

Theoretical approaches of the civil disobedience and the „case” of the Hungarian public education

Katalin Egresi

1. INTRODUCTION

„Lex iniusta non est lex” – wrote Saint Augustine,¹ which also draws attention to a timeless problem in the political and legal philosophy: the relationship between law and morality, and more precisely, why, for how long and how to obey laws that don’t meet the requirements of the justice. We cannot answer this question without asking further questions. Is it even necessary to assume a measure of value beyond the law? If yes, what do we mean by the concept of the justice? What is the moral foundation of the political obligations? Consequently, the „just” law is immediately linked to at least two other problems: the need for a moral basis of law and the legitimacy of the political system.

2. THEORETICAL BACKGROUND OF DISOBEDIENCE

Although we consider Henry David Thoreau's work as one of the first modern fathers of the civil disobedience, it is worth briefly touching on some of the representatives of the Greek and Christian political philosophy. The Trial of Socrates already highlights the difference between the „just” law and the „unjust” law.²

Socrates accepts the death penalty, but he questions the judges who condemn him. He warns that even bad laws must be obeyed. According to Socrates, the existence of the state is sufficient in itself to create a political obligation for its subjects. A citizen has no right not to obey the law, even if the state's laws are extremely unjust. Socrates had the opportunity to escape punishment, he refused to do so on the basis of his conscience, which implies that one's moral sense (sense of justice) commands him to comply with the law and accept the sentence imposed by that law.³

Abstract

The theoretical approaches of the civil disobedience are relatively new phenomena. The *classical* theoretical precursors (Thoreau, Habermas, Arendt, Rawls, Dworkin) point to a slice of modern society in which law, politics and morality are all „competent”. Through these theories, we will attempt to analyse the disobedience movement of Hungarian public school teachers in both legal and moral contexts. What are the moral foundations of political obligations? How to resolve the dilemma between the political obligation and the unjust law?

Keywords

democracy, civil society, freedom, morality, law, justice, right to education

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¹ TAKÁCS, Péter. Hit, értelem, közjó. A keresztény politikai bölcselet főbb jellemzői. In *Államelmélet I.* Budapest, Szent István Társulat: 2007, p. 59.

² SZOBOSZLAI, Kiss Katalin. *Alvó demokrácia. Kormányzásról, törvényről, erkölcsről Homérosztól Szókratészig.* Győr: Universitas-Győr Nonprofit Kft, Győr, 2018, p. 126 – 131. TAKÁCS, Péter. Szókratész pere. In *Nehéz jogi esetek, Jogelmélet és jogászai érvelés.* Budapest: Napvilág Kiadó, 2000, p. 35 – 39.

³ SZOBOSZLAI, ref. 2, p. 131 – 132.

In the Christian political philosophy, St Thomas Aquinas elaborated in detail the concept of the right to resist the law (*ius resistendi*)⁴, which is also mentioned by the medioeval constitutions, for example by the Hungarian Golden Bull that was adopted in 1222.⁵ However, these were examples of political systems in which the right to make political decisions was limited to a very narrow section of society, with the privileges.

The emergence of the concept of the *social contract* and then the subsequent separation of the civil society and the political state placed the issue of the justice of law in a completely different context. Why? The problem of legitimacy comes to the centre in the normative theories of the social contract. The state power as a legal order is established by the consenting will of the citizens. Although contract theories describe the relationship between citizen and state (also known as governors and governed) in different ways, they tried to answer the same questions: 1) where do society and the state come from? 2) under what conditions is the state legitimate? 3) who is entitled to exercise public power? 4) what are the rights of the subjects/citizens? 5) what is the relation between equality - political subordination - obedience. Consequently, the dilemma of modern political philosophy, which we later find in the theories of the civil disobedience, appears at the time of the theoretical justification of the fulfilment or refusal of political obligations.

