

## Political rights in the socialism and the period of change: Study on Hungary and Czechoslovakia

STEFÁNIA BÓDI

*Miklós Zrínyi National Defence University, Department of Jurisprudence, Budapest, Hungary*

### The state in the socialism

The socialist states had provided for economical and cultural rights because they wanted to offset their encroachment on political rights. The highly developed states in the West had indeed provided for these rights, too, however they did so without intending to build their societies on egalitarian socialist principles. The greatest mistake of socialism was the nationalisation of the means of production, the introduction of collective ownership and the adoption of some restrictions. For example, the former limits in connection with real estate. Naturally, it could not work for too long. Another shortcoming of the system was the encroachment on political rights, which resulted in dictatorship. The highly developed states aren't perfect in every respect, either, but the smaller problems<sup>1</sup> in politics or economy can't be so worrying if we have the rights for more or less the most part of the society. Human rights were interpreted in a different way in the former socialist and in the capitalist states.<sup>2</sup> During the cold war, two political blocks fought for they were interpreting the political rights differently; in fact, next to the arms race and competition, the interpretation of human rights served as the ideological background for the fight. The tools of both regimes were the same in this respect: giving a positive vision of the future. Next to the ideology both of the systems stated that the other don't realize the fundamental rights and that the political rights are more important than economical rights – that was the ideology of capitalists – or without having economical rights it needless to speak about the political rights<sup>3</sup> – that was the ideology of former socialist systems.

The Declaration of Exploited People, which was accepted by the III. Soviet Assembly<sup>4</sup> in 1918, sprouted from the ideology I have previously mentioned. The Declaration ordered that the land should be public property, the companies, factories be controlled by the workers and it established the Red Army. Further notices in connection with the individual rights, for example about right of association or right of work can only be found in the 1918 Constitution. It was that and the later Soviet Constitutions (1925, 1936, 1977) that served as models for other socialist states. The regime worked for more than forty years ruined the democratic values. The

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Received: September 19, 2005

*Address for correspondence:*

STEFÁNIA BÓDI

Miklós Zrínyi National Defence University

H-1581 Budapest, P.O. Box 15, Hungary

E-mail: bodi.stefania@zmne.hu

governments of socialist states had reservations about the international contracts which the legal debates would have referred to.<sup>5</sup> The former socialist states thought that international existence of human rights is an intervention in domestic affairs. The former socialist states denied that human rights were internationally accepted rights despite the fact that the UN Charter had been drawn up. To this opinion belong the concept which denied the international acknowledgement of persons either with the explanation that the ground of international law is the acknowledgement of sovereignty. Human rights were considered by the former socialists as if they had belonged to the national legal authority<sup>6</sup> and only one exception was accepted: breaking the law. In such case, they viewed international actions as useless because such actions were considered dangerous to global security. The former socialist states found injurious the difference between the UN Agreements in 1966, that only one of the pacts knew a process which must be applied in the case of breach of law. The pact of economical, social and cultural rights didn't contain a part like the other.

To the opinion of the time belonged the refusal of the natural law because they owned the sociological concept is more suitable for the social conditions. Human rights – or civil rights – were thought to be necessary only in a society where conflicts could be taken place between state and its citizens. So the history of natural law came to an end in the 19th century after the age of positive law, which legitimated the various kind of dictatorships, had begun. The former dictatorships didn't used to use the natural law ideologically, neither the fascism nor the socialists. These dictatorships had been founded on the defiance of the law and were not able to accept the natural law relating to the concept of human rights.

Roscoe Pound stated that the positive law had unintentionally supported absolutism while the natural law had been the most effective impediment to absolutism.<sup>7</sup> Marxist researchers thought that human nature is nothing else but the typical requirements today's people. They thought that the human nature is dependent on social conditions. According to Marx's opinion human nature is nothing else but a social product.<sup>8</sup> Characteristic of socialism is the stressing of the obligations against the rights and the thesis that law will die down. According to that, norms won't be wear out but they will become of people's conscience so we won't know the norms have legal character.

After this short introduction let's see how political rights were regulated in the former regimes in Hungary and Czechoslovakia.

### **The political rights in Czechoslovakia**

In the former Czechoslovakia we could find the *right to petition*, which meant that people and legal entities had the right to petition in connection with a private remedy or public interest. Petitions relating to public interest were to be submitted to the Parliament or other state institutions. This concept does exist on in the democratic states today. Looking at the historical development, we can conclude that the right to petition had existed in the Monarchy before Czechoslovakia was born. In the early 20th century the right of petition was regulated just as before then.

