"Experiences from the First Years of the Ombudsman for Future Generations in Hungary"

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From the conference call:

„Europe's fundamental institutions, and especially its systems of representation which have evolved in the 19th century, don't seem to be suitable to cope with the challenges of the 21st century. ”
Plea, or last warning?

• “We risk the entrenchment of these global disparities and unless we act in a manner that fundamentally changes their lives, the poor of the world may lose confidence in their representatives and the democratic systems to which we remain committed, seeing their representatives as nothing more than sounding brass or tinkling cymbals.”

• Political Declaration, WSSD, Johannesburg, 11 –15.

• “If I have all the eloquence of men or angels, but speak without love, I am nothing more than sounding brass or tinkling cymbals.”
  St Paul to the Corinthians I. 13 1.
From the conference call:

„How (to) try to establish additional ways of representation? What kind of tools and mechanisms can improve, correct and enhance the functioning of traditional representative institutions? How can governments be induced to be more responsive?”
„SUSTAINABILITY AND WELLBEING ARE LINKED”
Sustainable development = the good life

- A high level of human wellbeing (because no one wants to sustain a low standard of living).

Plus

- A high level of ecosystem wellbeing (because the ecosystem supports life and makes possible any standard of living).
World3: Reference Scenario
1900-2000
Figure 7.2 Distribution of economic activity between North and South, 1991 (% of global total) (Source: UNDP, 1994)

Each section represents one fifth of the world population.

- Richest fifth:
  - National investment: 85.0
  - National savings: 85.5
  - World trade: 84.2
  - GNP: 84.7

- Poorest fifth:
  - National investment: 0.9
  - National savings: 0.7
  - World trade: 0.9
  - GNP: 1.4
How close to global sustainability are we today?
World3: Reference Scenario
1900-2000
World3 Reference Scenario
1900-2100
Easy Problems

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Future

Better

Now

Next Evaluation

Actual

Desired

Action #1

Action #2
Difficult Problems

Now

Future

Better

Actual

Action #1

Next Evaluation

Action #2

Desired

Now

Future
Smart action: institutionalise long-term thinking

Smart tool: Establish an independent representation for future generations
History

• Green issues of the `80-ies leaving their mark on the transformation of Hungary in 1989-90
  • Right to a healthy environment in the 1989 Constitution
  • Green issues featuring in all election manifestos
• Constitutional Court decisions in the early 1990-ies unfold/explain new rights – e.g. the „right to a healthy environment”
Milestone rulings of the Constitutional Court of Hungary

„duties of the state include the protection of the natural foundations of life, extending to the establishment of institutions in charge of the responsible management of finite goods, the provision of environmental information, and the securing of the participation in decisionmaking processes of all those concerned.” (996/G/1990AB)

„The right to a healthy environment derives from and is part of, the right to life. (…) Concerning the right to life, state obligations to create institutional safeguards extend to human life in general, including the provision of the conditions of life for future generations. (…) The State is not free to allow the deterioration of the environment, nor to tolerate the risk thereof.” (28/1994 AB)
State actors for SD emerging...

- 1989: Right to a healthy environment established
- 1989: Constitutional Court
- 1990: Commission for the Environment (Parliament)
- 1990: Ministry for (…and) Environment
- 1995: National Environmental Council (trilateral, advisory to MoE)
- 1990-2002: system of enforcement authorities for environment, nature conservation and water
...but SD is fading - call for a new watchdog

• Sustainability issues consistently ignored by all parties in government through the 1990-ies
• 2000: Cyanide disaster on the Tisza river
• “Revolt of art and academia”: strong intellectual movement emerged to develop novel institutions safeguarding the introduction/implementation of sustainable development
• “Protect the Future” Association: intense cross-party lobbying for the institutionalisation of the protection of future generations; civil “modelling” of the institution
• Law drafted and supported by best professionals
• Bill repeatedly tabled between 2001-2007
• Five-party political agreement in 2007 to establish a Parliamentary Commissioner for Future Generations
• Election of the Ombudsman: spring 2008
What is an Ombudsman?

A scandinavian “invention”, the *ombudsman* is originally a guardian/speaker for the citizen. In the Hungarian system, she/he is watchdog for constitutional rights, acting as

- Complaint investigator
- Policy advocate
- A centre for strategy and research
- A beacon for the public
Powers

• Parliamentary commissioners are
  – elected by 2/3 of Parliament for 6 years
  – independent in their investigations and recommendations,
  – reporting annually to Parliament

• The Parliamentary Commissioner for Future Generations has

  a broad mandate, an extensive range of measures at his disposal,
  unlimited rights of access to information,
  right to investigate all stakeholders incl. private businesses,
  lots of possibilities for communication,
  but limited powers to act.
Horizon and anchor

How to go about fulfilling the mission of the advocate of future generations?

