup>54</sup> Csink 2016, 603–605.

<sup>55</sup> Fülöp 2012, 76.

Fundamental Law with valuable proposals that were – even if not entirely but surely to some extent – taken into account during the constitution-making process.

### 2.3. The Legal Framework for the Deputy Commissioner for Future Generations

As mentioned above, Article 30 of the Fundamental Law laid down the legal framework for the position of the Commissioner for Fundamental Rights and his Deputies. According to this article, the Commissioner for Fundamental Rights shall protect fundamental rights; investigate any violations related to fundamental rights that come to his or her knowledge, and initiate general or specific measures to remedy them. The Fundamental Law further provides that the Commissioner and his or her Deputies shall be elected for six years with a two-thirds majority of the National Assembly, and that *“the Deputies shall protect the interests of future generations and the rights of national minorities living in Hungary.”*<sup>56</sup>

Act CXI of 2011 on the Commissioner for Fundamental Rights (hereinafter ‘the Commissioner’) regulates the mandate of the Commissioner and the two deputies in detail. The comprehensive analysis of the duties and competencies of the Commissioner for Fundamental Rights would exceed the limits of this study; therefore, only the rules relevant to the OFG will be presented in the following. The interests of future generations appear in two contexts in the general rules on the Commissioner. First, the Act sets out four areas for which the Commissioner has to pay particular attention: children’s rights, values protected in Article P of the Fundamental Law (i.e., the interests of future generations), the rights of minorities living in Hungary, and the rights of the most vulnerable social groups;<sup>57</sup> and second, within the framework of his duty to give an opinion on plans and concepts otherwise directly affecting the quality of life of future generations (*inter alia*).<sup>58</sup> This latter duty was known in the former ombudsman system as well; however, in the new regime, it was transferred to the Commissioner instead of the OFG.<sup>59</sup> Theoretically, this solution fits better within the concept of sustainable development, of which intragenerational justice constitutes an inherent part.

Under the new legislative framework, the main task of the Deputy Commissioner is to monitor the enforcement of the interests of future generations. As pointed out above, the regulation for the former green ombudsman puts the enforcement of the right to a healthy environment at the center of concern, with two further values to be protected. One of these, the quality of life of future generations, was expressly transferred to the Commissioner. The other value, the common heritage of humankind, was not explicitly defined in the constitutional law of the time. Article P of the new Fundamental Law introduced the notion of the ‘common heritage of the nation’, which encompasses *“natural resources, in particular arable land, forests and the reserves of water; biodiversity, in particular native plant and animal species; and cultural artifacts”*, which shall be protected, maintained, and preserved for future generations as a general obligation.<sup>60</sup> The term ‘common heritage of

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<sup>56</sup> The Fundamental Law of Hungary, art. 30 (3).

<sup>57</sup> Act CXI of 2011, art. 1 (2).

<sup>58</sup> Act CXI of 2011, art. 2 (2).

<sup>59</sup> Cf. Act CXLV of 2007, art. 10 (3) f).

<sup>60</sup> The Fundamental Law of Hungary, art. P (1).

the nation' is a unique concept of Hungarian law, which – contrary to the notion of the 'common heritage of mankind', which refers to areas that are incapable of national appropriation and where the principle of sovereignty is not applicable – encompasses those resources that belong to a certain entity, in this case, to the nation.<sup>61</sup> Given the strong interrelation of the protection of the common heritage of the nation as well as the environment with the moral responsibility towards future generations, the mandate has three pillars, as concluded by Gyula Bándi: (a) the human right to a healthy environment; (b) the right to physical and mental health; and (c) the common heritage of the nation, as stipulated in Article P of the Fundamental Law.<sup>62</sup>