Following Peter McCormick, the *contract theory paradigm* can be summarised in the following syllogism:

- (a) A man is bound to obey only what he has agreed to by (his own freely made) choice;
- (b) this man has consented;
- (c) therefore, this man is bound to obey.⁶

However, these three steps of McCormick theory do not explain the moral justification that is hidden in the concept of the political obligation. What is the moral basis for the fact that decisions taken by legitimate authority require obedience from members of the political community? The problem arises when a legitimate institution, such as a parliament elected by a procedure that complies with the principles of representative democracy, makes - or at least has the possibility of making - a decision with which a citizen who otherwise fully accepts democracy does not agree. Leaving aside the inherent flaws in the representative system itself, it is beyond dispute that members of minorities are also subject to laws supported by the majority. *In searching for a moral basis of the civil disobedience*, we are looking for an answer to the question of the moral obligation of the minority to obey the laws adopted by the majority.

In terms of response, one extreme pole is David Hume's concept of justice. The empiricist philosopher himself denied the whole concept of the social contract, seeing justice as an artificial concept that could not be taken into account in the fulfilment of the political obligations. The justice, according to Hume, is based on agreements, and „...arises only from the fact that, on the one hand, men are selfish and not infinitely generous, and, on the other, nature does not provide generously

This problem is appeared in the act of *Antigone*, who, - in Sophocles' drama -, when the new „legislator” of Thebes, - Creon -, hadn't allowed her brother Polyneices to lie unburied on the battlefield despite his orders, replies: „*I do not believe in your orders that there can be any force that would make me break the unchanging unwritten law of the Gods*”. In SZOPHOKLÉSZ. *Drámái*, Budapest: Osiris Kiadó, 2004.

⁴ St. Thomas Aquinas distinguishes between unlawfully acquired power and unlawfully exercised power, and on this basis he typifies the duty of obedience of a subject. In. *Aquinói Szent Tamás jog-és állambölcselete*. In *Államelmélet I.* ref. 1, p. 76 – 77.

⁵ ZSOLDOS, Attila. *A 800 éves Aranybulla*. Budapest, Országház Könyvkiadó, 2022, p. 258. MEZEY, Barna. *Magyar Alkotmánytörténet*. Budapest: Osiris, 2003, p. 59.

⁶ MCCORMICK, Peter. Social Contract: Interpretation and Misinterpretation. In *Canadian Journal of Political Science*, 1976, Vol 9, No. 1, p. 63 – 76. See electronic form: <https://www.cambridge.org/core/journals/canadian-journal-of-political-science-revue-canadienne-de-science-politique/article/abs/social-contract-interpretation-and-misinterpretation/4C1859526BA39EBE7A334D9B8E5C1596> (09.09.2022).

enough for necessities.”⁷ It is not from the fear of the public interest, that is, from a strong and widespread benevolence, that we derive the first and original motive for the observance of the rules of justice, for it is admitted that if men were endowed with such benevolence, these rules would not occur to them in their sleep.⁸ Concepts such as the justice and the natural moral sense are artificial. It must be acknowledged that what is just is quite different from what my moral sense dictates in a given case, standing on the ground of positive law. A conception of *rule-following behaviour* refuses to question the substantive content of the rules: The other final pole is represented by *Voltaire's* philosophy: „The concept of the justice is so natural, so universally valid for all that it is independent of all laws, all treaties, all religions.”⁹

The difference between the two extreme positions can be resolved on the basis of Kantian moral philosophy. Just as the categorical imperative does not tell a person what to do, it gives a kind of formal, obligation-based rule. Is there an universal rule that can form the basis of political obedience? Thomas Scanlon attempts to give an universally applicable test of the correctness of political actions, which, following Kant, could be called the categorical imperative of every political obligation: „...an action is unjust if its form is prohibited under the circumstances by a set of rules of conduct which no one can reject as the basis of a voluntary and general agreement based on knowledge of the circumstances.”¹⁰

The Scanlon-principle requires us to consider the „costs” of our disobedience to other citizens and the strength of the reasons - derived primarily from the constitutional framework and the way in which the law is written and applied - that motivate us to disobey.

