



PARLIAMENTARY COMMISSIONER
FOR FUTURE GENERATIONS

Statement
of the Hungarian Parliamentary Commissioner for Future Generations
on the responsibility of the state
arising from the environmental and sustainability provisions of the new Fundamental
Law

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1. The importance of environmental protection and the requirement of sustainable development has become even more emphasized since the latest comprehensive procedure of drafting the constitution 20 years ago. The social, economic development of the upcoming decades is expected to be influenced the most significantly by the very scarcity of natural resources (drinking water, energy, soil etc.). Thus, it is vitally important that the legal norm considered as the basis of legislation, that is to say the Fundamental Law of Hungary itself drafted the state's obligation to form the social politics and development keeping the environmental protection in mind, and pervaded by the responsibility towards future generations.

2. Under Article 27/B (1) of the Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights (Ombudsman Act), the Parliamentary Commissioner for Future Generations shall follow with attention, estimate and control the enforcement of the legal provisions ensuring the sustainability and improvement of the state of environment and nature. Therefore the Office of the Parliamentary Commissioner for Future Generations (FGO) urges to establish detailed rules and other measures in compliance with the new Fundamental Law provisions concerning environmental protection and future generations. These measures should provide for the implementation of the new Constitution according to the will of those drafting it. All the cardinal (passed with a 2/3 majority) and other acts, as well as the lower pieces of legislation serving the enforcement of these, have to complete the undertakings, provisions and values of the Fundamental Law. To achieve this goal, as the first step, we have reviewed and systematized the provisions of the Fundamental Law dealing with environmental protection and intergenerational justice. In the future, the FGO will follow with attention the further legislation, and in justified cases the office will make recommendations according to the provisions of the Fundamental Law.

3. The environmental provisions of the Fundamental Law can be divided into two parts. On the one hand, as a new regulatory element, it controls the protection of natural resources with a force binding the whole state- and judicial system, and with regard to the interests of future generations. On the other hand, the Fundamental Law naturally fulfils the conventional ideology about fundamental rights, as it recognizes the right to a healthy environment. In general we can state that **the Fundamental Law extends and strengthens further the constitutional foundations of the Hungarian environmental law, and raises to a higher level the responsibility towards future generations in a legal sense, too.**

4. In the first range of subjects we have to take into account the provisions of three chapters. At the beginning of the National Avowal, indent 8 of the Fundamental Law lays

down that **the governmental, economic and social system of Hungary has to be formed and operated along the original definition of sustainable development:**

“We commit 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.”

5. Article P of the Foundation formulates the protection of our natural resources with actual examples. This provision will determine as a uniform guideline the content of not only the Hungarian environmental law, but of all the pieces of our legislation, which are relevant from the aspect of environmental protection and intergenerational justice:

“All natural resources, especially agricultural land, forests and drinking water supplies, biodiversity – in particular native plant and animal species – and cultural assets shall form part of the nation’s common heritage, and the State and every person shall be obliged to protect, sustain and preserve them for future generations.”

6. The regulation of the Fundamental Law is progressive in the „Public finances” chapter, Article 38 (1) as well, when, **according to the definition of sustainable development, it balances the satisfaction of the needs of present generations with the consideration of the needs of future generations:**

“The properties of the State and local governments shall be national assets. The management and protection of national assets shall aim to serve the public interest, to satisfy common needs and to safeguard natural resources in consideration of the needs of future generations. The requirements for the preservation, protection and responsible management of national assets shall be defined by a cardinal Act.”

7. The other group of the Fundamental Law’s environmental provisions can be found among the fundamental rights. Similarly to the Constitution in force, the Fundamental Law recognizes the right to health, and it declares the guarantees to ensure the right to health, among other provisions it stipulates the environmental responsibility of the State. With the clear, exact prohibition of the agricultural application of genetically modified organisms – in accordance with the precautionary principle – the Hungarian legislator expresses the demand not to turn the country and the population into an experimental plant, with special regard to the fact that the results of such experiments might be revealed only decades after. According to Article XX:

*“(1) Every person shall have the right to physical and mental health.
(2) Hungary shall promote the exercise of the right set out in Paragraph (1) by ensuring that its agriculture remains free from any genetically modified organism, by providing access to healthy food and drinking water, by managing industrial safety and healthcare, by supporting sports and regular physical exercise, and by ensuring environmental protection.”*

8. The right to a healthy environment has been incorporated into the Fundamental Law, in the same way as in the current Constitution. This involves the acknowledgement of the subject rights stemming from the fundamental right, as well as the so called institutional protection duty of the State related to ensuring the application of this right. However this wording is enlarged by an element of the polluter pays principle, furthermore by the

prohibition of the dumping aimed import of any types (solid, liquid, hazardous, nuclear etc.) of polluting waste. Article XXI says:

“(1) Hungary shall recognise and enforce the right of every person to a healthy environment.