Furthermore, the law prescribes eight tasks or competencies of the Deputy Commissioner, namely: (a) to regularly inform the Commissioner for Fundamental Rights on his/her experience regarding the enforcement of the interests of future generations; (b) to draw the attention of the Commissioner, the institutions involved and the public to the danger of infringement of the rights of a larger group of natural persons, especially of future generations; (c) to propose the Commissioner to institute proceedings *ex officio*; (d) to participate in the inquiries of the Commissioner; (e) to propose the Commissioner to turn to the Constitutional Court; (f) to monitor the realization of the National Framework Strategy on Sustainable Development adopted by the Parliament; (g) to propose the adoption or modification of laws concerning the interests of future generations; and (h) to assist the presentation of the values of the Hungarian institutional framework for the interests of future generations through his or her international activity.<sup>63</sup> Although some competencies are similar to those of the former green ombudsman – such as proposing the adoption of laws, issuing recommendations and reports, or representing the Hungarian institution at the international (or EU level) – certain competencies of the previous mandate are reserved for the Commissioner, and the OFG may propose the Commissioner to take action, namely, to institute proceedings *ex officio* and to turn to the Constitutional Court. However, powers relating to liability for environmental damage, including the competency to oblige the person or organization illegally damaging the environment, or instituting court proceedings against them, were not transferred to the new system. Neither was the former right of the Ombudsman to sue the polluters in administrative or civil courts transposed to the new legal arrangement. At the same time, we have to note that neither of these rights was frequently used by the green ombudsman because they were considered as partly undertaking the tasks of environmental administration, which was not the goal of the old institution of intergenerational equity. In other words, it was deemed to decrease the methodological independence of the Ombudsman from the Government.

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<sup>61</sup> See: Shaw 2017, 396–397.; Kovács 2016, 442.; Cf. Szilágyi ed. 2017, 32. The word 'heritage' also indicates that the legislator did not refer to the natural resources merely as objects of commercial transactions (goods, capital, etc.) but also takes into account their other, vital functions. See: Szilágyi 2021, 139.

<sup>62</sup> Bándi 2020b, 9–11.

<sup>63</sup> Act CXI of 2011, art. 3 (1).

### 3. An Overview of the Activities of the Deputy Commissioner for Future Generations at the National and International Levels

#### 3.1. Domestic Activities

The work of the OFG is comprehensive; as it embraces a wide range of activities and topics, an attempt to present it in its entirety would be too ambitious for this study. Therefore, we may arbitrarily select a handful of examples from his achievements and present them in the following paragraphs.

##### 3.1.1. Influence on the Constitutional Court Practice

The Constitutional Court (hereinafter the CC) often considers and refers to the findings and opinions of the OFG in several key environmental decisions. First, in Decision No. 28/2017 (X.25.), which is of paramount importance for the interpretation of the protection of biodiversity in light of Article P (1) of the Fundamental Law, the CC relied on the *amicus curiae* submitted jointly by the Commissioner and the OFG and concluded that the sale of Natura 2000 areas in the absence of a legal provision guaranteeing the preservation and improvement of such protected areas constitutes a violation of the obligations laid down in Article P.<sup>64</sup> The decision is also notable for its findings on biodiversity, pointing out that it shall be protected not only for its ecological function and thus its usability for humans (e.g., the production of goods such as water, food, or fuel; the natural self-regulation of rainfall or climatic processes; photosynthesis, soil formation, or the circulation of nutrients, the so-called ecological services of nature) but also on the basis of natural law, which is the starting point for the Christian interpretation of environmental protection.<sup>65</sup> In the author's opinion, the confirmation that the environment will be protected from both anthropocentric and ecocentric perspectives – focusing on the inherent value of biodiversity<sup>66</sup> – certainly shows a progressive approach to the issue in Hungarian constitutional law.

Another outstanding example is Decision No. 13/2018 (IX.4.), which was initiated by the President of the Republic. The arguments of the *amicus curiae* submitted by the OFG were used and cited in the President's petition,<sup>67</sup> as well as the CC decision. Notably, this motion of the President and OFG was supported by a wide array of civil and professional organizations, including the Hungarian Academy of Sciences. The Constitutional Court pronounced the unconstitutionality of a regulation allowing unlimited drilling and use of groundwater wells: given that groundwater resources belong to the exclusive property of the state, as well as the common heritage of the nation, the Court stated that such a regulation would violate the non-derogation principle and consequently the protection of natural resources and the right to a healthy environment

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<sup>64</sup> Decision no. 28/2017 (X.25.) [76].

<sup>65</sup> Decision no. 28/2017 (X.25.) [35]–[36]; Cf. Pope Francis, 2015; Ecumenical Patriarch Bartholomew, 2012.

<sup>66</sup> Szabó 2019, 98–101.