The first Czechoslovak Constitution in 1920 contained the same regulation as the others in this period. According to the Constitution, individuals as well as legal entities had the right to petition, however, the latter had the right to present petition relating exclusively to their own activities. Norms were founded in national and local rules and in the Regulation of Parliament, either. In this time, the former Czechoslovakia wanted to regulate the right to petition constitutionally that it provides the contact between Parliament and people. The Regulation of Parliament declared clearly how the state institutions should regulate this right. According to what I have mentioned above, people were able to lodge their complaints only in writing. The following Czechoslovak Constitution in 1948 regulated the right to petition, too. (Chapter III. Article 23.) The Constitution didn't restrict this right so it declared that the state would guarantee the human rights, including the right to petition for all citizens. On the other hand, there was no Act which was to enforce the right to petition guaranteed by the Constitution. Next, we can find a new regulation, the government decree 150 of 1958, about the right to petition. The decree differentiated between complaints, proposals and reflections. The government decree was passed so as not to fulfil the Article 23 of the Constitution but to give some regulation. The decree was based on the idea that complaints and reflections can be presented by individuals but proposals – which can be associated either with individual problems or public interest – can be presented by either individuals or groups. The regulation I have mentioned above was deficient in every respect because it didn't define clearly the procedural guarantees, and the weaknesses of the decree became visible in connection with the non-compulsory form of the regulation. The decree didn't define the right to petition, either, so we weren't able to take different among petitions and other applications. That's the reason why the decree wasn't able to become a really significant norm.

The next Czechoslovak Constitution was established in 1960 and went on the former conception. The Article 29 of the Constitution declared the right to petition: "People and associations have the right to bring complaints, proposals, applications forward to

the Parliament and other state institutions. The state institutions are responsible for applications.” It was useless to regulate the right to petition at constitutional level because the law of civil rights – which fulfilled the Article 29 of Constitution – hadn’t been became legally binding. The law would have regulated in detail the guarantees and the procedural norms. The governmental decree of 1958 stayed valid. In addition to this, some acts required the state institutions to reply to the proposals and applications people had handed in. With growing dissatisfaction people demanded with petitions the fulfilment of international agreements of the state.

The first regulation at the *right to form associations* bearing the spirit at democracy was adopted in 1867. According to this, people were given the right to form associations voluntarily if they had common objectives to achieve. After that we can find the first Czechoslovak Constitution in 1920 which was written in the spirit of democracy, either, and had a relatively detailed regulation. The regulation covered norms applying to foreigners: how they can participate in political associations and to profitable associations. The Constitution contains that associations make the relationship of workers stronger.

The second Czechoslovak Constitution in 1948 contained a new regulation and declared that the right to form associations would be honoured unless it would endanger democracy and peace.<sup>9</sup> The Constitution stressed that the right to form association should be regulated by an Act. The Act LXVIII of 1951<sup>10</sup> of the right to form associations in Czechoslovakia stipulated the voluntary associations of people. The law was amended in 1974.<sup>11</sup> The amendment contained restrictive regulations according to the purposes of the associations. This concept objected to built the socialism and took differences between the trade unions, the women and youth associations. According to the Act, the Home Secretary had the right to authorize associations before had come into force. Associations were to be dissolved in case if they would obstruct the building of socialism. At this time it was obvious to everybody that the state didn’t want to recognize the different associations. The Constitution followed the former regulation of 1951 on the right to form associations. After that, a new Act<sup>12</sup> declared that associations could be dissolved or could be suspended for the interest of public order for three months. Dissatisfaction with the political system first emerged in 1968 and in fact, it did not fade until November 1989. In the 70s, 80s independent movements appeared and foreshadowed changes. They turned to state institutions and the Communist Party and demanded the respect for human rights.

Regarding the *right to assemble*, states in Central and Eastern Europe always paid attention to assemblies, especially to political assemblies. In 1920, for the first time the Constitution honoured this right and declared that unarmed assemblies would be

allowed. The right to assemble was restricted at war and in some places which were reserved for traffic. The second Czechoslovak Constitution in 1948 contained a new regulation and declared that the right to assemble would be honoured unless it would jeopardize democracy and peace. The Constitution stressed that the right to assemble should be regulated by an Act. The Constitution of 1948 was written in the spirit of socialism and regulated the political rights in harmony with the spirit of democracy. The Communist Party came to power in February 1948. So the Constitution declared that the right to assemble would be honored unless it would jeopardize democracy or public order.<sup>13</sup> The next Act of Assembly was drawn up in 1951. It was only a formal regulation because the details of it regulars had been laid down in the Home Secretary's decrees. The decrees pronounced that workers' right to assemble would be extended to an extent unknown in capitalism. According to the decrees, assemblies must be announced to the district national board a week beforehand. This regulation caused legal instability because it had specified neither state institutions which would take measures against assemblies nor the conditions under which an assembly would be dissolved.<sup>14</sup> A new Home Secretary's decree<sup>15</sup> solved the problem in 1951 and declared that assemblies near public roads could be held only with the prior permission of the national board and these assemblies could not be held without approval from the police. The national board had the right to send its own representatives, who were allowed to disband any assemblies, to the spot.