3. CLASSICAL THEORIES OF CIVIL DISOBEDIENCE

The social contract theories express the idea, that the legitimacy, the political power and the political obligations derive from the consent of the individuals who constitute the government (or sometimes society). According to them, the legality and the obedience are based on agreement of individuals. At the same time, it leaves open the question of whether there is a common sense of justice, either formal or material, in a society, which can be the basis for the fulfilment of political obligation or even for opposition to it. A preliminary question for the moral judgement of the civil disobedience is whether there is a political obligation to obey unjust laws, for example, when the state power is illegitimate or extremely unjust. An introduction to the concept of the civil disobedience is worth starting with the dominant understanding of contemporary liberal political philosophy. This tradition can be traced back to John Rawls, who defines the civil disobedience as a *public, non-violent, conscientious yet political act of breaking the law, usually to bring about a change in the law or in government policy*.¹¹ The violation of the law in the definition can occur directly as a result of a law that is deemed to be unlawful or unjust.

The civil disobedience, however, often involves the violation of laws that are unrelated to the injustice at which the civil disobedience is directed. If a citizen enjoys the benefits of the state, he must also suffer the costs of unjust or unfavourable laws. Rawls takes a different views and believes that citizens have the right to use civil disobedience, but only if there are no other means of correcting the unlawfulness or if they have been previously exhausted. The requirement for civil disobedience is that it must be non-violent, since the main purpose of the law is to guarantee security.

⁷ LUDASSY, Mária. A polgári engedetlenség előtörténetéből. In *A polgári engedetlenség helye az alkotmányos demokráciákban*. Budapest: T-Twins Kiadó és Tipográfiai Kiadó, 1991, p. 30.

⁸ LUDASSY, ref. 7, p. 30.

⁹ VOLTAIRE. *Tudatlan filozófus*. In VOLTAIRE. *Válogatott filozófiai írások*. Budapest: Akadémia, (s. a.), p. 426. LUDASSY, Mária. Recta ratio vagy modus vivendi? In *Magyar Tudomány*, 2007, Vol. 168, No. 3, p. 286.

¹⁰ SCANLON, Tim. *What we owe to Each Other*. Cambridge: Harvard University Press, Cambridge, 1998, p. 153.

¹¹ RAWLS, John. *Az igazságosság elmélete*. Budapest: Osiris, 1997, p. 145.

A further argument in favour of non-violence is that non-violent civil movements, as opposed to violent acts, do not generate further acts of violence.

The liberal approach to civil disobedience, however, requires that the actor of the civil disobedience does not merely appeal to his or her own values, conscience or religious beliefs. According to this view, the civil disobedience must be justified by ideas that are the founding principles of the political establishment. From this point of view, Hannah Arendt's critique of Thoreau is entirely justified.

A century before the Rawlsian definition, Thoreau had already written a small book on civil disobedience which has since become famous. In it, the American philosopher aims to reconcile individual conscience and the rule of law: „Does the citizen have to surrender his conscience to the legislators even for a moment or in any small way? So why does he have a conscience? We, I believe, should be human beings first and subjects second.”¹² According to Thoreau, the key element of the idea of the civil disobedience is the action, in that every person has inalienable right to protest and refuse to enforce the unacceptable or, unjust legislation by non violent action. The power of government, even that to which I am willing to submit „(...) is still imperfect: to be absolutely just, it would require the sanction and consent of the subjects and consent of the subjects.”¹³

Thoreau's refusal to obey the law is a question of the individual conscience and declares that law and justice do not necessarily always go together. While clearly identifies disobedience as a political concept, the decision between the justice and injustice is always belongs to the moral sense of individual which gives the members of the political community the authority by their undeniable right right to challenge morally unacceptable laws. Thoreau calls for disobedience to unjust laws. For him, the law and the justice (i.e. law and morality) the quality of the individual as a moral being. Hannah Arendt notes in relation to Thoreau's program of civil disobedience that it is already about the unjust laws - but Thoreau, although introduced the civil disobedience into the political vocabulary, he speaks of the disobedience of individuals.¹⁴ Arendt defined Thoreau as the philosopher of private conscience, and in contrast, he cites the examples of Abraham Lincoln and Machiavelli: for the former put the interests of the Union before the emancipation of the slave, the latter the interests of his own people before his own conscience.¹⁵ According Arendt Thoreau is a self-interested moral rationalist who does not want to obey certain laws because he thinks them unjust, so that if he obeys them he would become unjust - and this fails before the court of conscience.