<sup>67</sup> Bándi 2020b, 18–19.

enshrined in Articles P (1) and XXI (1).<sup>68</sup> This decision is principally notable for two reasons: first, it elaborated on the precautionary principle<sup>69</sup> and raised it to a constitutional criterion for the benefit of the interest of future generations; and second, the CC interpreted the obligations towards future generations laid down in Article P based on the generally accepted theory of intergenerational equity of Edith Brown Weiss.<sup>70</sup> The CC also referred to an opinion issued by the OFG, in which he drew attention to the importance of the principles of precaution and prevention. The fact that the OFG brought the principles back to the discussion and, consequently, the CC could raise them among the most important principles for environmental protection shows that the OFG does have a significant role in the interpretation of the related constitutional provisions.

Furthermore, the OFG raised his voice in relation to the right to fair trial from an environmental perspective, pointing out that state guarantees of access to environmental information are crucial for the realization of the protection of the environment enshrined in Articles P, XX, and XXI of the Fundamental Law. In other words, access and disclosure of such information are prerequisites and form part of the constitutional right to a healthy environment.<sup>71</sup> These findings were reflected in Decision No. 4/2019 (III.7.) in which the CC found that the way statements on the protection of environmental compartments and natural values shall be disclosed in decisions issued by an authority shall be clarified in the law,<sup>72</sup> thereby establishing a link between environmental protection and procedural rights. It is worth noting that the green ombudsman also emphasized the importance of the declaration of procedural environmental rights in the Constitution; however, they were finally not implemented. Nevertheless, one may conclude that in this decision, the CC acknowledged a certain level of interrelation between the environment and the right to a fair trial.

Finally, Decision No. 14/2020 (VII.6.) should be mentioned, which can certainly be considered the most eclatant example of the involvement of the OFG in the work of the CC. The proceedings were initiated by the Commissioner upon the request of the OFG in connection with forest protection: the OFG sought the annulment of certain provisions of the Forest Act and the Nature Protection Act for violating the non-derogation principle, thus contrary to the values provided in Articles P and XXI (1) of the Fundamental Law. The CC found the petition well founded and pronounced the annulment of the provisions in question. This decision is remarkable for two further findings. First, a statement providing that *“the Commissioner for Fundamental Rights together with the Deputy Commissioner responsible for the interests of future generations plays a crucial institutional role in the protection of natural and cultural assets.”* Second, the decision deduced the internationally accepted legal concept of the public trust doctrine from Article P, which is considered a major milestone in the constitutional strengthening of

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<sup>68</sup> Decision no. 13/2018 (IX.4.) [73].

<sup>69</sup> Szilágyi 2019, 106–109. See also: Kecskés 2020a.

<sup>70</sup> The decision provided that protection, maintenance, and preservation of the common heritage of the nation are the obligation of the State and everyone in light of art. P. See: 13/2018 (IX.4.) [13]. Cf. Weiss 1989, 22–23.

<sup>71</sup> Bándi 2020a, 22–23.

<sup>72</sup> Decision no. 4/2019 (III.7.) [93].

environmental and nature protection. According to the public trust doctrine, the state acts as a trustee over the natural heritage of the nation for the benefit of future generations to the extent that it does not jeopardize the long-term existence of the natural and cultural assets that are worthy of being protected on account of their inherent values.<sup>73</sup> Therefore, the doctrine imposes limitations on state policies regarding the use, exploitation, and transfer of ownership over trust assets.<sup>74</sup> The CC also affirmed that the natural and cultural values stipulated in Article P (1) shall be protected per se for future generations, even if against the actual economic interests of current generations.<sup>75</sup>

As one may conclude from the above, the OFG has a significant impact on the Constitutional Court decisions. Besides the competency to initiate proceedings at the CC through the Commissioner, the OFG may contribute to cases instituted by other actors through *amici curiae* and opinions, which are duly taken into account and respected by the Court. Moreover, if one takes a closer look at the subject matters of the above-mentioned decisions, it may be apparent that the majority of the findings of the CC were also proposed by the green ombudsman during the constitution-making process: the principles of precaution and prevention, participatory rights in environmental matters, and the protection of natural values against the actual economic interest of current generations were all pointed out in the legislative proposals. Although these provisions were not implemented in Fundamental Law, they still form part of the Hungarian constitutional framework for the protection of the environment and future generations through the interpretation of the CC. Thus, it can be inferred from the above that the OFG has the tools to shape environmental protection at a high level.