Then, the new Czechoslovak Constitution came to light in 1960 and solemnly declared the victory of socialism. According to the new Constitution, the right to assemble would be respected as long as it would not be misused against the interests of working class. In addition to this regulation, the former Act stayed valid, too. In August 1968, there was a turning point because the Act CXXVI of 1968 was passed which stayed valid until 1990, affecting provisional measures. The Act vested national boards with power to dissolve demonstrations and public assemblies if they seemed to endanger the socialism. The Act ordered that the unlawful acts must be punished. The state machinery revenged the civil actions, furthermore, in October 1988 the national board of Prague prohibited by a decree to hold public assembly in Prague. The decree was seemingly passed to protect the city's monuments.<sup>16</sup> It was repealed in 1989.

### **The political rights in Hungary**

The Act I of 1946 about the form of government brought about changes in Hungary.<sup>17</sup> The Act regulated the fundamental human rights in Hungary and declared that the *right to assemble* was honored.

Exercising this right needed prior approval from the police. From 1945 to 1947 the regime eliminated the remainings of the privileges of the feudal state and eliminated the discrimination of women in every sphere of society family relations, political relations, and workplaces. In this period there was a radical change that would be regulated in the new Constitution of 1949. "The civil rights and obligatory duties, the general right to vote and the compulsory military service were not only ideological slogans but means of expressions of discording and fusing tension being in legal system and it was not a coincidence that the modernest dictatorships either attempt at perfecting force machinery or they refer to direct democracy from representational democracy, to referendum and the widest generality of free understanding." – said István Bibó about dictatorships.<sup>18</sup>

The new Hungarian Constitution declared the following: "The great Soviet Union has liberated the Hungarian state from German fascism, has crushed the antidemocratic power of landowners and capitalists, has opened the way to democratic progress... The Soviet Union has rebuilt our shabby country with unselfish support... Growing rich with the experiences of the socialist revolution, relying on the Soviet Union the Hungarian people has begun to build the basis of socialism..." The Constitution stressed that the state guaranteed the political rights for every worker living in Hungary. The Article 55(1) of the Constitution<sup>19</sup> declared that workers had the right to assembly and that right was absolute. The stressing of workers' interest referred to the possibility of party consideration. The right to assemble wasn't regulated by any Act at that time so the people in power were able to organise programmes and hold assemblies. The regulations concerning the misuse of this right stayed in force in the Penal Code.

The Article 56 of the Constitution declared the people's *right to form associations*,<sup>20</sup> according to what the People's Republic of Hungary was going to guarantee the right for the workers to participate in social, economical, and cultural activities. The Constitution stressed that the people's republic was going to depend on the workers' associations to fulfil the state's duties. At that time, there were the women's associations, youth associations, trade unions. These organisations had come together to form the 'Popular Front'. A decree with legal force 18 of 1955 was built on the above mentioned thesis of the Constitution and stated that each association could create its own charter, however, it would have to be registered. State offices were authorized to register associations and were responsible to inspect whether the purposes of the associations conformed to the aims of people's democracy.<sup>21</sup> The ministers had the competence to controll the national associations and county executive boards had the competence to controll the associations which were functioning in their counties. The associations which were functioning at lower level, as I have mentioned above, were

controlled by district executive boards.<sup>22</sup> The boards had controlled the legality and management, too. The decree with legal force didn't regulate the Labour Party because the activities of the Party weren't regulated by law. Finally we can mention the decree with legal force 29 of 1981 which was the last general regulation of the right to form associations before the system had changed. The decree with legal force ordered that associations which were established, must report to the future supervisory authority. The supervisory authority had the right to prohibit associations if the planned operation was opposite to the system of People's Republic of Hungary. Not reporting to a supervisory authority was considered crime. In the light of this we can see that there were no real civil associations at that time.

The next Act which regulated political rights was the Act I of 1954. It was about the complaints of people and declared the *right to petition* is absolute, so it had resulted in lots of complaints. The Act didn't regulate clearly which organizations were authorized to proceed. The deficiencies of the regulation can't be stayed on in Hungary, either, so the Act IV of 1957 about the public administration procedures was passed. The Act defined complaint, proposal and announcement of general interest and declared the following: announcement of general interest meant that people announced the problems they had felt about the economy and politics; proposals meant that people had the right to write proposals in order to improve the economy and state machinery. The third form of petition was the proposal in individual cases. According to the law, in these cases the regulations about complaint were to be applied. People had the right to complain against defaults, decisions or measures which they felt might infringe on their interests. The Act declared that the procedure was single-phase because a two-phase procedure is politically unjustified and needless. The governmental decree 1013 of 1959 (IV. 8.) on managing the workers' petition, which was part of the Act, ordered that the media should deal with these cases. According to this, the county newspapers had to deal with the petitions of the local councils, and publicize concret cases, at least, once a month. That was necessary because of growing the respect of councils and connecting people stronger. The regulation of the right to petition was laid down in Hungary in the Act I of 1977. The Act regulated complaints, proposals and announcements of general interest. The regulation of the Act were similar to the former so it took differences among three categories. The announcement of general interest meant that people had the right to report facts, events, deficiencies which were running counter to the economy or the interests of the society. People had the right to write proposals in case they were going to propose something useful for the society. And finally, complaints relating to individual problems could also be submitted unless the problem fell into the competence of another forum.<sup>23</sup> We can see that two of abovementioned rights were