Rawls considers violations of the principle of equal freedom, infringements of the civil and political rights of minorities, or restrictions on the exercise of religious freedom as unjust, against which civil disobedience can be used. Rawls makes it clear that there are strong limits to the use of civil disobedience, because this is *ultima ratio*, the ultimate form of protest, and its actors must be sure of that, that disobedience is inevitable. Rawl's theory of justice is based on the assumption that people have a natural duty to respect just institutions and even obedience to those institutions. Moreover, it also calls attention to the fact, that civil disobedience ultimately ensures the development of just institutions.

Rawls assigns civil disobedience a place on a scale of protest. Civil disobedience is a form of resistance that falls on the border of rule-follower behaviour which is situated between legal and conscientious protests and resistance. Individual resistance, based on moral principles, is in some cases a violent form, while civil disobedience is a form of non-violent resistance based on moral principles. The conscientious resistance transcends respect for the established legal order and attacks the social order; a just social system based on a social contract, – i.e. on public agreement, – can only

¹² THOREAU, Henry David. *A polgári engedetlenség iránti kötelességről*. Budapest: Fekete Sas Kiadó, 2005, p. 264.

¹³ Ibidem, p. 265.

¹⁴ ARENDT, Hannah. *Crises of the Republic*. New-York; San Diego; London: A Harvest Book, 1972, p. 60.

¹⁵ Ibidem, p. 61.

retain its character if the substantial and obvious injustices which even a consistently democratic society is not immune from, is balanced by an institutional system, so this is one of the indispensable element of civil disobedience. Thus, contrary to the view that civil disobedience is destabilising the democratic system. In a democratic society, conscientious objection is one of the stabilising forces of the constitutional system, even if it is *per definitonem* it seems destabilising. He argues that submitting to injustice only reinforces it, while civil disobedience can help to break it down.

Jürgen *Habermas* clearly defines the political disobedience as a symbolic act, an indisputable part of democratic political system. It is planned, calculated, but at the same time also appealing to the discretion and sense of *justice of the majority*. For Habermas, the civil disobedience is a type of illegal, non-violent and morally founded protest which not only based on private religious convictions or self-interest, but also on announced public act. It involves the deliberate violation of certain legal norms without impugns obedience to the legal order.

Perhaps the most important element of the contemporary idea of the civil disobedience is the *self-limitation* of the political act. It arises from the duality of the actor of civil disobedience violating the law and demonstrating respect for the rule of law. The civil disobedience is therefore a two-faced phenomenon. The participants respect the law and the legitimate political system, but in some cases consider the law is unjust. The violation of law on one side, respect the law on the other. The opposition to the whole political system no longer constitutes civil disobedience, even if it is peaceful, because its legitimacy is called into question. In Rawls's concept the civil disobedience confronts injustice within the bounds of the rule of law, and serves to prevent the abandonment of the path of justice or, once it has been taken, to correct it, so the civil disobedience can stabilize a well-ordered, or more just society.¹⁶ This is why Jürgen Habermas considers civil disobedience to be a normal - and necessary - component of the *political culture* of any confident democracy based on the rule of law.¹⁷

But, Habermas also highlights a further problem. In fact, in a representative democracy, the majority principle prevails in legislating. However, the sociology of majority decision-making may differ from one political culture to another. The majority principle, respected by minorities, works if and when: „...certain conditions are met...for example, there should not be born minorities because of, for example, stagnant cultural traditions and identities. Just as little should the majority take irreversible decisions. The majority rule only works effectively in certain contexts. Its value must be analysed in terms of the ideal of how far decisions, made possible in conditions of limited time and limited information, depart from the ideal of a disjunctively reached consensus or a presumptively just compromise.”¹⁸