### 3.1.2. Legislative Proposals

As mentioned above, the OFG has the competency to propose the adoption or modification of legislative acts. Based on this power, the OFG issued a comprehensive proposal on environmental liability in 2019 and protection of groundwater resources in 2020.

The legislative initiative on the effective enforcement of environmental liability (hereinafter 'the 2019 proposal') is based upon the EU Environmental Liability Directive (ELD)<sup>76</sup> within the framework of the existing liability scheme, with a broader understanding of liability, and with the most inclusive approach of the polluter pays principle. The 2019 proposal does not advocate for the radical transformation of the existing liability regime but rather aims at introducing certain auxiliary measures that would ensure a higher level of certainty and efficiency for the protection of the interests of present and future generations and the protection of the entirety of the environment.<sup>77</sup> The proposal is dedicated to the effective implementation of the polluter pays principle,

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<sup>73</sup> Decision no. 14/2020 (VII.6.) [22].

<sup>74</sup> Sulyok 2021, 360–363.

<sup>75</sup> Decision no. 14/2020 (VII.6.) [35].

<sup>76</sup> Directive 2004/35/CE. For an overview of the recent and potential further legislative steps in Hungary regarding the implementation of the Directive, see: Kecskés 2020b.

<sup>77</sup> Bándi 2020a, 10, 19.

and since environmental liability is not only a tool of ex-post sanctioning and remediation, it also helps enforce the principles of precaution and prevention.<sup>78</sup>

First, the OFG draws attention to the regulation of financial guarantees for environmental liabilities in legal activities. In this context, the greening of the rules influencing the economic decisions of users could also significantly serve for the enforcement of environmental liability through, for instance, financially supporting environment users who voluntarily introduce measures serving precaution and prevention, to the disadvantage of those who try to avoid such costs. Second, the creation of separate budgetary funds for state intervention is advisable<sup>79</sup> in order to secure financial resources for state actors in cases when (a) immediate intervention is needed but the resources do not enable the stakeholder to cover the costs; (b) the performance is not fulfilled; and (c) the identity of the perpetrator is unknown.<sup>80</sup> Third, the OFG proposes the adoption of an act regulating the details and methods of the settlement of damages, especially in relation to the 'inherited' or historical damages.<sup>81</sup> The regulation of this field is particularly important, as the scope of application of the ELD does not extend to damages that occurred prior to April 30, 2007. Besides the environmental and health aspects of these damages, their management also bears economic damages; the later the interventions take place, the greater burden it poses on the budget. In addition, the above regulations shall duly take into consideration the protection of the health and property of the population.

Furthermore, the 2019 proposal highlights the necessity of the enforcement of environmental liability in connection with real estate. According to the OFG, besides permanent environmental damage, the environmental burden shall also be noted among the relevant legal facts in the real estate records. The OFG also pointed out that the availability and accessibility of information on environmental matters are the basic conditions for the enforcement of Articles P (1), XX, XXI, and 38 of the Fundamental Law. A reform of the sanction system is also recommended, which would serve as a basis for the establishment of a uniform practice, and as a guideline for the environmental user and decision-making authority. The conditions for the intervention of authorities shall be based on the public procurement rules provided by the EU, and the 'greening' of the domestic regulation of public procurements shall be facilitated.<sup>82</sup> The OFG also emphasizes that sanctions shall focus on the implementation and enforcement of obligations with special regard to the principles of precaution and prevention. Lastly, the 2019 proposal suggests some modifications regarding the administrative conditions for the enforcement of environmental liability, such as ensuring the petitioner status of civil

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<sup>78</sup> Fodor 2020, 42.

<sup>79</sup> Regarding the interrelation of environmental and financial policies, see: Bartha, Bordás & Horváth 2020.

<sup>80</sup> Securing sufficient financial resources is particularly important as scientific uncertainty may arise in establishing causality between the pollution and its source, and which actors should bear the costs of remediation. See: Sulyok 2020.

<sup>81</sup> It shall be noted that the term 'historical damage' is not a legal term but in colloquial language it rather refers to damages originating from permanent pollution which occurred before the change of regime or even the past centuries. See: Agócs 2020, 158–160.

