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**Violations of the right to assembly in Hungary
between 1990-2010**

PhD thesis abstract

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I. Research topics and objectives

This research aims at analysing violations of law related to the right to assembly in Hungary during the 5 parliamentary terms between the elections of 1990 and 2010, in chronological order. This topic came into the focus of attention during the past decade, particularly after the serious issues of malpractice on September 19-21, 2006 and October 23, 2006. As a lawyer I have repeatedly defended persons accused of criminal acts related to the events of 2006, and persons subjected to contravention proceedings in 2007-2009, and continued to represent them in the civil proceedings for compensation on the grounds of human rights violation that followed their acquittal. In 2010, following the parliamentary elections, the new majority set up a parliamentary subcommittee to investigate the 2006 violations of law. As a permanent guest I was invited to attend several of the subcommittee meetings and so I decided to choose this topic for my PhD thesis. In this paper I am going to focus on individual cases to recite the history of unlawful dispersals of political demonstrations, infringements of rights committed by the police in connection to the events under the right to assembly, mistreatment in official procedure, and the unlawful infringement of personal freedom. I will demonstrate how the unlawful practices of dispersing demonstrations, the misreading of applicable legislation by police forces, and the trauma the police suffered during the siege of the national television headquarters jointly lead to extraordinary violations of law on September 19-21, 2006 and October 23, 2006. Although no such severe legal injuries were caused in the years that followed, the police continued to violate the law particularly related to dispersal of demonstrations and during contravention arrest. I will highlight changes in legislation on the right to assembly during this period, among them ones that contributed to making the practising of this right freer and more peaceful, such as the regulation on road traffic, and ones that limited the practising of this freedom by limiting the more extreme forms of peaceful gathering, like the regulation which classifies passive resistance as a contravention. One of my aims with this paper is to present these events in a chronological order, case by case, to those interested in the field of law. But I would also like to present these cases as a lesson for the generations to come; to make sure that such assaults, especially as the ones in 2006, will never be repeated. My other aim is to help legislators reconsider current legislation on the right to assembly: to encourage the precise definition of spontaneous demonstration, and to call for stricter measures regarding the dispersal of demonstrations by road traffic in the new act on the right to assembly, which will be passed as part of the reform of core

legislation. I believe that the Police Act, the Regulation of Duty of Police, and the Contravention Act should all be revised from the point of peaceful assembly, and that the constitutionally questionable amendments limiting the right to assembly, which were passed after 2006, should be deregulated.

II. The method of research

I have written up the history of the assaults related to the right of assembly in this period in chronological order. After a short historical survey I have presented concrete legal cases from each period. Related to each legal case I have used the documents of the specific criminal cases, contravention procedures and civil procedures, especially judgments of first instance courts, appellate judgments, sometimes judgments of review (extraordinary remedy), in contravention proceedings decisions of the police as competent authority as main primal original sources. In case of abandonment of criminal or contravention proceedings, withdrawal of charges, or the acquittal of the accused, the persons who have been unjustly restrained in their right of liberty, have sued civil actions for damages. If the prohibition or the dispersal of a demonstration or some circumstance of it has been legally controversial, the organisers of the demonstration have sued for an administrative court against the decision of the police authority about the prohibition or dispersal of the demonstration. There have been some cases when the victims of violation of law have turned to the Parliamentary Commissioner for Human Rights, to the Independent Body of Complaint, or to the National Superintendent of the Police. When the victims of the legal injury have exhausted all the national legal remedies they could turn to the European Court of Human Rights that resides in Strasbourg.

The most important secondary sources of my research are the reports of the commissions that investigated the violations of law related to the right of assembly, and the protocols of the parliamentary subcommittee. Concerning the events of 2006 the most important sources are the report of Gönczöl-committee requested by the Gyurcsány-government, the report of the Civil Lawyers Commission which has been created by independent practising jurists, former judges and university teachers with the aim to inspect legal injuries, the reports of the Ignác-committee and the Papp-committee, which have been requested by the leaders of police with the aim of conducting an internal investigation, and the report written by three former members of the Constitutional Court, including pro-deacon of our University, Dr. János