It is both useful and necessary to start by
- ensuring sustainability for present communities
- starting with the provision of a „healthy environment”, i.e. securing the ecosystem services that support health (as the WHO defines it).
ECOSYSTEM SERVICES

Supporting
- NUTRIENT CYCLING
- SOIL FORMATION
- PRIMARY PRODUCTION
- ...

Provisioning
- FOOD
- FRESH WATER
- WOOD AND FIBER
- FUEL
- ...

Regulating
- CLIMATE REGULATION
- FLOOD REGULATION
- DISEASE REGULATION
- WATER PURIFICATION
- ...

Cultural
- AESTHETIC
- SPIRITUAL
- EDUCATIONAL
- RECREATIONAL
- ...

CONSTITUENTS OF WELL-BEING

Security
- PERSONAL SAFETY
- SECURE RESOURCE ACCESS
- SECURITY FROM DISASTERS

Basic material for good life
- ADEQUATE LIVELIHOODS
- SUFFICIENT NUTRITIOUS FOOD
- SHELTER
- ACCESS TO GOODS

Freedom of choice and action
- OPPORTUNITY TO BE ABLE TO ACHIEVE WHAT AN INDIVIDUAL VALUES DOING AND BEING

Health
- STRENGTH
- FEELING WELL
- ACCESS TO CLEAN AIR AND WATER

Good social relations
- SOCIAL COHESION
- MUTUAL RESPECT
- ABILITY TO HELP OTHERS

Source: Millennium Ecosystem Assessment
Principles

What?
Safeguarding the constitutional right to a healthy environment by
- Enforcing legislation (Rule of Law: domestic, EU, International)
- Improving legislation (Tightening/improving the legal and institutional basis of sustainability of material flows and social systems)
- initiating and supporting SD efforts on the ground

How?
• Systems approach
• Inter-disciplinary teams
• Quality over quantity
• Proactivity
• Precautionary principle
Goals:

– Improvement of the enforcement of legislation relating to sustainability issues

– Contribution to the sustainability of “system modules” (energy, sustainable communities, transport policy, civil service etc.) through investigations, independent policy proposals, training, and networking

– International demonstration of a functioning model for the institutional safeguarding of the interests of future generations
Tools:

• Recommendations to authorities
• Strong powers to intervene in on-going activities damaging the environment
  » Can intervene to suspend the execution of administrative decisions if the delay may lead to irreversible damage
  » Can intervene in on-going court proceedings (amicus curiae)
  » Can sue the polluter for compensation of environmental damage (beneficiary: central budget)
  » Can call on any person or organisation to stop illegal polluting activities
• Can lodge a constitutional complaint to the Constitutional Court
• May initiate an investigation by Parliament
• May suggest new legislation
• Can turn to the Parliament or to the public any time
Scope of work

- Environmental matters (air, water, land, biodiversity)
- Other related matters:
  
  **Economic issues**
  - state budget (e.g. the environmental impacts of the fiscal system, state subsidies and public procurement)
  - national development policy;
  - environmental public utility services;
  - sustainability of production and consumption patterns;
  - state of the environmental protection industries and of environmental sciences,

  **Social issues**
  - environment and health,
  - environmental security;
  - environmental education;

  **Institutional issues**
  - state of environmental administration (legal, financing and capacity aspects);
  - collection, quality, access to and dissemination of environmental information;
  - public participation, state of NGOs;
  - international cooperation.
Office

• 35 strong staff
  – 20 lawyers (including international lawyers) covering a wide range of areas under environmental law and neighbouring policy areas
  – 10 scientific experts (environmental science and technology, and social sciences)

• Units:
  - Secretariat: organisation and communications
  - Dept. for Strategy and Research
  - Dept. for Legislation and Enforcement

• Budget: appr. 1 M EUR/yr
Achievements

• 40 months of operation
• Investigation of over 2700 cases (382+694+874+834)
• Broad professional and political recognition in the environmental and heritage protection sector
• Successful intervention in a number of individual cases
• Support to civil sustainability initiatives
• International recognition
Interesting cases (1)

Complaints and „ex officio” cases:
Biomass power plant construction in world heritage landscape, urban planning, urban sprawl, regional planning issues (location of kindergarten near motorway, Páty Golfcourse, Budaörs heath, Érd gene pool orchard), Privatization attempt of Mid-Danube Regional Water Base and Waterworks, Ensuring proper legal procedure of authorities incl. public participation Red Sludge Disaster – background and responsibilities