<sup>82</sup> For further analysis on the nexus between public procurement and the enforcement of environmental liability, see: Gyulai-Schmidt 2020.

organizations for the protection of the environment or nature<sup>83</sup> or introducing guarantees for the professionalism of the work of authorities regarding environmental matters.<sup>84</sup>

As pointed out in the 2019 Report of the Commissioner, the proposal serves to enforce the obligations derived from the Fundamental Law, with regard to the obligations arising from the transposition of the ELD.<sup>85</sup> The proposal embraces a comprehensive approach to liability and offers solutions for the existing gaps and future problems arising thereof, while also targeting historical damages of the past.<sup>86</sup> Even though the results are not tangible yet, in the sense that the Parliament has not adopted such legislation until the conclusion of the present study, given the high-profile contributors to the elaboration of the proposal – several Ministries, the Prosecutor General’s Office, the Parliamentary Committee for Sustainable Development, the National Council for Sustainable Development, and different environmental organizations – the Office of the Deputy Commissioner has high hopes for the success of the 2019 proposal. The forward-looking nature of the proposal is also shown by the fact that in the following year, the European Commission published an ambitious study of the joint effort of 40 leading scholars and practitioners in environmental liability matters that strongly supports and underpins the former statements of the OFG.<sup>87</sup>

In comparison to the 2019 proposal, the proposal on the protection of groundwater resources (hereinafter ‘the 2020 proposal’) was less comprehensive in that it commented on one specific legal act, instead of offering a comprehensive solution for an issue which was already complex. At the time of publication of the proposal, a modification of Act LVII of 1995 on the management of water was discussed in the National Assembly. The planned modification aimed to divide the unified system of water management to facilitate the establishment of agricultural irrigation wells. The OFG pointed out that groundwater resources should not be distinguished based on the purpose of their utilization.<sup>88</sup> The CC Decision No. 13/2018 (IX.4.) – which relied on the reasoning of the OFG – pronounced that groundwater resources do form part of the ‘common heritage of the nation’, and as such, Article P and its guarantees apply to these compartments. The OFG drew attention to the fact that the draft law did not implement the principles of precaution and prevention and the equal division of water resources between present and future generations. The 2020 Report of the Commissioner concluded that, in the end, the law adopted by the National Assembly was more favorable compared to the first draft on which the OFG commented. However, a part of the constitutional dilemmas of the OFG – such as concerns stemming from structural

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<sup>83</sup> For an analysis of progressive solutions, such as the activity of civil society in the cleaning of polluted areas from the perspective of environmental civil experts, see: Fülöp 2020. For a further overview on the role of public participation in light of the Aarhus Convention and the petitioner status of civil organizations, see: Pánovics 2020.

<sup>84</sup> Legislative proposal of the Ombudsman for Future Generations for the effective enforcement of environmental liability 2019, 1–3.

<sup>85</sup> Commissioner for Fundamental Rights 2019, 121–122.

<sup>86</sup> For an overview of the complexity of the proposal, see: Pump 2020.

<sup>87</sup> See: European Commission 2021.

<sup>88</sup> Legislative proposal of the Ombudsman for Future Generations for the protection of groundwater resources 2020, 1–3.

changes – was not implemented, but its solution was delegated to the government.<sup>89</sup> The 2020 proposal, although not adopted in its entirety, was taken into account during the legislative procedure, and it also implied that the OFG had a considerable impact on the formation of the law. The fact that the CC Decision no. 14/2020 (VII.6.) was issued in the same year, also shows that the OFG is actively engaged in the enforcement of the protection of future generations through various channels, which has already produced tangible results.

### 3.2. International Activities

The OFG is also active at the international level: as mentioned above, the Network of Institutions for Future Generations was established in 2014 on his initiative. The Network brings together the institutions of future generations highlighted in the 2013 UN report, as well as other establishments from around the world that are committed to creating institutional means for the protection of future generations in their own countries. The cooperation aims at sharing and exchanging institutional best practices for the development of effective means and practices, to provide innovative ideas for other establishments working on various levels worldwide, as well as to channel outside perspectives, successes, and lessons learned into the work of already existing bodies. The Parties also adopted the 2014 Budapest Memorandum, which summarizes their goals and expresses their support for the establishment of a High Commissioner for Future Generations at the UN level.<sup>90</sup>

