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Definition of the Civil Defense of Rights as a Profession

The aim of my study is to find answers for the following question. Can it be said that in the last 20 years, the work of the civil defense of rights¹ has become a separate profession, in that it has become an independent legal profession, separated from other existing professions because of its particular function and activity performed.

I assume that in the last 20 years, a process has started which indicates that this discipline can be pursued as a profession: it can be practiced as a main trade and can provide a livelihood. On the other hand, it has to be seen that it has particular features, which separate it from other activities undertaken by lawyers.

1. About civil organizations (NGOs) for the defense of rights and civil defenders of rights

Within civil initiations, we can distinguish between those organizations providing nature (for example educational, health and social organizations belong here) and those organizations for the protection of values and interests (for example religious, environmental protection and human rights organizations).² Civil organizations for the defense of rights can essentially be included in the second class. A specific segment of the civil sector is the civil initiation which handles legal protection and whose task it is to call attention to problems in the legal system,

¹ About the 'state' organizations for defense of right see in more details: Dr. Legény Krisztián: Jogvédő szervek a Magyar Közigazgatásban. *Magyar Közigazgatás*, 2005/5. 283-296. p.

² Lester M. Salamon - S. Wojciech Sokolowski - Regina List: A civil társadalom „világnézetben”. Civitas Egyesület, Budapest, 2003. 18. p.

get correcting mechanisms of the legal system going, or share and present conclusions drawn from those.³ The activities of civil defenders of rights can be found in those areas where „there is some kind of problem with the legal system”, whether in the area of legislation, either in justice or law enforcement areas. Three main groups of activities can be distinguished: legal reform activities, communication and public education activities (for example activities connected with public relations, i.e. publicity, lectures, home page) and legal advice services and strategic litigation.

In technical literature, numerous expressions can be found for lawyers who take part in the defense of rights or the forming of laws and also their activities. “Such lawyering as I have called "lawyering for the good" others have called "social justice" lawyering, "public interest" lawyering, "rebellious" lawyering, "activist" lawyering, progressive lawyering, "transformative" lawyering, equal justice lawyering, "radical" lawyering, lawyering for social change, "critical" lawyering, socially conscious lawyering, lawyering for the underrepresented, lawyering for the subordinated, "alternative" lawyering, political lawyering, and "visionary" lawyering, to name but a few of the variations. And these are only generic definitions, as distinguished from the "cause-specific" labels of civil rights, poverty, legal aid, environmental, labor, death penalty, feminist, disability, and defense lawyering.”⁴

A categorization similar to the latter classification has been made by Máté Szabó in relation to the post-socialist states. Civil organizations can be found in the following areas:

1. “Women’s rights
2. Minority, ethnic, sexual, disability, patients’, and drug addicts’ rights
3. Rights of those who do not have full civic status, as the rights of people asked for asylum, or rights of illegal migrants, stateless persons, refugees.
4. Protection of those who have “injured” civic status since they are held in totalitarian institutes such as prisons, the military, restrained or are subjected to forced medication.”⁵

Of course the content of each area is highly complex. For example, the defense of patients’ right may include the patient’s informed consent for treatment, the issue of home

³ Csemus Eszter - Földes Ádám: Adatvédelem és információharc két fronton, in Sólyom László (et al.): Tízéves az Adatvédelmi Biztos Irodája, Budapest, 2006. 138. p.

⁴ Menkel- Meadow, Carria: The Causes of Cause Lawyering. Toward an Understanding of the Motivation and Commitment of Social Justice Lawyers, in Sarat, Austin – Scheingold, Stuart (eds): Cause Lawyering. Political Commitment and Professional Responsibilities. Oxford University Press, 1998. 33. p.

⁵ Szabó Máté: A társadalmi mozgalmak és politikai tiltakozás. Rejtjel Politológia Könyvek 5. Rejtjel Kiadó, Budapest, 2001. 274. p.

birth and the rights of HIV patients. Furthermore, abortion and euthanasia may also be included here.

In connection with the aforementioned list, some important amplifications should be made. The given political and social climate affects on which areas these organizations act, therefore, the aforementioned list should be amplified with rights belonging to the classic civic and political rights, which are consequently primarily those of the freedom of assembly and the freedom of speech.

In the course of investigating the action area, the following question arises: are there still 'white spots', areas where de facto active civil organizations for the defense of rights cannot be found? On the basis of conversations with civil defenders of rights, there are three areas of this kind: defense of women's rights, age discrimination and children's rights.