Zlinszky, moreover Dr. Éva Terstyánszkyne Vasadi, and Dr Géza Herczegh. In 2010 after the formation of the second Orbán-government, the Human Rights Committee of the Parliament set up a subcommittee to investigate any violation of law between 2002 and 2010, especially those committed by police and other state authorities in the context of right of assembly in 2006. At the same time the Prime Minister has requested the former Minister of Justice, Dr. István Balsai to make a report about the legal injuries on 23 October 2006. There have been many lawyers acting as advisers who helped the work of both the parliamentary subcommittee and István Balsai. In the course of six month in 2010, the parliamentary subcommittee has questioned many police leaders, court executives, leaders of state attorney office, former ministers, commanders of police units taking orders in the field, heads of civil service media, the victims of violations of law, both policemen who have been injured in 18 September 2006, during the so called siege of the headquarters of the Hungarian National Television and civilians who have been injured or unjustly restrained in their right of liberty either in 19-21 September 2006 or 23 October, the leaders of the above mentioned investigating committees, and also delegates of legal protection organizations. The report and the protocols of the parliamentary subcommittee are the sources used to the greatest extent; they are also most frequently referred in footnotes since there are numerous prominent results in my research which were found in these sources. The Balsai-report is also considered a distinguished important source because the lawyer experts who worked on this report had access to such important primary sources which have not been available to the parliamentary subcommittee.

I used the descriptions of events and political columns of the daily newspapers and main internet news portals, and also the regarding parts of websites relevant to the subject of my research, including the official website of the Hungarian Parliament as well as the website of the National Foundation for Legal Defence, the later of which played a major role in the defence of the victims of the violations of law. Processing legislation applicable to the subject of my dissertation was also an important part of my research. One of the most remarkable legal acts is the Constitution of the Republic of Hungary which was the effective constitution of Hungary until 2011. Other legislation that has to be mentioned as important sources are the Act of Assembly, the Criminal Code, the Code of Criminal Proceedings, the Contravention Act, the Police Act, the decree of Minister of Interior about the Regulation of Duty of Police. I have also referred in my work to many decisions of the Constitutional Court, two applications for subsequent abstract control of rules written by the National Foundation for Legal Defence as well as the judgment of the European Court of Human Rights in the case of

Bukta and others vs. Hungary. Considering that the events discussed in my dissertation occurred not long ago, there is relatively little specific literature on the subject. Some of the abovementioned reports were published as a book, some investigative journalists have written books about the facts of year 2006.

I have divided the dissertation of the events of the above mentioned twenty year period dissolved to three great chapters. Considering that from the point of the right to assembly the most serious and most numerous legal injuries occurred during demonstrations in 2006, the most lengthy middle chapter of the three discusses the violations of law in this year, the first chapter is about the period before 2006, the third one is about the period after 2006. The report of the parliamentary subcommittee has used the same chronological dissection-method; the report itself discusses the events that occurred in 2006, while the partial report attached to the report negotiates the periods before and after that. Act III. of 1989, one of the most prominent cardinal acts made in the course of the public law system change provides for the organization and registration requirement of the public events under the of right of assembly, the occasions when the police can prohibit to keep a demonstration for either a certain location or route, or for a certain date, also the regulates of the dispersal of the demonstrations. Even the political forces at the time of the system-change thought that the classical political liberties, the right of assembly, the freedom of speech and the freedom of press were amongst the most significant human rights in a democracy and their regulation among the first rules. Between 1990 and 1997 the police accepted all requests for registered political demonstrations even if it involved a serious and disproportionate disturbance of road traffic as it was shown in the case of taxi driver's blockade of 1990. There was only one occasion of unlawful police action in this period, after a football match, although sport events are not subject to the rules on right of assembly. When the Horn-government intended to make the partial purchase of agricultural land by foreign private or legal persons legal, the greatest farmer's corporation Metész announced to organize national traffic-slowing demonstration for 3 November 1997. The police approved keeping the demonstration for the countryside, but prohibited to keep the moving demonstration in the capital on the grounds of disproportionate disturbance of road traffic. This was the first occasion after the regime change when the police prohibited keeping a demonstration and sadly the first occasion when policemen assaulted demonstrators, among them the hero of the revolution and freedom fight of 1956, Gergely Pongráz. I used legal documents of cases as sources of the legal injuries of 1997. I present the police verdict prohibited keeping the demonstration, the court decree that

approved this decision, the documents of the contravention procedure against the organizer of the demonstration, ex-parliamentary member of MDF, Gyula Zacsék, the documents of the action for damages, brought by Gyula Zacsék because of his unlawful contravention arrest, and finally the documents of administrative action brought by journalist András Bencsik who attended the demonstration, which ended in a judgment of the court stating that both the prohibition and the dispersal of the demonstration were contrary the law, in showing the history of these legal cases.