Furthermore, the review of the OFG on the implementation of the sustainable development goals in Hungary was internationally cited,<sup>91</sup> as it was published as an annex to the document issued at the High-Level Political Forum on Sustainable Development 2018 in New York. The review provided an in-depth analysis of the implementation of certain sustainable development goals, namely Goal 6 (ensure availability and sustainable management of water and sanitation for all), Goal 7 (ensure access to affordable, reliable, sustainable, and modern energy for all), Goal 11 (make cities and human settlements inclusive, safe, resilient, and sustainable), Goal 12 (ensure sustainable consumption and production patterns), and Goal 15 (protect, restore, and promote sustainable use of terrestrial ecosystems).<sup>92</sup> The OFG articulated several recommendations as to the steps needed on the basis of the Ombudsman's practice: the review pointed out that the individual cases have a concrete, detailed, and specific nature similar to the implementation steps, and thus, the recommendations of the Ombudsman may serve the concretization of the broad and abstract goals.<sup>93</sup> The presentation of this review could

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<sup>89</sup> Commissioner for Fundamental Rights 2020, 148–149. Cf. Act CLXXV of 2020 on the modification of Act LVII of 1995.

<sup>90</sup> See: Network of Institutions for Future Generations 2014.

<sup>91</sup> See, for instance, GANHRI 2021a, 25–26; and GANHRI 2021b, 21.

<sup>92</sup> Voluntary National Review of Hungary on the Sustainable Development Goals of the 2030 Agenda 2018, 8–18.

<sup>93</sup> Voluntary National Review of Hungary on the Sustainable Development Goals of the 2030 Agenda 2018, 6.

also serve as an example for other national institutions with a similar profile, to promote and contribute to the implementation of Agenda 2030 in their own countries.

Apart from the above, the work of the OFG is considered a good example in a number of international documents. For instance, the Hungarian model is highlighted in the annual thematic reports of the Special Rapporteur on human rights and the environment.<sup>94</sup> In conclusion, the fact that the Hungarian OFG is given special attention among other similar institutions implies that it has a special role not only at the domestic level but also in the context of other future generation institutions.

### 3.3. Other Activities

Besides the examples from the practice of the OFG highlighted above, the Ombudsman also frequently issues opinions, recommendations, or awareness-raising reports on various topics related to the interests of future generations, such as the preservation of national parks,<sup>95</sup> protected species,<sup>96</sup> certain elements of nature (including soil<sup>97</sup> and groundwater resources<sup>98</sup>), the landscape,<sup>99</sup> or waste management.<sup>100</sup>

The Commissioner also turned to the Supreme Court (Curia) upon the initiative of the OFG in relation to the violation of the law on the shaping and protection of the built environment by a local government decree. The petition could be considered successful, as the Curia annulled the provisions of the decree.<sup>101</sup> The decision was particularly important as the decree was issued by the local government of a town situated near Lake Balaton. The legal nature of the Balaton is at the center of the OFG's attention, and in 2018, he raised his voice to grant legal personhood to the lake, similar to the protection afforded to the Whanganui River in New Zealand.<sup>102</sup> Recognizing the Balaton as a legal subject instead of considering it an object would allow the realization of only those developments that could guarantee (and do not jeopardize) the protection of the Balaton as having natural value.<sup>103</sup>

The OFG also took part in the monitoring of advertisements and the elaboration of related guidelines, and was asked to contribute to the review process of the Hungarian Code of Advertising Ethics in 2018.<sup>104</sup> In addition, the OFG participates in several

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<sup>94</sup> See, for example, A/HRC/28/61 2015, 14.; A/HRC/31/53 2015, 13.; A/HRC/43/53/Annex III 2019, 5.; A/77/284/Annex II 2022, 5–6.

<sup>95</sup> National parks as the guardians of natural and cultural values for future generations 2014.

<sup>96</sup> The preservation of *Nannospalax (leucodon) montanosymmiensis* for future generations 2015.

<sup>97</sup> The protection of soil 2016.

<sup>98</sup> The protection of groundwater resources 2017.

<sup>99</sup> The fundamental law aspects of the landscape, the protection, management and planning of landscape 2021.

<sup>100</sup> The problems of the functioning of the waste management public service 2018.

<sup>101</sup> Köf. 5004/2019/5, Curia.

