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Future Generations' Ombudsman – a Hungarian Initiative

The principle of sustainability is based on the premise, that present generations do not have the right to exhaust all the resources of our planet, and we are obliged to assure the conditions of survival for our descendants, the future generations – as it was clearly stated in the *'Our Common Future'* report of the Bruntland-committee. This moral obligation means, that we have to take into account their rights for existence, and we should ensure the freedom of choice, (this means the maintainance of natural and cultural diversity), the quality of life, and the free access to natural resources. In order to take into consideration these rights, generations of the future should be able to represent their interests in those present decisions, which could have an effect on their lives. As these decisions could be made in both the public and the economic sphere, we should establish an institution, which is capable to controll both sector, and to represent the rights of future generations and the principle of sustainability in our decision-making systems. These reasons motivated UNESCO to publish its *Declaration on the Responsibilities of the Present Generations towards Future Generations* in 1997, and to establish the Future Generations' Programme, located at the University of Malta, and managed by Professor Emmanuel Agius. And by these days, we could find a realization of these principles, as in 2001 the Knesset, the israeli parliament accepted an act on the establishment of the Commission for Future Generations, an official body to examine all the decisions of the Parliament from viewpoint of the future generations. From this starting-point, in the year of 2000, a Hungarian NGO, Vedegylet (Protect the Future – Society for the Conservation of Natural and Cultural Heritage) proposed the official establishment of such an institution, the Future Generations' Ombudsman. The draft law, elaborated by Professor Laszlo Solyom, former President of the Hungarian Constitutional Court, was widely popularized by Vedegylet, and in 2001 the bill was introduced to the Hungarian Parliament by two MPs. The draft law failed at the Committees, but in 2002 it was repeatedly introduced. At this moment the bill is at the Committees for debate.

The draft law is in harmony with the existing Hungarian Ombudsman Act. The keystones of the proposed institution are:

- *independency*: the ombudsman's office should be independent, both from present ombudsman's office (because of the possible conflict of interests of present generations, represented by the present ombudsman, and future generations, represented by the proposed institution), and from public administration, e.g. ministries (because the ombudsman should be free to investigate in public administration)
- *wide competence*: the ombudsman should have the right to investigate not only at the state institutions and public administration, but even in economic sphere, because most of the harmful decisions, which are threatening the global system, and so the conditions of life of the future generations, are made in the economic sector.
- *proactivity*: the ombudsman should study all the bills and draft laws introduced to the Parliament from the viewpoint of the future generations, and in the case of grievance, the proposal should be sent back to the Parliament. The ombudsman him/herself has the right to propose new draft laws as well.

The bill was sent to all of the parliamentary parties, and we were lobbying for its introduction to the Parliament. After a while we had to realize, that there is no real acceptance in the political sphere for such an institution, and the chance of the draft law is minimal. To support and to make known the bill, a conference was organized at the Hungarian Scientific Academy, but, however, it was successful in a scientific sense, that political effect, we originally intended to have, this symposium didn't result (the material of the conference was published in English and in Hungarian).

5th International Conference on Ethics and Environmental Policies
BUSINESS STYLES AND SUSTAINABLE DEVELOPMENT
Kyiv, April 2-6, 2003

In this situation we decided to organize an alternative institution with two main purpose. First, to fulfill the duties of the planned ombudsman. This means, that – keeping in mind the authorizations, which are given to the ombudsman by the draft law – we carry out proceedings in different cases, where the interests of the future generations are violated. Second, this alternative organization, the Future Generations' Representation – even through its cases – tries to prove the necessity of an official institution to represent the interests and rights of our descendants.

The form of the Representation is a network and cooperation of different NGOs, which are working together in specific cases, but these unique cases are held together in one, coherent programme, and this is called Future Generations' Representation. Technically, the programme is managed by Védegylet (Protect the Future Society) and physically it is localized in our office, but it's not a kind of one-man show, it is really a cooperation of several NGOs.