Between the formation of the Medgyessy-government and the Ószöd-speech in 2006 the police prohibited the keeping of many political demonstrations for certain locations, routes or times, sometimes there were dispersal or contravention arrests. When discussing these demonstrations I mention some occasions when a judgment of the court declared the unlawfulness of the dispersal, or stated that the procedure of the police, especially the contradiction arrest was contrary to law. Among the demonstrations mentioned in my dissertation the flash mob in front of Hotel Kempinski has a huge significance. The organizers of the demonstrations, Dénesné Bukta and others, after exhausting all the national legal remedies, have submitted an application for the European Court of Human Rights in Strasbourg against the Hungarian state, on the grounds of the breach of the European Convention on Human Rights. The judgment of the court condemned the Hungarian state for the breach of Article 11 of the Contract restraining the applicants in their peaceful right of assembly. The judgment laid down a legal precedent by stating that if a political action provokes response in the form of a demonstration, the dispersal of a peaceful demonstration solely because of the lack of the preliminary registration constitutes a disproportionate limitation of the freedom of assembly. The dispersal of spontaneous demonstrations after this judgment is contrary to the judgment of the European Court of Human Rights so it runs contrary to the international law. We also can learn a lesson from the demonstrations in Gesztenyés kert in Buda. The Civil Association Lelkiismeret 88 announced several demonstrations for different times to the above mentioned location. The police dispersed a demonstration claiming that its earlier verdict had forbidden keeping another demonstration for the same route but for another time, although there was no prohibition verdict for this later demonstration. The amendment off the Act on Assembly came into force in 2004. This modification defined the reason of prohibition of a demonstration on the grounds of road traffic in a more specific way than it used to be. Instead of the term “the disproportionate disruption of the order of road traffic” the new text of the act uses the terms “road traffic

could not be provided in an alternative route”. The keeping of another demonstration in Gesztenyékert in 1 December 2005 was forbidden by the police referred to the terms of the former text of the Act on Assembly as the government and competent minister at the time had failed to modify the related executive decree in accordance with the amendment of the act. I think that the instructions of the Act on Assembly that concern road still give the police too much freedom if interpreted that extensive way. The police may forbid keeping demonstrations announced to take part in dead-ends or side streets approachable in only one way, even if it this is contrary to the intent of the legislator. In order to prevent such a situation I believe that a legal amendment is necessary that would only make the prohibition of a demonstration possible for road traffic reasons if it brings a whole city or village or a significant part of it under a blockade or if it disables the traffic on a national or local main road. This modification would preclude the possibility of forbiddance of any half-road traffic slowing demonstration, or any demonstration which takes part in a dead-end or a side street.

The most extensive middle chapter of my discussion presents the events of 2006 in three sections. The first one shows the riot that broke out in 18 September 2006 in front of the headquarters of Hungarian National Television in Szabadság Square, commonly known as the “siege of the Television”, primary on the basis of the protocols of the parliamentary subcommittee, and especially the declarations made by the persons involved in these events before the subcommittee. Based on these protocols we can establish that the leaders of police have made many mistakes that constitute serious breaches of law. As a result the insufficiently armed police units ordered to defend the headquarters of the Hungarian Television against a violent mass, and also the employees and studio guests of the Hungarian Television were left to their own devices. A violent minority of the persons demonstrating in the front of the headquarters of Hungarian National Television inflicted serious injuries on some police officers, and also caused significant property damage. In a few cases charges were brought against the actual perpetrators of the “siege of the Television”, and, in even fewer cases the court has found them guilty. Already then there were instances of unlawful arrest by the police and the competent court ordered the pre-trial detainment of persons who were later found not guilty in a criminal offence by the criminal court. The grave trauma that policemen lived through in Szabadság Square could have caused a thirst for revenge in many of them against all the demonstrators and could have been one of the main reasons of police brutality in the following days.