going to protect public interests and only one was going to protect personal interests; therefore it can be concluded that public interests were given more concern. The Act I of 1977 was in force in an obsolete form for a long time – for example, the system of councils stayed in the text until long after the change of regime – so it wasn't applicable under the rule of law. This statement I have above mentioned refers to the proceeding organs. Creating this Act the state would like counterbalanced the restrictions of human rights<sup>24</sup> in socialism but the aim of the Act was either the complaining of people or control them.

### **The period of change of the regime and liquidation of the vestiges**

At the beginning of 90's two basic grounds urges the transformation of law in Hungary and the Czech Republic: the first was the demand for democracy and rejection of the former socialist regime, the second was the desire to join the European Union and adapt the law system. The European Community started to negotiate with Hungary, Poland, the Czech Republic at the beginning of 1990.<sup>25</sup> It was a great challenge to Hungary and the Czech Republic – similarly to the other countries in Central and Eastern Europe – because the situation was much worse than the countries' which had no Soviet influence. Lawyers had to revise the whole law system while at the beginning of 90's they hardly had experience about democratic law system. So, the revision of the Hungarian and Czech constitutional system started in the 90's and began the dogmatic transformation of the constitutional order.

At that time, a new constitutional act, Act C of 1990, the very important Act I of 1993 of the Charter of Basic Rights and Freedoms<sup>26</sup> were passed. The output of the changes were further 26 important acts. The Charter of Basic Rights and Freedoms contained the rights taxative in 44 Articles and regulated the basic political rights and personal liberties such as economic, social, cultural rights. The progress of rule of law had drawn great international attention. In fact, the Charter of Basic Rights and Freedoms had evoked a long discussion;<sup>27</sup> the greatest problem was whether the Charter had a 'sui generis' status like the Constitution and the Acts had constitutional force. There was an Act of introduction of Charter which stressed the importance of the Charter and declared that even the Constitution had to conform to the document. It became obvious that the Charter was more than a simple Act and the only one good solution was to regard it as an act with constitutional force.<sup>28</sup> Further question was what the future of the act of introduction should be. Answering to that it was necessary to decide whether the act of introduction had some legal effect. The act aimed to guarantee the coherence of the law system. According to this, the Article 6 declared that every Act



must be conform to the Charter of 31 December 1991. The Constitutional Court had the competence to announce a norm unconstitutional. The examination of formal and material unlawfulness belongs exclusively to the Constitutional Court.

The new Constitution of 1990 relegated the Act to a simple act without constitutional force.<sup>29</sup> If the act lives as a simple act, we will check its relation to the constitution. The act had the function to abolish every illegal norm but checking illegality belonged to the Constitutional Court so we can say there would not be any contradictory regulations between the abovementioned acts. Since 1 January 1993 judges have been obliged to put the Act with inconsistent regulation into the Constitutional court according to the Article 95 of Constitution.<sup>30</sup> The new Constitution of 1993 declared then that the act of introduction of Charter had no legal force any longer as of 1 January, 1993. (The Article 112) The Act fulfilled the work was obliged to in the course of changes. I summarize the statements I have so far mentioned that the Charter belongs to the constitutional order of Czech Republic and has constitutional force. Let's see how the political rights are regulated in Hungary and Czech Republic now.

### **The political rights in the Czech Republic**

The Article 18 of Charter of Basic Rights and Freedoms declared the rights to petition and the following regulation: "The *right to petition* is honored. Everyone has the right to put complaints, proposals and claims to state organizations or local governments in connection with public affairs or any other affair which can be interesting for publicity. The right to petition can be used by individuals or by groups."<sup>31</sup> According to the Article 18(2), petitions can't be used to interfere with the independence of courts and the Article 18(3) declared that petitions can't be used to infringe on the basic rights and freedoms of the Charter.