Finally, we must also turn to Dworkin's analysis, who was another influential author of a contemporary liberal political interpretation of the civil disobedience. The starting point of his theory is the same as Rawl's one. „The civil disobedience involves those who do not challenge authority in so fundamentally a way. They accept the fundamental legitimacy of both government and community they act to acquit rather than to challenged their duty as citizens... The civil disobedience is a feature of our political experience...because we disagree sometimes profoundly in the way independent people with a lively sense of justice will disagree about very serious issues of political morality and strategy. We must be careful not to make the rightness of any decision about civil disobedience depend on which side is right in the underlying controversy. We must aim, that is, to make our judgments to turn on the kinds of convictions each side has, rather than the soundness of these convictions”.¹⁹ Dworkin distinguished three types of civil disobedience:

¹⁶ RAWLS, ref. 11, p. 145 – 146.

¹⁷ MISETICS, Bálint. *Polgári engedetlenség és erőszakmentes ellenállás*. Budapest: Napvilág, Kiadó, 2016, p.228.

¹⁸ *Ibidem*.

¹⁹ DWORKIN, Ronald. *A Matter of Principle*. Cambridge, Massachusetts; London: Harvard University Press, 1985, p. 107.

1. INTEGRITY-BASED: personal conscience forbids him to obey, so the individual is defensive: it aims only that the actor doesn't do something that his conscience forbids);²⁰
2. JUSTICE-BASED: instrumental and strategic: it aims at an overall goal - the dismantling an immoral political program);²¹
3. POLICY BASED: the actors seek to reserve a policy because they think it dangerously unwise, they believe the policy they oppose is a bad policy for everyone, not just for some minority, they think what is in the majority's own interest as well as their own better than the majority knows).²²

In the second and third forms there are a so-called a) persuasive argument-based strategy and a b) non-persuasive argument-based strategy. The persuasive strategies don't challenge the majority-rule. They accept that in the end the majority's will must be done and ask only, by way of qualification or annex to his principle, that the majority be forced to consider arguments that might change its mind even when it seems initially unwilling to do so. Their aims to force the majority to listen to the arguments against its measure, on the assumption that the majority will then change its mind. The latter „...is not aimed at changing the mind of the majority, but at increasing the cost of the measure that the majority continues to support, in the hope that the majority will find the new cost of the measure unacceptably high.”²³ Non persuasive strategies lack this explanations, and that is why, particularly in a democracy, they are always inferior from a moral point of view.

Dworkin sees the Rawlsian definition authentic. For him the civil disobedience is a way for the democratic system to innovate. In democratic states, there is a wide variety of mechanisms for self-correction of the majority principle. Starting with the general and detailed discussion of a parliamentary act, the review of law by Constitutional Court, the right to strike in the constitution, etc., which draw attention to the interests of a particular social class or minority. The rule of law therefore has a high demand for revision. If the civil disobedience takes place, it may *prima facie* appear to be in violation of the law, but it can be a catalyst for long-overdue corrections and innovations. In these cases, civil infringements are moral attempts, without which a vibrant republic can neither acquire the capacity to innovate nor the faith in legitimacy of its citizens. Civil disobedience is therefore ultimately the guardian of legitimacy.

4. THE „CASE” OF HUNGARIAN PUBLIC EDUCATION

We have seen, that there is no uniform definition of civil disobedience, that can applied to all acts, but the *common element* of classical theories is clear. Only in constitutional democratic system can civil disobedience be committed since only here is a general and equal obligation of obedience of citizens to the state power they have established. In the dictatorships there are no citizens, only subjects. It is an important corrective mechanism of every constitutional democracy, where citizens who commit it seek to enforce the spirit of democracy against the specific measure or norm they are challenging which is alien to the spirit of fundamental value of democracy.

Civil disobedience is bound to occur in modern democracies, as the complexity of the problem means that the fundamental values and institutions of democracy clash with each other from time to time in the long term. Its frequency and prevalence, however depends on a large extent on the *traditions of political act and legal culture*. Civil disobedience is therefore also inevitable part of the democratic political culture, even if it is illegal act and therefore punishable, and even if there are no-codified moral rights that are stronger than legal obligations.

²⁰ Ibidem, p. 108 – 109.

²¹ Ibidem, p.109.

²² Ibidem, p. 110.

²³ Ibidem, 109.