In the next section I present the history of the violations of law committed by the police that happened on the nights of 19-20 September and 20-21 September 2006 in the streets of downtown Budapest. I present the events using the example of specific legal injuries described in police documents and judicial documents of the case in question. The applicable part of the Report of the Civil Lawyers Commission is also an important source in the study of the cases. The abovementioned cases came into the centre of the media's attention therefore I used columns and books written by journalists on this topic when describing the cases. Both the parliamentary subcommittee and partially the Balsai-report discussed the violations of law committed between 19 September 2006 and 21 September 2006 so I researched the announcements made in the forum of the parliamentary subcommittee, and the parts of the subcommittee-report concerning the legal injuries on 19-21 September 2006. Both the report of the subcommittee and the Balsai-report emphasized that torture in the illegal "temporary police prison" located in the courtyard of the headquarters of the Hungarian Radio can be regarded as an outrageous legal injury among the breaches of law that happened on 19-21 September 2006. It is important to mention that the first instance courts confirmed the motions of state attorneys for ordering pre-trial imprisonment in September of 2006 almost without exception. However the investigating judges acted in the court of appeal changed the decrees of first degree in most of the cases, and ordered to release the suspects. The decrees of courts of first degree in the abovementioned cases made no mention that there existed any special condition at all for using the most serious coercive measure on a single suspect considering his or her personal circumstances.

The most serious breach of human rights of present history since the change of regime in 1989-1990 happened on 23 October 2006. The police evacuated Kossuth Square claiming that dangerous tools had been found in tents. The illegitimacy of the abovementioned police act was declared in a conclusive judgment of the court later. Contrary to a verbal agreement between the police and demonstrators police forces prevented the return of demonstrators to Kossuth Square in the afternoon, on the grounds of a non-substantiated case of violence against the police. The police pressed the dispersed mass which included some violent persons towards the peaceful participants of the festal event of the biggest opposition party. During the dispersal the police violated to the rules for breaking up demonstrations several times. The attack of the mounted police units and the deployment of rubber bullets were commanded regardless of the legal requirement for proportionality or special police regulations. Neither the type of the bullet nor the type of the gun for shooting these bullets

used on 23 October 2006 were registered as regular police weapons, although the registration process of these weapons had started but yet not finished at the time. Police officers aimed with these guns extremely unlawfully at head height. In the section on 23 October 2006 I discuss physical injuries in a separate subsection using of the research of psychologist expert of the Civil Lawyers Commission, Anna Szöör. Many persons suffered serious injuries that heal beyond eight days some people suffered permanent health damage two people became blind in one eye. On the basis of the report of the Civil Lawyers Commission and the Balsai-report I have collected the cases of breach of constitution, criminal dispositions and infractions of special police rules which probably occurred on 23 October 2006. I have discussed some widely known cases connected to 23 October 2006, including a case of an eye-shot causing blindness, the beating of Fidesz-MP Máriusz Révész, the assault of catholic priests, and the case of Super Granny who intended to visit her sick granddaughter in hospital, got off the subway at the wrong stop, was accused of violence against a public official and was finally found not guilty. The parliamentary subcommittee examined primarily the events of 23 October 2006, the Balsai-report focused specifically on the abovementioned events. I discuss the abovementioned sources from the point of liability. During the auditions of the subcommittee it turned out that the police commander who intended to finish the dispersal of the mass in the corner of Andrassy Street has been relieved of his office. A significant part of legal injuries that occurred on 23 October 2006 were never revealed because police leaders allowed police officers not to wear their identity badges, referring to an unlawful verdict of the national superintendent of police. The majority of video footage recorded by cameras in the streets, in police prisons and the penitentiaries could not be inspected either by the court, the state attorney or the parliamentary subcommittee. On the basis of all of these and also because police witnesses in trials never testify against their colleges, most of the perpetrators of police crimes committed on 23 October 2006 avoided the sanctions of jurisdiction.