<sup>102</sup> In 2017, the Whanganui river in New Zealand was the first river to receive the status of a legal person. This act also recognizes the spiritual attachment of the indigenous Maori people to the river. This approach expresses respect towards the value of the natural resource and aims at preventing irreversible pollution in the future. See: Kramm 2020.

<sup>103</sup> Commissioner for Fundamental Rights 2018, 367.

<sup>104</sup> See: Önszabályozó Reklám Testület 2018.

conferences in Hungary and abroad and represents the Hungarian viewpoint and practices in the field of the protection of the environment and future generations.

Although the entire activity of the Ombudsman could not be presented in depth in the present study, one last point ought to be highlighted: the social embeddedness of the institution. The work of the Ombudsman is strongly interconnected with various state actors and stakeholders. The office is often present in parliamentary committees, co-operates with courts, intervenes in proceedings, requests information from the government, articulates his opinion on government policies and legislation, collaborates with actors of the economic sector, investigates in public complaints, contacts and collaborates with green organizations, and represents itself in academia.<sup>105</sup> In addition, the OFG often appears in the media, reflecting on environment-related issues that are at the center of public attention.

#### 4. Concluding Remarks

Although the moral responsibility towards future generations is recognized by international conventions, national constitutions, and non-binding (soft-law) instruments, the practical enforcement of their needs and interests seems difficult under the current legal regime. The representation of people not yet born may raise certain concerns – such as the uncertainty of defining their preferences, lack of concrete claims and claimants, and separation of rights and obligations in legal relationships – but these dilemmas must not hinder the endeavors to include a future generation-perspective in decision-making. In the author's view, the institutional protection of the interests of future generations from a bottom-up approach could be a viable solution. Until the establishment of a High Commissioner or a similar international institution for the protection of future generations, the creation of more such national institutions and their close cooperation could certainly provide a solution as a first step.

The Hungarian model for the institutional protection of future generations is one of the few endeavors worldwide to expressly safeguard the interests of our descendants. Even though the institution went through fundamental changes for which the new Fundamental Law was strongly criticized, the powers of the Ombudsman are still significant in light of the unique constitutional provisions on future generations and even in the context of other similar mandates abroad. As pointed out above, the findings of the OFG had a significant impact on several key Constitutional Court decisions, and in 2020, he initiated a successful proceeding in the Court. Furthermore, the OFG may also contribute to legislation-making by issuing his own legislative proposals. These could be considered his strongest powers, which may not be found in the case of the other future generation institutions presented above.

In comparison to the competencies of the predecessor of the OFG, the so-called green ombudsman, one may argue that the scope of the former mandate was broader. For instance, he had the power to call upon a person or organization illegally damaging the environment to cease this activity, and in case it is unsuccessful, turn to court in order to enforce the call. Moreover, the former green ombudsman had all the competencies of an ombudsman, while the current OFG is integrated within a single-ombudsman system

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<sup>105</sup> Agócs et al. 2021, 566–567.

and may enforce certain initiatives only through the Commissioner. However, it could be concluded from the dissolution of the formerly functioning Israeli Commissioner for Future Generations that Parliaments may consider too much authority of such an institution as a threat to their work. The Israeli Commissioner had different tools and powers from those of the Hungarian green ombudsman, and the circumstances of its dissolution could not be compared either, but we may draw the conclusion from the dissolution of the two institutions that a delicate balance shall be struck between the competencies of future generations advocates and political bodies when defining the scope of their influence.

Furthermore, it should be noted that the OFG significantly contributed to the implementation of several concepts into the interpretation of the constitutional norms that were proposed explicitly by the former green ombudsman. Therefore, even if such principles, linkages, and value choices were not included in the text of the constitution, the OFG had a significant role in the fact that, by now, the proposals of the green ombudsman form part of the interpretation of the constitutional provisions.

In conclusion, the institutional protection of future generations is a currently evolving field in the international sphere, and numerous questions arise in relation to the establishment and the future of such institutions. Defining the scope of action, the institutional structure, and the relationship to political bodies, as well as the potential role of advocates in youth-led environmental – especially climate change – litigations, are certainly challenging issues for the legal sphere, which must be solved in order to enforce the interests of future generations in practice. Nevertheless, the position and work of the Hungarian OFG may serve as a role model for other similar institutions, which could contribute to the representation of the interests of future generations at ever higher levels across the globe.

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