The activity of the Representation is shaped by the original bill. It is not reduced to reports on draft laws, introduced to the Parliament for example, but with a wider range of activity, covers legal procedures against the public administration, media-campaigns, and demonstrations. But in each and every case, from a very practical starting point, the tangible case itself, we went toward a more general level, and – besides some direct actions, when we tried to achieve local result – we always tried to modify the legal environment, which made the kind of that case possible. So the most important outcome of our activity, are always proposals for the modification of the legislation, or even new draft laws. That's what a real ombudsman normally does.

As the Future Generations' Representation is a network of NGOs, we don't have either the capacity or the sphere of authority of an official ombudsman. So, the Representation can not proceed as an official institution, we can undertake only a small number of cases, and our methods must be in harmony with the legislation concerning civil organizations.

In choosing cases, we try to follow some basic principles. First of all, the case must have a long running effect in the future: not all of the environmental damages are threatening the interests and rights of the future generations, we have to select among the environmental cases which we get from day to day. We try to study carefully, which cases suit to this criteria.

Secondly we accept such cases, which represent more than a small local problem. If there are local problems in our praxis, we undertook them, because we considered, that it is a local manifestation of a wider problem or trend, as it happened for example in some green-area protecting cases. Briefly: the case must be a precedent.

And thirdly, we accept a case only if our legal status and practical abilities ensure the possibility of the achievement of any result.

On the basis of these principles, last year we were engaged in five area.

- The introduction of genetically modified organizations in agriculture, which raises a lot of ethical, ecological, economic and social questions. We overlooked the present Hungarian legislation, and we called attention to the problematic points.
- The problems of nature protection, first of all in forest management, where economic interests are in contradiction with the rights of future generations to inherit ecologically unharmed forests.
- An experiment of an alternative agro-economic model in a small rural area of twelve villages, which based on the natural resources of the region. It's a trial for a new method of sweetwater resource management and development.
- Wastewater-management, where we studied the possibilities of the propagation of alternative ecological sewage-managing plants. The present Hungarian legislation and financial practice does not support these alternative solutions.
- Green-areas and the protection of urban trees. In the last twelve years in Budapest a dramatic loss of green areas was happened, we studied its legal and practical causes.

Our most important weapon is publicity. We try to maintain good relationship with the media, and to make our cases and the whole work of the Representation appear in media. Every year, in frame of a press conference we introduce our Report of the year. In the last years we published 3 Reports, and from year to year with an augmenting interest of the media.

5th International Conference on Ethics and Environmental Policies
BUSINESS STYLES AND SUSTAINABLE DEVELOPMENT
Kyiv, April 2-6, 2003

But the work of the Representation serves also the popularization of the bill itself – we hope that with success. Two Member of the Parliament introduced the bill last June for the second time, and the activity of the Representation could increase the chance of the bill which is still at the affected Committees.

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**Act No./2000
on the Ombudsman of Future Generations**

Whereas being aware of its liability for maintaining the natural foundations of life and health of future generations resp. the environmental conditions in harmony with human dignity, the following Act has been issued by the Parliament by virtue of the authority granted to it by §.32/B(4) of the Constitution, in order to uphold for future generations the discretion of options, the quality of life and free access to natural resources.

§.1.(1) With the purpose of representing the interests of future generations in the course of passing long term decisions such generations are essentially affected by, further in order to implement the right to a healthy environment as acknowledged and ordered to be asserted by §.18. of the Constitution, and the Acts on the protection of nature and environment, the Ombudsman of Future Generations shall be elected by the Parliament. The Ombudsman is to be elected by the Parliament from among those Hungarian citizens who have graduated, have an excellent theoretical knowledge or at least ten years professional practice in the field of protection of the environment or nature, who have gained considerable experiences in procedures relating to the protection of nature or the environment resp. in the supervision of such procedures, or in the implementation and enforcement of rights regarding the protection of nature or the environment, or in the scientific research, and are of good standing.