The third main chapter of my dissertation discusses the events after 2006, emphasizing on the one hand the modifications of law that restricts the right of assembly, and on the other hand the history of those demonstrations on whose dispersal legal injuries occurred. Among the legal changes it is important to mention the government decree which classified the contravention of resistance against a lawful police action, even if it is a passive resistance. On the basis of this decree police officers acted against demonstrators who disobeyed the police command for dispersal even if they have left the location of the demonstration too slowly. As many points of this decree were contrary to the constitution, legal-protection organizations

turned to the Constitutional Court. Many paragraphs of the package of acts legislated at the time of minister Tibor Draskovics modified the Code of Criminal Procedure, the Act of Contraventions and some other acts also raises some constitutional worries. The throwing of eggs, tomatoes, cakes and other things harmless for physical safety in the direction of a politician is a Europe-wide known extreme way of political protest. The above mentioned act earlier had been a non-verbal insult; a private prosecution felony only could be punished if the inflicted person took a request for prosecution. After the modification of law the same act became affray a public action felony punished even against the intention of the inflicted. The provision of this package of acts that composed a new legal disposition similar to affray called the “disturbance of authority” also raises some constitutional law questions. The perpetrator of this felony is the one that commits any public nuisance act that disturbs or avoids any procedure of the court or other authority. There is a danger that the police would think itself as “another authority” so it could qualify any passive resistance against a police action which is legally only a contradiction not a crime, or either the obedience of any police act with critical words as a “disturbance of the police authority” and could take denunciation. The extensive interpretation of this act could lead into the total liquidation of both the liberty of assembly and the freedom of speech. Unfortunately the Constitutional Court has not negotiated the application of the National Foundation for Legal Defence for subsequent abstract control of law until 31 December 2011. As the foundation has lost the right of application for an abstract control of law after the new Act of Constitutional Court had come into force, this petition could not be negotiated by the constitutional court. Although the parliament has many more important tasks of legislation in the past years the derogation of the above mentioned legislative measures would take just a little time. This derogation would be very important from the point of view of rule of law

Between 2007 and 2010 many demonstrations under the scope of right of assembly were dispersed. In my dissertation I have emphasized the cases when either the fact of dispersal was unlawful as confirmed by the judgment of the court, for example in the case of the demonstration of Clark Ádám Square in 11 April 2008, or the contravention arrest of the participators were contrary to the law, for example because the police did not allow them to leave the location of the demonstration as we saw in the cases of the Erzsébet bridge blockade of 26 October 2007 and the abovementioned demonstration in Clark Ádám Square. The quash of the contravention proceedings in accordance with the international law resulted in the victims of unlawful deprivation of liberty filing for compensation for moral damages,

on the grounds of violation of privacy. There has been a judgment of review of the Supreme Court which deprived the plaintiffs of compensation entirely contrarily to international law and consolidated judicial practice of the past years. In the abovementioned case the plaintiffs turned to the European Court of Human Rights. The last significant violation of law occurred on 15 March 2009, when the police restrained demonstrators and legal protection activists in the practice of the right of assembly, blowing them with pepper-spray; civilians, including mothers with little children were not allowed to participate in state events by security guards of private companies, demonstrators demanded the resignation of the prime minister were arrested for a contravention and submitted to unlawful treatment in police custody. I studied the judicial documents of concrete legal cases in order to discuss the abovementioned events and also used the partial reports of parliamentary subcommittee to a certain degree also supported by internet sources.

Among the appropriate steps made by the new parliament and the new government I emphasize Act XVI of year 2011, also mentioned in the Balsai-report, known as the nullity act by public opinion. Many of the persons accused of violence against public officials, affray or other violent crimes made in a public in connection with the practice of right of assembly in the September or October of 2006 have been found guilty exclusively on the grounds of police reports and testimonies of police witnesses. In most of these cases the accused received a suspended prison sentence. According to this act in the abovementioned cases the court is obliged to investigate each case either by the court in an official procedure or at the request of the convicted person or his/her defence counsel. If the court thinks that the case is under the scope of this act, the acquittal of the accused is obligatory. Some judges have turned to the Constitutional Court because of the imperfect rules of procedure, so the rehabilitation of these persons is still delayed.

III. Results of the research

Of the aims of my research the one that has been absolutely realized is the requirement for summarizing many independent and original sources, judicial or other official documents, reports that discuss the abovementioned events not yet used in any specific literature in a single dissertation. I emphasize how these significant sources contribute to the accurate reconstruction of the violations of law. I mentioned those legislation reforms that are necessary in my opinion that would help the legal and material rehabilitation of the victims of

legal violations, the initiation of proceedings against those responsible, depending of the nature of liability, if it is not prevented by limitation or other circumstances. On the other hand I would like to help with my dissertation a legislation which prevents the repeating of violations of law occurred in the last twenty years. I would consider it a success if my dissertation started a professional discussion that leads to some positive process in legislation.