The right to petition is regulated in the Czech Republic like in the other European countries so in addition to complaints, we can find proposals, claims aiming to address public affairs and there has hurt character. People have the right to turn to state organizations with their complaints or requests relating to public affairs or personal problems without being afraid of any retaliation. The state organizations have to respond to applications because a democratic state does not let people without answer. An application, – which is a written complaint, or after oral remarks a written complaint in most cases can aim to modify or create a regulation. The application can't be applied to trials instead of well-known legal remedies like appeal or revision because these legal remedies are tried and trusted and secured by law. The functions of legal remedies can't be got round by applications, this regulation/practice is wide-spread in Europe.

Right to petition can be exercised by individuals and groups, too. Collective petitions are always more successful than petitions of individuals and have bigger influence. In the course of changes, in addition to complaints, a very important milestone, the Act LXXXV of 1990 was passed, which was written in the spirit of democracy. Watching the former political atmosphere and deficiencies of legal system it's not surprising that petitioners had no answers what's more their activities brought punitive sanctions about. The most famous organization which was struggling for changes at that time was the Charter 77'. The Helsinki Committee and the Protective Board of Unjustly Convicts are also to be mentioned for their active involvement in bothering. After these prior events the aim was creating an act of political rights which suits the international requirements and expectations undertaken by Czechoslovakia in the Helsinki procession earlier.

The new Act on the right to petition turned out to be too short. The legislative body intended to create a short, simple but clear regulation which would rule out the possibility of misunderstanding. The Act declares that everyone, either an individual or legal entity has the right to petition but a legal entity has the right to petition only in connection with their operations. The Act clearly declares that nobody can be denied the right to petition and because of this nobody may have any disadvantages. There are some slight restrictions which are democratic and internationally accepted. The Act prohibits to infringe on the independence of justice. Despite the shortness, the points of the right and guarantees are clearly stated in the Act, so the principle that state organizations which receive applications should respect basic principles. The closing provisions declares that the act respects other regulations containing this right in the case if these acts don't call the applications petition. The growing importance of the right is that the right to petition is one of the means of direct democracy and it can strengthen the public activity as well as civil organizations. It can be considered as a guarantee of the enforcement of the fundamental rights. The main advantage of the right that it's very simple and clear, on the other hand, the proceedings are long, extensive, and difficult for people inexperienced in trials.

So the *right to form associations* is in the Act LXXXIII of 1990. This Act was written in the spirit of democracy so it permits people to form associations to perform any activity, except associations which would run counter to constitutionalism and democracy. The parties, churches, and the associations established for personal gains are not covered by the Act. There are specific regulations referring to such associations.

According to current legislation, the subject of the right can be either a citizen or a foreigner. Both forming an association and joining one are voluntary. According to the act, associations have to be registered at the Home Office. The registration is a so-called

simple registration, for it might be revised by the Ministry.<sup>32</sup> The revision can be initiated by a preparatory board if it finds that refusal of registration has no real reason. The act regulated the way in which the ministry can shut down an association if the operation of the association is illegal and the illegal operation will not stop despite the warning of the ministry. Decision about closure can be revised by the court. The right to form associations is stated in the Charter of Basic Rights and Freedoms in the Article 20.<sup>33</sup> According to this, parties, associations, political movements and civil organizations can be established. Exercising this right can be restricted according to principles of democracy for example, public interest, security and the rights and freedoms of people.

After 17 November 1989 the changes strengthened the law and order in the Czech and Slovak Federal Republic, with special regard to fundamental civil rights. In March 1989 the word 'socialist' was deleted from the name of Czech Republic. In June 1989 democratic elections were held and privatization began. At that time a conflict emerged about the legal status of the Czech and Slovak Republic. On 17 July 1992 the new Parliament declared the autonomy of Slovakia. The Czech and Slovak governments began to discuss the breaking up of Czechoslovakia and work out a peaceful settlement. As a result, on 1 January 1993 an independent Slovakia split off and came into being. The two states signed a customs agreement and Slovakia got a new Constitution as of September 1992.

In 1988, an extraordinary decision was made which was allowed to hold *public assemblies* in Prague. The assemblies held according to the decision had been pronounced provocation by the regime afterwards so assemblies were prohibited again. In spite of this, people held many assemblies in 1989 in which the police intervened and took legal actions against the participants. At that time, state organizations recognized the disintegration of the regime and revenged the actions of the enemies of the regime. After that the Act LXXXIV of 1990 was born on the right to assemble. The Act conforms to the requirements of democratic regulation. The right to assemble was allowed without permission. There were only a few exceptions when some assemblies had to be announced to the National Board, which had the right to prohibit them. The reasons had to be based on the principles of democracy and the decision could be discussed in court. The regulation on the right to assemble can be found in the Charter of Basic Rights and Freedoms (1990) too, in which, according to the Article 19, the right of peaceful assemblies were allowed.<sup>34</sup> The Charter added a few words about the restrictions and declared that this right could be encroach on for the safe of public order, public morals, public health and protection of other people's

rights and freedoms. The Charter added that assemblies could not depend on the decision of an administrative authority.