For societies without democratic political experience, classical theories of civil disobedience cannot be fully applied. Behind the political protests of post-regime change, Hungarian society lies a political culture that can be described by the following characteristics: passivity, alienation from political life, exclusivity of private life (private welfare), paternalism and indifference to civic initiatives.²⁴ The level of distrust of democratic political institutions and political cynicism was also higher than in other post-socialist Eastern European countries.²⁵

Yet there were some emblematic protests between 1989-2010. All governments had to deal with protest actions, but not to the same extent. Even the first government after the regime change faced significant protests. In fact, a nationwide civil disobedience action against government emerged as a result of a protest movement by an occupational group.²⁶ The road hauliers protested by blocking roads against the rising petrol prices. The road blockade was an illegal, non-violent and morally justified action. Nevertheless, the taxi blockade does not correspond to the classic interpretation of civil disobedience, as the protesters wanted to avoid the consequences of their actions and were fighting for impunity.

The protests against the next (social-liberal) government (1994-1998) change also added colour to the Hungarian protest culture. In the university protests and the agricultural demonstrations, participants did not engage in civil disobedience, despite the fact that their style sometimes used more strident and aggressive rhetoric than usual. Under the first Orbán government (1998-2002), there were not as many significant demonstrations as under the previous two governments. Initially, people only protested against local conditions and international trends, but later, as the elections approached, protests intensified. The parties used the protests as a campaign tool against each other. For the period 2002-2006, the social-liberal coalition came back to power. Immediately after the elections, protest movements emerged questioning the fairness of the elections. Under this social-liberal government, there were also significant protests by farmers. There were also civil disobedience actions against the planned locator station in Zengő. The actions taken in defence of Zengő – complete roadblocks, live chains, illegal occupation of private land, etc. – were deliberately illegal, non-violent and morally justified.²⁷

In 2006, the Gyurcsány government was re-elected, and its reform measures sparked a nationwide protest. During this government, politicians from the largest opposition party, Fidesz, carried out an almost classic act of civil disobedience. The cordon-breaking was at once illegal, non-violent, morally justified, and the politicians waived their immunity and took responsibility for their actions.

²⁴ KÖRÖSÉNYI, András. *A magyar politikai kultúra*. In. <http://www.c3.hu/~szf/Szofi97/Sz97-03/Sz97-03-Area-3.htm> (10.01.2023). SIMON, János. *A politika értékviszáltságban. A demokratikus politikai kultúra keresése*. Budapest, L'Harmattan-Gondolat, 2013, p. 71 – 72.

²⁵ BARNES, Samuel H – SIMON, János. *The Postcommunist citizen*. Budapest: Erasmus Institute for Political Science of the Hungarian Academy of Sciences, 1998, p. 108.

²⁶ The taxi blockade was initially a voluntary, conscious action against a specific law, and later against the political leadership, in which taxi drivers and private drivers deliberately and unlawfully violated the norms generally accepted in society. The objectives of taxi drivers have changed. Initially, they only demanded the withdrawal of the price increase, but later they negotiated and agreed on various compensations and a price control mechanism. Eventually, the conflict was resolved through a mutual compromise between the protesters and the government, with the involvement of the Stakeholder Council. There is no doubt that the blockade, as a form of action, is non-violent, with protesters forcing people to stop by their mere presence and roadblocks. Another important aspect to be examined in relation to the civil disobedience character of the taxi blockade is its moral justification. The participants derived the moral justification for their protest from the fact that the "government lied", since a few hours before the announcement of the price increase, the government had denied that it was planning to increase the price and had publicly announced that the price of petrol would not be changed in the near future. In CSAPODY, Sándor. *A polgári engedetlenség helye az alkotmányos demokráciában*. Budapest: T-Twins Kiadó, 1991, p. 97.

²⁷ FEKETE, Sándor. *A feloldhatatlan konfliktusok „feloldása” a polgári engedetlenség*. http://www.konfliktus.unimiskolc.hu/docs/Polgariengedetlenseg_FeketeSandor.pdf (03.01. 2023.).

However, the legal avenues available to them were not used and the classification of the act is therefore questionable.

