ABSTRACTS

ESSAYS

In his essay Tamás Győrfi examines the question whether a communitarian constitutional theory is possible. The supporters of the communitarian approach believe that the moral and communal identity of the individual is not necessarily of the same origin, and the reasoning employed in the one question cannot be used in the case of the other unproblematically. According to their criticism procedural liberalism has nothing to say about the factors determining human identity. Győrfi accepts it that the approach of liberalism does not in fact hand us a view to good life and moral identity. Yet identity has some important dimensions—including national identity—which are not based on a specific notion of a good life: and thus liberalism can support politics that strengthen such identity, without violating the principle of neutrality.

In his essay József Kovács examines the relationship of a non-voluntary psychiatric treatment and the freedom of expression, and states that with the spread of the modern, intrusive forms of psychiatric treatment the use of "freedom of thought" as a term is justifiable, since with such treatments not only the expression of thought, but the thought itself becomes limitable. It is because the intrusive forms of psychiatric treatment do not require the co-operation of the person under influence: they change his mental activity and thinking, whether or not he wants it. Kovács points it out that Hungarian regulations consider only invasive treatments "serious" enough to require the patient's consent for their use. He starts out from the idea that in the case of non-invasive treatments the patient is not in real danger, so in these cases—and in the case of an incapable patient—the decision of the doctor in itself is enough for the ordering of the treatment. In Kovács's opinion an intrusive treatment—in the legal and non-medical sense—is also dangerous, as among others it threatens the patient's freedom of opinion.

In an essay Károly Bárd examines the role of substantive and procedural justice in the jurisprudence of the European Court of Human Rights. When analysing the right to a fair trial as procedural justice he mentions the relationship of the legal protection provided by national courts and the European Court of Human Right, and also the reasons for the spread of procedural justice after the Second World War.

INTERVIEW

In his interview for Fundamentum, Péter Polt Chief Prosecutor evaluated on his opinion about, among others the model of Hungarian public prosecution, the relationship of the Public Prosecution Office and the Parliament, the relating decision of the Constitutional Court, and the effect of the new Code on Criminal Procedure on the relationship of the Public Prosecution Office and the police.

In Polt's opinion the important question is which constitutional solution makes the institution of public prosecution more suitable for its role. He says, that arguments are possible for both sides, and the office can be effective in both cases.

He debated the statement, however, that the public prosecution office is in trouble, that its functioning is disturbed. He emphasised, that in his opinion when the Chief Prosecutor is giving an account to Parliament, he has to give an answer to whether the Public Prosecution Office made its decisions legally, but not to the question in what way they reached this decision, and why not another.

He greeted the fact that the Constitutional Court has substantiated the independence of the Office, that is declared by the Constitution. He thinks it really important to state that the Chief Prosecutor is a professional, not a political leader, and in this

way has no real political responsibility. At the same time, although the Office is not a separate power, it is a separate constitutional body, that is not subordinated to either Parliament, or any other institution; it performs its duties exclusively on the basis of laws and legal regulations. Concerning the relationship of the Public Prosecution Office and the police, Polt stated that the Public Prosecution Office has got extra duties, and extra responsibility for example by being able to stop proceedings in a high number of cases, whereas previously only the police had been able to do this.

FORUM

Our column "Forum" deals with the publicity of judicial proceedings. In his writing László Majtényi points it out that with a view to the effectiveness of constitutional principles one of the clearest controversies of regulations by acts or decrees is, that the judge cannot say anything about his own decision. This total lack of his freedom of expression in the case of questions relating to his profession is no doubt unacceptable. Attila Péterfalvi examines some problems of the courts' handling of data, taking examples from the practice of the Office. He mentions it that many people turn to him with the complaint that either in civil or in criminal proceedings a great number of the proofs handed in by the participants contain personal, often special personal data, which go beyond the subject of the case. He also examines the problems of the regulation of publicity, the resolutions hindering the freedoms of press and research, and judicial practice. In Erika Róth's opinion it could cause a serious crisis in the functioning of justice if the judges had to make their decisions—justified according to the demands of the Code on Criminal Procedure—acceptable by a public explanation and pleading, even if there is a growing social need for this at home and abroad. It is to be feared that in this case even a judge who feels independent today, would then prepare for the public test and act according to the pressure of public opinion and politics. Róth also thinks that the public needs to be informed, for the judge not to make a decision closed into an "ivory tower"; yet the ways of his calling to account needs a thorough consideration.