### **The political rights in Hungary**

István Bibó has drawn attention to the fact that political rights are very important because they allow to people do as they want within certain limits.<sup>35</sup> "In the different form of political rights appear the purpose that individual's subjective moral freedom can be expressed as external, general and objective freedom. In the voters' actions aren't expressed that people as personified complete exercise sovereignty but the people subjugated to norms in the form of objective legal institution take part in understanding regard to that they in which forms endure the compulsion that stops to be a real compulsion with this understanding."<sup>36</sup> He added that in the greatest political freedom will be people who don't really feel free and don't regard legal power to his own law.

Now the *right to assemble*<sup>37</sup> is in Article 62 of the Hungarian Constitution and in the Act III of 1989. According to the Act, assemblies have to be announced to the regional police station 3 days beforehand. The organizer has to announce the assembly and report all important circumstances.

These are the place and time of the assembly, the name and address of the organizer, the purpose of the assembly and the expected number of people. Police may prohibit assemblies if they might jeopardize the functioning of courts, Parliament or might disturb the traffic.<sup>38</sup> The Act refers to crime, request for crime, infringement on other's rights and freedoms as legal reasons for prohibition. In these cases assemblies can be dissolved and if the participants appear armed too. Within 3 days after prohibition being reported participants can appeal. Against the new decision no further legal remedies can be requested.

The regulation of *right to form associations* can be found in Article 63 of the Hungarian Constitution according to which everyone has the right to form associations which are not prohibited by law and join to them. According to the right to form associations armed organizations with political purposes can not be established.<sup>39</sup> Details are stated in Act II of 1989. The Act makes forming civil associations widely possible because they are essential to a democratic society. In the narrow sense association is referred to as a type of legal entities which can be formed by anyone. It's important to interpret the word in a wider sense whereby it refers to all kinds of organizations, parties, trade unions, mass movements... In this interpretation association is one of the type of civil organizations and people may create all types of organizations.

“Civil organizations are voluntary formed organizations with well-defined purposes stated in their Charters. They have their own authorities and registered members.”<sup>40</sup> The legality of civil organizations – except parties – is overseen by the public prosecutor’s office. A civil organization can be legally established only if it has at least ten members, a Charter and elected representative and administrative bodies. Prohibited purpose are crimes or request for crimes, violent takeover, encroachment on others rights or freedoms. Armed organizations and associations for material gains exclusively are prohibited to be established. After being established association, the association must be registered by the court. The most important forms of associations are parties, public utility companies, national and international civil organizations.

The *right to petition*<sup>41</sup> is in Article 64 of the Hungarian Constitution, which declares that everyone has the right either individually or in group to put in a claim or complaint<sup>42</sup> to the appropriate state bureau. It can be seen that the regulation is contrary to the Constitution because it contains another classification. We regard exemplary the Constitution.<sup>43</sup> Over the Constitution the right to petition and required guarantees should be regulated at law. The current regulation on the right to petition is shorter than the former and it is in Act XXIX of 2004. The Act repeats the three former categories and, according to this, it differentiates among complaints, proposals and public announcements. The Act declares that complaint is an application which can be applied if there is no other legal way, for example, trial or administrative procedure.

The Act among the proceeding institutions knows rightly only state organizations and local governments and declares that the applications presenting in writing or orally must be arranged in 30 days. If the proceeding take more than 30 days, the proceeding bureau institutions processing the claim or complaint give a notice to the complainant and inform him/her how long the procedure may still take. If the announcement need it the proceeding authority will hear the complainant. After concluding, finishing the examination, the proceeding authority has to inform the complainant either orally or in writing, or in electronic form because in democracy the authorities have to respond to citizens’ applications. The importance of the right to petition is growing nowadays because it is one of the means of direct democracy and to the civil movements it may strenghten people’s public activities. It can be regarded as a guarantee of the fulfilment of fundamental rights. A lot of people think that the right to petition has plenty of advantages for example, it is simple, clear, and cheap and compels the authorities to respond. Nowadays the petitions refer to different matters: permission to use light drugs – the petition to legalize hemp – violence against animals, experimentations with animals, women’s self-determination, childbirth at home, racism for example the petition of Lungo Drom which criticized the position of Romas in Hungary. A growing

number of petitions referring to public health, privatization of the public health service, and the freedom of the press have been submitted ever the past few years. Nowadays petitions often refer to the payment of wages of public officers.