(2) A person who causes any damage to the environment shall be obliged to restore it or to bear all costs of restoration as defined by law.

(3) No pollutant waste shall be brought into Hungary for the purpose of dumping.”

9. In course of applying these rights, it is important to take into account the rules of the restriction of certain fundamental rights and of their harmonization with other fundamental rights, elaborated by the Hungarian Constitutional Court and incorporated into the Article I (3) of the Fundamental Law:

“(3) The rules for fundamental rights and obligations shall be determined by special Acts. A fundamental right may be restricted to allow the exercise of another fundamental right or to defend any constitutional value to the extent absolutely necessary, in proportion to the desired goal and in respect of the essential content of such fundamental right.”

10. At last we would like to point out that the new Hungarian Fundamental Law adds an international dimension to the rules of healthy environment and intergenerational justice in Article Q (1):

“In order to create and maintain peace and security, and to achieve the sustainable development of humanity, Hungary shall strive for cooperation with every nation and country of the world.”

11. To our point of view, the Fundamental Law ensures the continuity of the last 20 years' environmental legal interpretation, through sustaining its foundations, first of all by declaring and confirming the right to a healthy environment. **This means primarily the preservation of the legal practice of the Hungarian Constitutional Court and of the Office of the Parliamentary Commissioners, as well as the preservation of the developed content of the right to a healthy environment, including the principles and requirements within this right.** This also guarantees that **all the environmental law principles (prevention, precaution, integration etc.) shall remain valid with the same content**, moreover, one “sub-rule” of the polluter pays principle has been raised to constitutional level (thus strengthening the significance of other principles as well). The recognition of the fundamental right, and as a matter of fact its affirmation, means at the same time the recognition of the subject legal rights. Although public participation and the declaration of its side-rights are not fixed directly in the Fundamental Law, these rights can still be derived from everyone's fundamental rights, and other fundamental rights, as well as from fundamental values.

12. Nevertheless the Fundamental Law has preserved not only the former values and constitutional achievements, but in several aspects it contains further remarkable outcomes, and creates the possibility of actual development and advance through its progressive provisions. With the incorporation of the “test of necessity and proportionality” into the Fundamental Law, as a matter of fact the principle of non-derogation, established by the Constitutional Court, has also been articulated. By the multiple formulation of the protection of future generations' interests; by emphasizing common responsibility; by the protection of the nation's common heritage and the

national wealth; by the prohibition of the agricultural application of GMOs and by the demand for healthy foods, the Fundamental Law represents all in all the requirement of sustainable development on constitutional level.

13. The Fundamental Law extends the aspects of sustainability and of the protection of future generations to the budgetary and foreign policy of Hungary, too. The comprehensive advancement represented by the Fundamental Law establishes the obvious and binding constitutional basis to implement several recommendations, which have been revealed earlier by the Commissioner in his statements towards the Parliament and the general public.

14. We also remind that the legislation has not been finished yet. Based on the new constitutional provisions **it's time to make sure that** the guidelines of the Fundamental Law concerning the right to a healthy environment and the protection of the interests of future generations shall be organically built into the secondary legislation. Accordingly, **the tools and frameworks of the state institutional structure, administration should be broadened and improved, and thus the actual progress should take place after all. The obligation to strengthen the institutional system of the Hungarian nature conservation, water protection, environmental protection, soil conservation, construction management and public health authorities follows directly from the Fundamental Law, as well as the duty of providing for the scientific monitoring system and base research that support the operation of these authorities.**

15. In Hungary **the cultural, economic and legal regulations and cadres that support the unsustainable lifestyle, attitude and economic practice damaging the environment, must be abolished and transformed immediately and definitely. The Fundamental Law has established the firm frames for this, nevertheless their enforcement is inconceivable without further consequent codification, ensuring the society's cooperation, the education and media that prepares for environmental-conscious actions, and without the strengthening of the environmental elements of state administration.**

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for Future Generations