(2) The provisions of Act No. LIX of 1993 on the Ombudsman of Civil Rights shall apply to the Ombudsman of Future Generations, unless otherwise provided by the present Act.

§.2.(1) The Ombudsman of Future Generations will examine and monitor the implementation and enforcement of provisions of the Constitution and other rules of law, relating to the preservation of natural foundations of life and health of present and future generations as well as to the maintenance of environmental conditions of same; he/she carries on inquiries *ex officio* in this respect and examines the reports made to it. The Ombudsman of Future Generations will express his/her opinion on the draft of laws, which would by virtue of the long-term decisions included therein, primarily affect the living conditions of future generations.

(2) Upon endangering of the environment by acts or omission, moreover in the event of pollution or damage of same, the Ombudsman of Future Generations:

a) will request the user of the environment to cease such endangering or damaging activity. Such user of the environment shall forthwith notify the Ombudsman of Future Generations within 30 days in writing on the measures undertaken by it;

b) may initiate actions to be taken by the authorities against the user of the environment or may file a lawsuit for injunction against such illegal action and for obligation of preventive measures, or make a complaint for petty offence or a criminal charge against the user of the environment if he/she fails to give information on the measures taken by him/her or if such measures taken were insufficient;

c) may assert by virtue of the relevant statement of the party so injured, the claim for compensation of damages in favour of the Fund for Environmental Protection, should such party waive its right to assert the claim for compensation of damages;

d) will request the authority to take the measures relating to environmental protection, if such authority has failed so far to do so. The authority shall within 30 days upon receipt of said request inform the Ombudsman of Future Generations on the measure taken by it. Simultaneously with such request, the Ombudsman of Future Generations may refer the case to the superior organ of such authority. Upon fruitless expiry of the deadline the Ombudsman shall report to the supervisory organ of such authority.

e) may upon completion of the inquiry publish the fact of jeopardising or damaging the environment and the relevant data, as well as data of the measures made by the authorities; and will do so upon the fruitless expiry of the deadlines specified in subsections a) and d).

5th International Conference on Ethics and Environmental Policies
BUSINESS STYLES AND SUSTAINABLE DEVELOPMENT
Kyiv, April 2-6, 2003

(3) The Ombudsman of Future Generations will submit his/her proposal for making and amending the legal rules on environmental protection and will express his/her expert opinion on the relevant bills.

(4) Upon request of the Ombudsman of Future Generations, the data relating to the inquiry, processed by the National Information System for Environmental Protection (§.49. of Act No. LIII of 1995 - the Act itself hereinafter referred to as the Act on Environmental Protection) shall be reviewed and the data established by the inquiry shall be entered in such Information System.

(5) The fact, scale and nature of any lasting environmental damage established by the inquiry of the Ombudsman of Future Generations shall be entered in the Land Register upon request of the Ombudsman of Future Generations. As regards the entry, §.52. of the Act on Environmental Protection shall apply.

(6) The Ombudsman of Future Generations shall be invited to any public hearing to be held according to §.93. of the Act on Environmental Protection, and the minutes taken on such public hearing shall be forwarded to him/her. A public hearing shall, upon the initiation of the Ombudsman of Future Generations, be held beyond cases specified by the Act on Environmental Protection too, and in particular in connection with the development plans of certain regions, as well as with bills relating to such regions, which affect fundamentally the essential conditions of future generations.

(7) The Ombudsman of Future Generations will express his/her opinion, in advance, on international obligations to be entered by the Republic of Hungary, which relate to spaces, resources and phenomena being the common heritage and common concern of mankind, moreover to the protection of the environment and nature, whether or not the interests of future generations were duly considered. The Ombudsman of Future Generations may have recourse to competent organs regarding the implementation of such obligations.

§.3. Each person has the right to report to and request the Ombudsman of Future Generations to conduct inquiries, save in issues with court procedures pending.

§.4.(1) In the course of performing his/her tasks, the Ombudsman of Future Generations may request from any and all natural persons and legal entities as well as from those using the environmental information and data and may become familiar with any data, circumstances, procedures which might relate to the state of the environment, and in particular to the threatened and damaged state of it.