In Árpád Pataki's opinion it has to be made possible for willing judges to make a statement on their own cases, but only if the given part of the proceeding in which the judge participated have ended. Statements, however, should not be made compulsory: if a judge does not wish to make one, the judicial spokesman can evaluate on the court's standpoint in his stead. Zsuzsa Sándor is of the same opinion, adding that judicial prestige would grow in direct proportion to the number of judges appearing in public with a statement that explains and clarifies their decisions. András Schiffer emphasises that the accessibility of effective decisions, the consistent manifestation of the principle of publicity is in practice one—although not the only—of the necessary preconditions for the quickly offended and mysterious state to become a serving and transparent public power. Journalists Zsuzsa Szikra and Gábor Juhász think that judges are clearly public figures, who are compelled to stand any criticism concerning them or their work, no matter where it comes from, and including such—today still unfamiliar—statements, that "the train of thought of reasoning is illogical". In their opinion judges have to give up the opinion that only a supreme court can judge their work.

DOCUMENTS AND COMMENTARIES

The decision of the Constitutional Court made in the case of the Mécs committee is commented on by two writings. Balázs D. Tóth's writing says that with the merit judgement of the constitutional complaint the Constitutional Court deprived the judicial power of its field of authority of individual legal debates, and

also overturned the position of ordinary courts in the interpretation of legislations. After examining three decisions by the Constitutional Court, Gábor Halmai forms the opinion that the Constitutional Court is an activist both in questions of state organisation and sphere of authority. If there is something to violate legal certainty to be protected by the Constitutional Court, this is it.

We present Márton Nehéz-Posony's writing, "Old and New Regulations of the Conditions of Pre-Trial Detention". The author sums up the basic principles and demands that have to be followed in the regulation and practice of pre-trial detention, then he examines Hungarian judicial practice primarily from the point of view of what novelties the new Code on Criminal Procedure has meant after the old one.

István Szikinger's writing analyses two decisions of the Constitutional Court relating to the Act on the Police. In his opinion these two decisions are not of the same mentality, and their reasoning also differs in its logic. This is worrying because on the one hand further decisions are to be made by the Court relating to the legal bases of the work of the police, on the other hand it would have been good to get a constitutionally substantiated and in legislation and legal practice useful theoretical instruction.

PRIOR TO DECISION

In this column we present the text of the proposal handed in to the Constitution Court by the President of the Republic, on the modification of the incitement to hatred of the Criminal Code, the letter of the Minister of Justice to the Constitutional Court on the same proposal, and Péter Molnár's writing about the prospective decision of the Constitutional Justices.

In her writing Daisy Kiss examines the reasons of the length of procedures, and to what extent the new procedural institution proposed by government: the objection to the length of procedures can mean a solution to slow judicial procedures. She also evaluates on the question whether the proposed new legal institution can be reconciled with the principle of judicial independence.

AFTER DECISION

In this column we present the judgment delivered by the European Court of Human Rights on 16 December 2003 a judgment in the case of Kmetty v. Hungary. The Court held unanimously that there had been a violation of article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights on account of the failure to carry out an effective investigation into the applicant's allegations of ill-treatment.

Petra Jeney and Endre Sebők present a decision of the International Tribunal for Rwanda made last December, in which the Tribunal convicted several people responsible for inflammatory printed matter and the activity of broadcasters in Rwanda, for crimes against humanity. The writing surveys the previous practice of international tribunals, and critically analysis the reasoning of the judicial decision.