Court cases:
NATO-radar in the town of Pécs
Auchan and the Dunakeszi bog

Legislative processes:
world heritage act,
forestry act,
national budget,
comprehensive analysis of the legal regime of noise exposure and reduction, development of the new Basic Law (Constitution, Grundgesetz) of Hungary
Interesting cases (2)

*International law:*
Maintenance of GMO-free status
Danube navigation regime – clarifying international obligations

*Policy advice:*
Danube strategy – principles of ecosystem services use
Decarbonisation pathways for Hungary
Green Budget reform
Health care system reform
National Regional Development Strategy
CAP reform 2013-20
Hungarian presidency of the EU – chairing of EU WPIEIs

*Proactive initiatives:*
Beyond GDP – wellbeing goals and their indicators for public expenditure
Sustainable communities – support to networking and improving legal frameworks
Local markets, local economy – opening legal bottlenecks
A „Green Minimum” for the 2010 elections
Lessons learned

• A good question is worth ten valid statements
• If you carry a big stick, you may as well try to talk softly
• Providing for the future directly benefits the present
• A really new part to the structure will inevitably be regarded as the threat or the promise of real change
Lessons learned

• Base important structures and processes – physical or social - on their fundamentals (the „theoretical”). Trial and error is for details.
• Innovative structures may increase diversity, connectivity, modularity, thus resilience. They may also contribute to dismantling resilience.
• Systems-level transformations of eco-social systems need guardrails and stepping stones to remain manageable.
• The seed of a systems-level transformation is alien to the „mother” system and may be rejected (cf. „China in the bull shop”, „Nemo propheta in patria sua”).
21 Issues for the 21st Century

- Align governance to the challenges of global sustainability
- Transform human capabilities for the 21st century
- Ensure food safety and food security
- Reconnect science and policy
- Catalyse rapid and transformative changes in human behaviour towards the environment

(UNEP Foresight Process, 2012)
From the „Future We Want”, UNCSD, 2012, Rio de Janeiro:

86. We decide to launch an intergovernmental and open, transparent and inclusive negotiation process under the General Assembly to define the high level forum’s format and organizational aspects with the aim of convening the first high level forum at the beginning of the 68th session of the General Assembly. We will also consider the need for promoting intergenerational solidarity for the achievement of sustainable development, taking into account the needs of future generations, including by inviting the Secretary General to present a report on this issue.
UN DESA on a representation for future generations, 2013 July:

„The need for an institution was very much underlined by all participants and the ways in which this could and should work were discussed in some detail. Issues surrounding the independence of the position and the fact that it needs to be transparent, have a broad mandate, be able to access information and most importantly take action when needed were all emphasised. Those already working in positions that ensure future proof policies underlined the fact that integral to any institution will be an appropriate set of indicators that will ensure a measure of accountability and transparency to what the position will be addressing.
„The global transformation required may not be fast, easy, simple or cheap - but it is perfectly possible. We offer two proposals for urgent consideration:

Establish innovative, independent and powerful representations for future generations to align today's policies and actions with the long-term common good.”

Salzburg, June 2013
http://www.salzburgglobal.org/mediafiles/MEDIA70751.pdf
State actors for SD: tides and ebbs…

- 2005: “Green President”
- **2007-8**: „Green Ombudsman” established
- 2009: National SD Council (4 sides, advisory to Parliament)
- 2010: Commission for SD (parliament)
- Ministry for Environment abolished
- 2011: SD and future generations in the Basic Law
- 2011-12 Independent Ombudsman abolished
„The end of the Affair” (?)

• New Basic Law (Constitution, April 2011) upgrades and extends legal base for sustainability and the rights of future generations, but at the same time…

• …creates a hierarchical ombudsman system with a deputy responsible for future generations.

• The changes (effective from January 2012) in the structure, information flow, budget, and rights and responsibilities strangle the work for future generations and sustainability.

• Efficiency once again defeated resilience…
Parliamentary Commissioner for Future Generations
- 2008-2011 -

Deputy of the Commissioner for Basic Rights
Responsible for the Interests of Future Generations
- 2012-? -
Planetary boundaries

100% Renewable Europe

Potential interconnected renewable energy domains (2030)

- Trans-European Grid (scheme)
  - Wind domain
  - Hydro domain
  - Biomass domain
  - Solar domain

Sources:
- IES - Institute for Environment and Sustainability
- EEA - How much bioenergy can Europe produce without harming the Environment

EEA