### Summary

As we have seen human rights were interpreted in a different way in the former socialist states and the capitalist states. During the cold war, they fought because they were interpreting political rights differently. Next to the arms race and competition the conception of human rights was the ideological background of fight. To the opinion of the time belonged the refusal of the natural law because they owned the sociological concept is more suitable for the social conditions. They thought that human rights – or civil rights – were necessary for a society where conflicts between the state and its citizens could take place. At the beginning of 90's two basic ground urged the transformation of law in Hungary and the former Czechoslovakia: the first was the demand for democracy and rejection of the former socialist regime, the second was the desire to join the European Union and adapt the law system. It was a great challenge to Hungary and the Czech and Slovak Federal Republic – similarly to the other country in Central and Eastern Europe – because the situation was much worse than the countries' which had no Soviet influence. Lawyers had to revise the whole law system while at the beginning of 90's they hardly had experience about democratic law system. So, the revision of the Hungarian and Czech constitutional system started in the 90's and began the dogmatic transformation of the constitutional order. Nowadays lot of freedoms and moral principles will be human rights formally but not sure in on its merits. The quick growing, spreading of human rights can be very dangerous because of being valueless the idea of human rights. Aron asked<sup>44</sup> in connection with political freedom what the liberty means to people today and replied that modern ideal of liberty is the ideal of freedom giving full scope. "Let's make it clear – he says – only the political freedom gives people the feeling that they can influence the life of their community with his own opinion." Human rights can be classified as political rights and individual liberties which success with legal mechanisms. He adds that political rights don't hurt only because a democratic criteria of a system isn't perfect.

So the interpretation of political rights<sup>45</sup> is very different for it depends on political context in which it is being interpreted; hence, political rights were interpreted in the former socialist countries in one way, in another way in the democratic countries of Western-Europe.

### Notes and references

1. Here we can mention lots of examples like lacks of legal mechanism, the structure of Parliament, the unsuitable representation of employees' interests.
2. Pointed to socialist opinion János Vincze: Az emberi jogok politikai célja és a valóság (The political purpose of human rights and the truth), *Belügyi Szemle*, Budapest, Volume XVI. Number 2. 1978. Febr.
3. How can we speak about freedom of thoughts if there's no right to work?" – asked IMRE SZABÓ: Az emberi jogok és a szocializmus (The human rights and socialism), *Gazdaság és Jogtudomány, MTA Gazdaság- és Jogtudományok Osztályának közleményei*, Budapest, 1978. Chapter VII.
4. IMRE SZABÓ: Az emberi jogok és a szocializmus (The human rights and socialism), *Gazdaság és Jogtudomány, MTA Gazdaság- és Jogtudományok Osztályának közleményei*, Budapest, 1978. Chapter IV.
5. It's obvious that socialist and capitalist countries couldn't agree on human rights, although it's evident that human rights can't be relative.
6. GYÖRGY ANTALFFY writes: "to a national court no kind of cases may be distributed without the agreement of interested states. It's not hard to recover in these ideas the World Federation's reactionary thoughts which are directed by imperialist monopolies..." Az emberi jogok százada (The Century of human rights), *Magyar Jog*, Budapest, Volume IX., 1962. Feb. p. 55.
7. TAMÁS FÖLDESI: A természetjog, jogpozitivizmus, emberi jogok csapdái – Legalitás és moralitás (Pitfalls of natural law, positivism and human rights – Legality and morality), *Magyar Tudomány*, No. 8. 1993. p. 957.
8. With other words but MÁRIA SOLTÉSZ KATONA says the same: "The human nature's-individuality – progress is nothing else as progress of forces of production." MÁRIA SOLTÉSZ KATONA: Emberi természet és jog (Human nature and law), *Jogtudományi Közlemények*, Volume XXVI., 1971. Dec. p. 546.
9. VÁCLAV AMORT, JOSEF LŽIČAR, VLADIMIR MIKULE, Droit d'Association, droit d'Reunion, droit de Petition et droit de Presse – 1990. *Bulletin de Droit Tchécoslovaque*, 1990/3–4. p. 117.
10. To the Act belonged a decree 1951/320. which referred to assemblies of voluntary associations.
11. The Act LXXIII of 1974.
12. The Act CXXVI of 1968.
13. See AMORT-LŽIČAR-MIKULE: p. 121.
14. See AMORT-LŽIČAR-MIKULE: p. 122.
15. In December, 1951.
16. A decree 6 of 1988 on protection of Prague monuments.
17. JÁNOS SÁRI: *Alapjogok* (Fundamental Rights), II. Revised edition, Budapest, Osiris 2003. p. 159.
18. See ISTVÁN BIBÓ: *Válogatott tanulmányok*, (Selected Studies), Volume I. (1935–44) Budapest, Magvető, 1986.
19. BEÉR-KOVÁCS-SZAMEL: *Magyar Államjog*, (Hungarian State Law), Budapest, Tankönyvkiadó, 1972. p. 476.
20. BEÉR-KOVÁCS-SZAMEL: *Magyar Államjog*, (Hungarian State Law), Budapest, Tankönyvkiadó, 1972. p. 477.
21. "In the socialism the content of right of assembly and association can't be that people organize against socialist state" – says IMRE SZABÓ: Az emberi jogok és a szocializmus (The human rights and socialism), *Gazdaság és Jogtudomány, MTA IX. Osztályának közleményei*, 1978. Chapter XII.–IX.
22. The control of state security of associations belonged to the Home Secretary. See a decree 3/1957 (I. 20.)
23. ERNŐ NAGY says: "The right to petition is directed against grievances (made by state institutions for example: action, decision, neglect) against which there's no appeal." Magyarország közjoga, (Public law of Hungary), Budapest, Athenaeum, 1868. p. 162.
24. The right to hold a public office and the characteristics of public offices were various and depended on which sphere of power they belonged to. For example: to the judging belongs independence, the