2. Civil defense of rights as a profession, as a legal profession?

To decide if we can talk about civil defense of rights as a separate profession in addition to being a legal profession, several methods could be applied; theories of professionalization and of professions could be examined⁶, or theories of the definition of the legal profession could be viewed⁷, or the question could be answered empirically by asking individuals involved in this area what their opinion is about their position.⁸ In selecting the last method, I have visited eleven relevant – acknowledged by the profession – Hungarian organizations for the defense of rights where I put the question to 20 lawyers in all, asking if civil defense of rights could be considered a separate legal profession.

2.1. Potential connection between lawyers and civil organizations

Before drawing conclusions from the interviews, a short detour should be made to see the ways in which a lawyer can participate in the work of a civil initiative. In my view, this can be

⁶ About the topic see in more details: Nagy Krisztina: Professzionizáció - és professzió- elméletek a segítő hivatások tükrében. *Esély*, 2009/2. 85-105. p.

⁷ About the topic see in more details: Abel, Richard R.: Theories of the Professions, in Abel, Richard R.: American Lawyers. Oxford University Press, New York- Oxford, 1989. 14-39. p. Sutton, John: Law/Society: Origins, Interactions and Change. Thousand Oaks, California, Pine Forge Press, 2001. 223- 252. p. Deflem, Marthieu: Sociology of Law. Vision of a Scholalry Tradition. Cambridge University Press, New York, 2008. 181-197. p. Badó Attila - Loss Sándor - H. Szilágyi István - Zombor Ferenc: Bevezetés a jogszociológiába. Prudentia 9. A Miskolci Egyetem Jogelméleti és Jogszociológia Tanszékének Kiadványsorozata. Bíbor Kiadó, Miskolc, 2000. 209. p.

⁸ In the literature Everett Hughes represents this point of view. Inggwall Robert: The Legacy of Parsons and Hughes, in Dingwall, Robert: Essays on Professions. Ashgate classics in sociology, 2008. 1-10. p.

useful in any case, since – as the interviewees have also highlighted– lawyers who act in this sector should not be handled as a homogeneous group.

In my opinion, the strength and intensity of a link with an organization depends on the way in which a lawyer participates in the action of an organization.⁹ The weakest connection – which is the least relevant for us – is where the lawyer identifies themselves with the aims and the mission of the organization. This identification can be invisible or can appear in several ‘visible’ forms – membership in the organization, supporting membership, donation, etc. – too. The closer connection has also several forms. The work a lawyer performs for the organization can be a full-time job. In my opinion, this relation can be considered the closest from several aspects. The first and most determining reason is that with the people who take part in the work of a civil organization for the defense of rights as employees, the identification with the aims of the organization is very strong and stable. As it turned out from the interviews, someone who does not agree with the principles and views represented by the organization will not go to the organization or will leave it:

“...I always wanted to be involved in something I believe in, something that I can consider sensible [...] I consider the work performed by the organization important.”

“I noticed that for some time I have been using first person plural, but I think this happens to a healthy degree.”

“There is a mental load, but that suits the civil defender of rights who likes this theme; no-one is compelled to deal with such sad stories.”

The connection between the lawyer and the organization can be regarded as tight also because there is also a certain kind of pecuniary and subsistence ‘dependence’, since these lawyers live fundamentally on the salary that they earn at civil organizations for the defense of rights. The growing professionalism of the civil sector is indicated by:

“For more and more people there is a real possibility, that here they can get a job or a part-time job, or some income or they can find sensible, professional employment.”

⁹ Also in the foreign literature can be find attempts to make difference between the possibilities of joining in an organization. Thus for example Jones Lynn C. has made difference in his study between the core and the marginal activists. See in more details: Jones Lynn C.: Carrer Activism by Lawyers: Consequences for the Person, the Legal Profession, and Social Movement, in Jerry Van Hoy (ed.): Legal professions: Work, Structure and Organization. Elsevier Sience Ltd. The Boulevard, Langford Lane Kidlington, Oxford, 2001. 181-206. p.

From the aforementioned, those who take part in work as attorneys should be separated, as besides the work of civil defense of rights, attorneys maintain in parallel their praxis.

The fourth way of connection is expert work. I do not consider expert work a close connection, since in these cases the organization asks the opinion of an expert regarding a special issue (e.g. foreign legal practice). It is not a regular connection, and the expert does not have to become one with the principles represented by the organization.

2.2. How do civil defenders of rights consider themselves?

Keeping in mind the aforementioned connection possibilities, on the basis of the completed interviews, the following main statements can be made regarding the civil defense of rights as a separate profession, as a legal profession.

1. On the basis of the opinions of the interviewees, it can be said that civil defense as a profession exists. During the last 20 years, a separate profession has come into existence, which has particular features and ensures its participants have enough to live on.

“[...] I think that this is peculiar profession, the sense of vocation is very important to do it.”

“As a profession it exists, therefore, there are people who live from this, this is their principal occupation, so consequently there is such vocation.”

