

FORMER PRESIDENT OF THE REPUBLIC OF HUNGARY

*Address by Professor László Sólyom
to the ceremonious opening of “The Right to a Healthy Environment and the
Representation of Future Generations’ Interests in the new Hungarian Constitution”
conference of the Hungarian Parliamentary Commissioner for Future Generations
Budapest 14 February 2011*

Ladies and Gentlemen!

In Hungary, we are in the midst of a rapid constitution-making process. The new constitution is to be enacted before the end of April so there is no use of any further discussions on the necessity of a new constitution, or about the normal course of preparatory work. The “Guidelines for the new constitution” have already been submitted to Parliament by the preparatory commission of Parliament and will be decided upon, hopefully this month. Then, from March 15th, Parliament is said to be acting as constitutional assembly and the final text will be elaborated, as already mentioned, within four weeks. The novelties of the Guidelines are first of all in the Preamble as well as in some rather symbolic declarations. The normative rules are in line with the common European constitutional tradition, therefore they do not differ in merit from the present constitution.

Nevertheless, once we do have this situation it can and should be used to reconsider the performance of the constitution in force, to correct its deficiencies, to update it and, first of all, to improve its provisions that were progressive already in 1989/90 when the current constitution had been passed by Parliament. Our legal community is aware of its special responsibility. A series of conferences have been held, evaluating the official constitution-making process and working out proposals, thus partly substituting the necessary but missing

preparatory work. This two-day consultation with international and domestic experts also fits in and contributes to this effort.

The protection of the environment – alongside with data protection and the freedom of information – were the fields where the present constitution in 1989 had set standards above the European average. However, since then we have been facing new and severe challenges in both fields in the light of which the once pioneering rules of the valid constitution have by today become if not obsolete but not sufficiently effective. And so are also the once so significant judgments of the Constitutional Court like for instance the declaration of the non-derogation principle in the environmental law – that is the duty of the State to maintain the level of nature protection as guaranteed by law.

But even if some new challenges have not been reflected in our constitution, the story of our environmental rights shows a permanent extension and has been from this point of view in harmony with the international trend. First, the Constitution speaks of the right to a “healthy” environment and environmental protection embedded in the means of the implementation of the right to health. The Constitutional Court made it clear that the language of the Constitution could not be interpreted as a limitation on this right. Back then the Constitutional Court provided the broadest foundation for the right to a healthy environment in the right to life. The Court also held that prevention took precedence over all other means to guarantee the right to environmental protection. I mentioned already the non-derogation principle. I would like to stress that this had far-reaching practical consequences. For instance, the State was obliged to buy back protected areas – mostly forests – which had been privatized before, because

privatization led to the dismemberment of those areas and the destruction of natural treasures.

However, the most significant step was the creation of the parliamentary commissioner of future generations. The very idea of a guardian for future generation represents best the extension of environmental protection beyond the original emphasis on the right to health and nature conservation. If we speak of the rights or interests of future generations we speak of sustainability and must consider the environment in its interrelation with economic growth, social justice and the need for global cooperation.

I see the significance and importance of our consultation just in presenting this broad approach. Your lectures will show and remind us of the development of the last decades. The constitutional protection and the judicial enforcement of the right to healthy environment have become world-wide norms. Sustainability is understood in the complexity of its economic, social and environmental aspects. International and domestic legal instruments have indeed become numerous; the question now is their implementation. Even in the shadow of the unsuccessful international climate conferences, and even if you point to the gap between words and deeds, for Hungary and its new constitution it will be decisive and crucial whether the new philosophy of the old “environmental protection” will be understood and accepted.

Looking at the official Guidelines to the new constitution we can rather see a falling back to the starting position of the constitution in 1989. This document mentions the right to healthy environment in the paragraph on the state’s duties to secure physical and mental health, which is implemented among others

through the protection of the built and natural environment. It is true that with that right the obligation to save the environment is also declared. It is true that according to the Guidelines the use of state ownership and the public finances must also consider the needs of future generations. But the Guidelines ignore the twenty-year constitutional development, the principles laid down by the Constitutional Court.

Yet, the principle of not stepping back, the most important achievement in our environmental law, must prevail in the case of the new constitution as well. It is even more important that the timely spirit, the wide horizon of environmental rights and state goals should be present in the constitution, which means that properly understood complex sustainability embracing the economy, the society and nature, and effective means of leaving goods and decisions for the future generations must be incorporated in it.

In this respect the proposals of the Commissioner for Future Generations are warmly welcome. They enshrine the duty of the State to set up institutional guarantees for the living conditions of the present and future generations, everyone's duty to protect the environment and also the right for them to participate in decision making. They laid down the principles of sustainable development, non-derogation, precaution, prevention and the "polluter pays" principle.

We know how many and how strong dogmatic difficulties arise in connection with the definition of the very nature of the right to the environment. Is it a right or a state goal, who is the subject of it, who can make a claim, who is responsible and who is the beneficiary etc.? And other similar problems are even more

difficult to tackle in respect to future generations. Who are they, how far can we look into the future, what about the conflicts between future generations themselves? While these problems will for a long time still occupy the legal theory, practical steps are necessary to be taken already today. It is better to pass on the freedom of choice to the future generations than to anticipate their interests. So it is best to conserve the goods for them.

Now the term “property of the nation” is disputed, but it remains a mere rhetoric if only state ownership is meant by this. Instead, the protection of common goods, like the soil, the water resources, and the genome of the country should also be elaborated. As a further command of our time, sustainability should have its constitutional guarantees concerning not only the environment and economic growth but the sustainability of state finances as well.

A further and today a still open point in the discussion on the constitution is the future of parliamentary commissioners. At present, we have four ombudspersons: the classical one for the constitutional rights of citizens, and the other three parliamentary commissioners for data protection, national minorities and for future generations. The question is whether all these fields could be united in the portfolio of one ombudsman.

The guardian of future generations is an internationally significant achievement. A step back from this would be hard to justify. But there is a more essential argument: it needs to be shown that the guardian of future generations is not in competition with the other commissioners. The latter protect the clearly defined constitutional rights of the individual, as a rule, against the state. The commissioner for future generations is not defending comparable legal rights –

one can speak of the rights of future generations rather symbolically. The guardian of future generations – as this internationally used term suggests – has rather the role of representation. In the name of future generations he influences political decision making and raises public awareness of their case and acts as mediator. Therefore, this institution should remain self-standing and time must be granted for its further development in connection with similar institutions which are to emerge in national laws as well as internationally.

Ladies and Gentlemen!

This consultation is being held at the best moment. It may contribute to our main objective: the new constitution should regain its pioneering character in the field of a complex environmental protection.

László Sólyom