(2) State, official and business secrets may in no way hinder the Ombudsman of Future Generations in exercising his/her rights specified in the present Article. The Ombudsman, however, is bound by provisions relating to the non-disclosure of state and service secrets.

§.5. The Ombudsman of Future Generations will annually report to the Parliament. In connection with extraordinary events affecting the state of the environment, the Ombudsman of Future Generations may request his/her hearing by the Parliament and may suggest examination of the case.

6.§ The Office of the Ombudsman of Future Generations will perform the management and preparatory tasks.

§.7.(1) The Ombudsman of Future Generations will be elected by the Parliament at least two months prior to the Act's coming into force.

(2) Present Act will enter into force on January 1, 2001.

(3) §.39. d) of the Act on Environmental Protection will be invalidated by present Acts coming into force.

Legislative intent general reasons

As it is established in the 1997 Declaration of the UNESCO, everyone is responsible for the future generations, therefore, states are responsible too. The most important one of the human rights granted by the Constitution of Hungary, is the basic right to life, and human dignity (54.§), which covers the obligation of the state to secure the essential conditions for future generations. (Resolution of the Constitutional Court 64/1991.(XII.17.)AB, ABH [the official publication of the Court] 1991, p. 303.)

A specific occasion is given by the new millennium to the Parliament to express its commitment and responsibility for the fate of future generations by the establishment of an institution that can efficiently contribute to maintaining the essential conditions for our successors and can represent their interests in the course of passing long term decisions, which fundamentally affect their essential conditions; can moreover through further means of the Ombudsman the implementation of laws relating to the state of the environment.

The Parliament is authorised by §.32/B.(4) of the Constitution to elect a special Ombudsman for the protection of a constitutional right. The Parliament already expressed in the course of enactment of the Act No. XIII of 1995 on the Protection of the Environment, that it deems the participation of an Ombudsman necessary in solving problems of the environmental protection. According to §.39. of the Act, „the Parliament determines the responsibilities concerning environmental protection of the Ombudsman for Civil Rights ... in order to protect the environment.” The competence of the Ombudsman for Civil Rights covers, however, merely inquiries with the „authorities” , thus the private sector, where most of the contaminating sources can be found, does not belong to his/her sphere of activity. The means at his/her disposal, like recommendations made to the superior bodies, are not properly tailored for issues of the environmental protection either.

Thus election of a special Ombudsman is deemed necessary by the Draft, to perform the obligations towards future generations in the following fields: to protect and sustain the natural foundations of life and to keep progress in harmony therewith. Shaping the spheres of authority and means of the Ombudsman of Future Generations is particularly similar with those of the Data Protection Commissioner, who is protecting the right to privacy vis-à-vis the data processing in the private sector, too.

Reasoning in Detail

§.1. As regards the Ombudsman of Future Generations, the Act on the Ombudsman for Civil Rights shall apply to the following: election, incompatibility, parliamentary immunity, termination of the assignment, and further elements of his/her legal status. The only departure is that a degree of higher education instead of degree in law is specified by the Draft as a requirement for the election, supposing thus the professional practice in the field of protection nature or the environment accordingly. Through the alternative option for the election, namely „the significant experience gained in the implementation and enforcement of rights regarding the protection of nature and environment”, it is made possible for the Parliament to elect as an Ombudsman significant personalities, who are active in civil movements, let alone, that dispute concerning the “professional practice” of such personalities can thus be avoided.

§.2.(1) According to the Draft, the competence of the Ombudsman of Future Generations is defined by the laws on „environmental protection”. His/her right to inquiry covers thus all the fields which are regulated by Act No. LIII of 1995 on the General Rules of Environmental Protection and by Act LIII of 1996 on the Protection of Nature, as well as by the further Acts specified therein. The right to express his/her opinion, however, is wider than the possibility provided for by the said Acts: it extends to Draft Laws, as well, which might significantly affect the essential conditions of future generations by the long-term impacts implied therein.