One interviewee formulated all this very expressively: *“A Facebook profile about the defense of rights could be created very promptly, and many responses would be received in a short time.”*

I have questioned another interviewee as to whether a graduating student can calculate therewith that a separate profession of the defense of rights exists: *“Yes, sometimes applications for positions are invited, and trainees are thronging to us, Hungarians and foreigners too. The students take this into consideration, and not only lawyers, but political scientists, sociologist etc. [...] The more visible an organization is, the more it is so. Various interactions are created. He reports his horrible story to you; that is an interaction. He comes to the legal advice service; that is also an interaction. He comes to be a trainee; that is also. Or he writes a comment to something on the website. All of these are interactions, and as the*

number of the interactions ever grows, the more it comes to a person's mind that maybe it is possible to work for this organization."

2. A defender of rights does not necessarily possess a juridical degree.

"An uninitiated man, so not a lawyer, can also practice as a defender of rights successfully or even very successfully."

"The work of the defense of rights can form a distinct group, but in no way I would like to make a judicial degree a condition."

Those who highlighted that the job of the defender of rights could be executed on a high level without judicial qualifications added: *"It is clear that it does no harm if a civil defender of rights is a lawyer at the same time, in my opinion it is not a problem."* Since, if he is occupied in a relatively defined theme as an uninitiated, maybe he finds his way about it more than a qualified lawyer, however, in the case of other related areas or essential legal notions it is not necessarily likely to be so. A number of interviewees stated that such cases can occur when this difference is manifest. However, it is a fact that it can be stated that a juridical degree – in contradiction to a judge's career – is indispensable. Consequently, although it is a separate profession, it can not be said that it can be a separate legal profession. Therefore, it seems that this part of my hypothesis has failed.

3. It requires different (juridical) qualities and a different attitude and outlook. I have already mentioned above that a person, a lawyer, can enter into the activity of the defense of rights in several ways, and the activity of the defense of rights itself is complex, including several kinds of activities. There are people who are of the opinion that a good attorney can be a good defender of rights. Several of them compared their job to the activity of an attorney: *"[...]parts of this work are an attorney's, which do not differ very much from the traditional work of an attorney."* But, so to say to tinge, to complete this picture they added that they do many things that a traditional attorney does not, and that their work has a helping character at the same time: *"I think that this an entirely special segment within the juridical vocation. On the one hand, the activities are also different than for example in an attorney's office, even if there may be common, classic tasks. On the other hand, I consider the work of the defense of rights to be much more manifold."*

Moreover, it can be determined that this job requires a deep commitment and some kind of sensitivity too: *"[...] this is a totally different way of thinking within the perception of the legal problem, and is also a completely separate category within the legal way of thinking. I think it should be handled separately [...] since this is also supporting work. Thus, the thing*

is not simply that I give legal advice to someone to the best of my knowledge or that I represent someone as if I were standing there instead of him, but the thing is simply that it should be considered that when I do this kind of defense of rights work, I promote a whole community's – which is affected in the same manner – interests.”

One of the interviewees, who is connected with his organization as a partner attorney, had this to say: *“Attorneys also specialize themselves [...] people like to handle with pleasure what they are competent in. Therefore, if someone has just become enmeshed in this sphere of human rights, then he will gain expertise in this, he will be competent in this [...] It is possible to specialize in this, though I consider the vocation and the humility towards the matter important, since this can not be done if someone does not have his heart in it.”*

3. Summary

To sum up, it can be said that the civil defense of rights is a separate trade, a separate profession, but not a legal profession. In my opinion, nevertheless, it is important to distinguish the lawyers who act as civil defenders of rights since they are not only ‘simple’ attorneys, but they struggle for the social justice and all this influences their entire life.

In my study I have discussed the civil sector specialized to the defense of rights. My aim was to call attention to the segment of the civil sector handling the defense of rights, and to draw the attention to the importance of the function of these organizations, since the whole civil sector plays an important role in the development of an efficiently working democracy. The civil initiations handling the defense of rights can help a lot to develop a more democratic governmental operation, but only if they can influence the civil control over the state effectively and successfully, if they really act as a watchdog.

In our country, the civil sector was roughly developed in the nineties, however a profile purifying process which was carried out has never been finished completely: on the one hand, organizations are always searching for new directions where they can obtain innovation potential. On the other hand, if a new problem or a competing organization appears on the scene then it affects the profile of the organization. From several points of view, organizations function more professionally than when they were established. Therefore, they can ensure their workers enough to live on and this contributed to the development of the profession of the defense of rights. Although my hypothesis that this profession would be a

legal profession has not been proven, on the basis of the interviews it can be said that a profession of the defense of rights actually exists.

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