At the same time we present the summary of some recent decisions of the Hungarian Constitutional Court relating to basic rights.

PROTECTORS OF RIGHTS

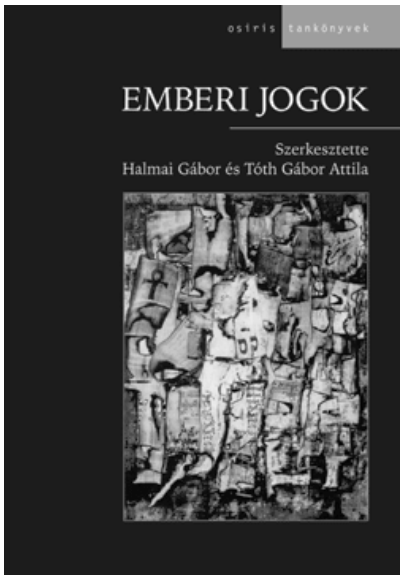
In this column Tamás Fazekas tells the unsuccessful story of the initiative to start an action, in which two citizens turned to the Public Prosecution Office to bring charges against MIÉP, because the party in question called on people

to overthrow the government in its documents. The Office was of the opinion that there was no possibility of an action in the case, since the two mentioned documents were not more than an expression of political opinion. Means to "overthrow" or "force to resign" can also be legal. What has to happen to force out merit proceedings?, asks the author at the end of his writing.

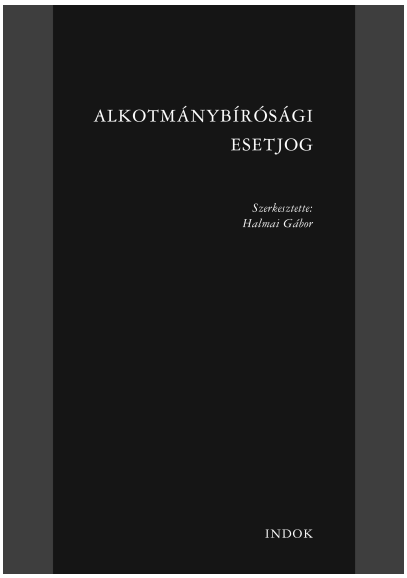
In the column we also present the shortened, Hungarian version of the report that was made for the European Network of experts on fundamental rights, formed by the Commission of the European Union, with the title "The Situation of Fundamental Rights in Hungary in 2003".

REVIEW

In this column we recommend the following books on human rights: Catherine Dupré: Importing the Law in Post-Communist Transitions; and the book of Gábor Kardos on social rights: Empty Shell?. In addition, we recommend the book edited by Péter Takács on the theory of the State, the volume written by Balázs Majtényi on the possibility of registering the person's identity and also the book by Mária Herczog on reconciliation and restitution.



A Halmai Gábor és Tóth Gábor Attila által szerkesztett, tíz szerző által írt tankönyv hazai és külföldi jogeseteket alapul véve, nemzetközi össze-hasonlító módszert alkalmazva mutatja be az alapvető jogok általános kérdéseit és az egyes alapjogok sajátosságait.



A könyv segédlet az Emberi jogok című tankönyvhöz. A magyar alapjogi bíráskodás anyagának tömörítésével nemcsak a joghallgatók, hanem az alapjogi kérdésekkel foglalkozó gyakorlati és elméleti jogászok és nem jogászok helyzetét is szeretnénk megkönnyíteni.

PÁLYÁZATI FELHÍVÁS

Az Erasmus Kollégium pályázatot hirdet olyan kiemelkedően tehetséges egyetemi és főiskolai hallgatók számára, akik tanulmányaik mellett tudományos munkát végeznek, önálló kutatást folytatnak. Pályázhat valamennyi magyarországi felsőoktatási intézmény beiratkozott nappali tagozatos diákja. Az idei pályázatok formai és tartalmi feltételeiről részletes információ található az *erasmus.computronic.hu* honlapon.