(2)-(7) The Ombudsman of Future Generations has all the rights and measures the Ombudsman for Civil Rights may exercise. The Ombudsman has no right to give order to any of the governmental authorities and the Ombudsman of Future Generations shall obviously not instruct any user of the natural resources in the private sector either. The main device of the Ombudsman is publicity. Corresponding therewith, the Ombudsman of Future Generations may upon completion of the inquiry publish the fact of threatening or damaging by acts or omission of the environment and the relevant data. The Ombudsman shall publish the data if he/she has not received information within the deadline set in the act hereto on measures taken against such threatening or damage or if the measures so taken have been insufficient. The same applies to publication of the measures that have been taken by the authorities, either by publishing by the Ombudsman of Future Generations the fines and other sanctions that have been imposed, or by publishing the result of measures taken by an authority or a municipality upon the request of the Ombudsman.

Certain rights, which may, according to the Act on Environmental Protection be exercised by associations involved in environmental protection, or by the Minister or other authorities and fit well into the sphere of activity of the Ombudsman of Future Generations, shall be due to the latter one, too. *E.g.* the lawsuit initiated for stopping of threatening activity or for damage prevention, the claiming compensation for damages in favour of the Fund for Environmental Protection by virtue of the waiver of the injured party, entry in the Land Register of the lasting damage of the environment (which would be an authentic completion of the information system on the state of the environment, let alone, that it would induce the holder of the real estate to take measures against those contaminating the environment). The rights granted to the Ombudsman of Future Generations will be important motivating factors for the further development and up-to-date state of the National Information System on Environmental Protection. By means of information on public hearings will the Ombudsman be in a position to gain knowledge of significant licensing procedures. A public hearing initiated by the Ombudsman is obviously not part of a licensing procedure of the authorities, it is rather a tool in the hands of the Ombudsman for his/her public relations work.

Purpose of making, by the Ombudsman of Future Generations, his/her own opinion known prior to entering international obligations is to have the interests of future generations be represented in this field that may not be less decisive for the environment protection than draft laws. The wording of the Draft follows partly international agreements. The Ombudsman may also turn to the authorities with his/her opinion on the implementation of such agreements. He/she may most obviously publish his/her opinion and the relevant response of the authorities.

§.3. It is sufficient to provide for in the Act that anyone has the right to turn to the Ombudsman of Future Generations. As regards protection of the announcing person, the general rules will apply without any special reference to them.

§.4. Like in case of the other Ombudsmen, the inquiries made by the Ombudsman of Future Generations must be tolerated by everyone, and the Ombudsman shall not be hindered in his/her inquiring work with reference to state or service secrets. The general rules apply to the limits of inquiries to be conducted with the armed forces and organs of the national security.

Since the Ombudsman of Future Generations may, like the Data Protection Commissioner, conduct inquiries outside the governmental sphere, thus with everybody, it is specially emphasised in the Draft that the Ombudsman shall not be hindered in exercising his/her work through making reference to business secrets, either. It is a definitive element of a business secret that a justifiable interest in the nondisclosure of such secret must be shown. Said non-disclosure of data relating to the environment is not justifiable if it is related to hazardous or injurious activity to nature and in particular in the event when the holder of such secret fails to undertake appropriate measures despite the relevant request of the Ombudsman of Future Generations.

5th International Conference on Ethics and Environmental Policies
BUSINESS STYLES AND SUSTAINABLE DEVELOPMENT
Kyiv, April 2-6, 2003

§.5. Each Ombudsman shall annually report to the Parliament. The extraordinary hearing as well as the proposal on a parliamentary inquiry are especially pointed out in the Draft because of the nature of environmental protection: it is most likely that extraordinary events requiring measures to be forthwith taken would occur in this field.

§§.6-7. As regards the dates of enactment, election and setting up of the Office, it has been reckoned with an Ombudsman of Future Generations commencing its activity in 2001.