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government, the executive power and public administration are politically bound. In public administration independence is obligatory (of course it doesn't mean in all cases the prohibition of member of party) but having a good position depended on not the qualification in socialism. Even the judges were loyal to the Party.

Freedom of speech and freedom of press were granted by the Constitution in Article 55(1) according to the people's interest. The Constitution stressed that state guarantee the financial support for the people in order for them to be able to enjoy their rights. In formal sense there was no censorship but from the 50's media were loyal to politics in both countries. Newsmen and boss of an editorial board could be only those who were immaculate and had some political qualifications. Political qualifications were, for example, the college of the Party, the Soviet Military Academy, the Marxist-Leninist Evening University, the Komsomol, the Youth Communists League ( KISZ ) and the Years Schools by the SZOT. After that, the new Act II of 1986 came to light and declared that press was a state property. That time was the period before system had changed and after that the Act I have above mentioned was modified many times.

25. The Czech Republic signed the Association Contract in Brussels in October 1993. The contract urges harmonization of law in every respect, with special concern in Czech Republic to economical and social rights.
26. See the Act XXIII of 1991 on introduction of the Charter.
27. About the discuss see: ROBERT DAUBNER: Formaler Status der Charta der Grundrechte und Grundfreiheiten innerhalb der 'verfassungsmäßigen Ordnung' der ČR, WIRO, *Wirtschaft und Recht in Osteuropa*, 3/1996. 5. Jahrgang, 1996. p. 93.
28. The Acts with constitutional force are formally equal in the Czech Republic.
29. See DAUBNER, R.: p. 94.
30. See DAUBNER, R.: p. 95.
31. HOŠKOVÁ MAHULENA: Verfassungsgesetz zur Einführung der Charta der Grundrechte und Grundfreiheiten, als eines Verfassungsgesetzes der Tschechischen und Slowakischen Föderativen Republik, *Europäische Grundrechte*, 18. Jg. Heft 16/17. 1991. p. 400.
32. See AMORT LŽIČAR-MIKULE: p. 120.
33. See HOŠKOVÁ MAHULENA: p. 400.
34. See HOŠKOVÁ MAHULENA: p. 400.
35. See ISTVÁN BIBÓ: *Válogatott tanulmányok* (Selected Studies), Volume I. (1935-44) Budapest, Magvető, 1986.
36. See ISTVÁN BIBÓ: p. 108.
37. The international regulation can be found in the Article 21 of UN Covenant on political rights which declares that this right can be restricted as it's allowed in democracy. The Council of Europe regulates this right in Article 11, together with the right to form association.
38. The Article 8 of the Act.
39. Let's see how is regulated this right in international agreements. Article 22 of the UN Covenant on political and civil rights declares the right to form associations and trade unions and know only the restrictions which are allowed in a democratic society (public order, moral and public health) The Article doesn't restrict the state to introduce more restrictions in connection with armed forces. The Council of Europe declares the two classical political rights, the right to form assemble and right to form associations together, including the right to form trade unions, too. (*The Convention for the Protection of Human Rights and Fundamental Freedoms*, Article 11.) The restrictions are the same like in the UN Covenant. The Hungarian regulation is in harmony with international requirements. *Az Európa Tanács válogatott egyezményei*, (Selected Conventions of the Council of Europe), Budapest-Strasbourg, 1999. Conseil de l'Europe-Osiris
40. The Act II of 1989. Article 3(1).



41. The international agreements don't regulate this right neither the UN Covenants nor the agreements of Council of Europe.
43. ERNŐ NAGY mentioned the two categories in his work in 1868.
44. RAYMOND ARON: *Tanulmány a politikai jogokról* (Study on political rights), Society of Raymond Aron, Pécs, Tanulmány kiadó, 1994.
45. ERNŐ NAGY wrote that "political rights are which guarantee for the people the participation of power." *Magyarország közigazgatási jogja*, (The public law of Hungary), III. Edition, Budapest, Eggenberger-féle Könyvkereskedés kiadása, 1897.

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