Until 2010, there were some significant political protests in Hungary, but most of them were legal and did not reach the level of civil disobedience. Overall, it can be said that the Hungarian protest culture is characterised by peaceful demonstrations, but during the last two governmental terms, violent actions have become more and more frequent, which go beyond civil disobedience demonstrations, and during these demonstrations there have been significant atrocities between the police and protesters.

After the 2010 parliamentary elections the political and public law system changed. The Fidesz-KDNP government became a constitutional power with a 2/3 majority, adopting a new constitution and changing several laws, including the electoral law²⁸ and media law²⁹. In the „illiberal democracy” the governmental political forces radically changed the relation between the society and the state. What does it mean? On one side the government established a new form of political communication. The System of National Cooperation (NER) is the main tool of governmental ideology and its national vision of future. Consequently the political system tries to form the society in that applies many ancient fears and stereotypes of authoritarian political systems: e.g. the prioritisation of public/state "welfare" policy over civil initiatives. The citizen expects the state to provide certain services. Critical opinions and oppositional movements are placed in a created image of the enemy, so it is important to emphasise the dominant views rather than a diversity of opinions. Lastly, there is the so-called „victim” policy, which consists in attributing internal social, economic and political problems to external causes. The result is that a political perspective arrived from governmental forces, with many populist and paternalistic elements, prevails instead of a democratic political culture.

At the moment, Hungarian political culture is completely divided. As a consequence, there is an irresolvable divide between the different political camps, even in terms of the core values of a non-political community. In this political environment, during the Fidesz-KDNP governments two political protests were successful. One was a demonstration against the introduction of an internet tax in Budapest with tens of thousands of participants. As a result of the protest, the government withdrew the legislation bill. Other referred to the Sunday shop closure, that was initiated and introduced by the Christian Democratic Party. A year and a half after the law came into force, the legislation act was withdrawn following the protests.

Several other demonstrations took place without results. There were demonstrations to demand pay rises and improved working conditions for nurses and health workers. Part of their demands were made in the context of the health situation caused by the Covid epidemic. (There are currently wage increases in this sector.) The other major movement is related to the restructuring of higher education. It was first about the reorganisation of the CEU, then the Hungarian Academy of Sciences and finally the universities that operate in the form of public interest trust foundations.

Of all the protests briefly analysed above, the biggest test of "illiberal democracy" is the demonstration of teachers and students in public education, which since 2022 has also taken the form of civil disobedience. To understand this, we need to outline the situation of public education in Hungary and some of the specific features of the legal regulation of public education. A paradigm change has taken place in public education in Hungary. The need for this, both in terms of the organisational restructuring of education, the development of curricula and skills, and the career of

²⁸ Unlike the previous system, this is an one-turn system, so the winning candidate does not need to win more than half of the votes (absolute majority). In Act CCIII of 2011 *on the Election of Members of Parliament*, paragraphs 13-15.

²⁹ The President and four members of the Media Council are elected by Parliament for a term of nine years by a two-thirds majority of the members present. This allows for the election of persons close to the government because of the Fidesz-KDNP's 2/3 parliamentary majority. In Act CLXXXV of 2010 *on Media Services and Mass Communications*, paragraph 124.

teachers, must be emphasised. The right to education is an element of the fundamental right of second-generation rights. The Hungarian constitutional framework - like the international - distinguishes three levels of education: primary, secondary and higher education. Both national and international legislation contain significant differentiation between them: the primary education is *free and compulsory*, the secondary education is *free and compulsory* and higher education is *open to all on the basis of ability*. The Fundamental Law does not define the types of institutions, but levels of education, so that within these levels the state is free to decide on different.³⁰ Subsequently, a new *National Public Education Act* was enacted, which introduced significant changes.³¹

The aim of the Act is to create a system of public education which promotes the harmonious spiritual, physical and intellectual development of children and young people through the conscious development of their skills, abilities, knowledge, emotional and volitional qualities and education in accordance with their age, and thus educates people capable of leading an ethical, independent life and achieving their goals, reconciling private interests with the public interest, and responsible citizens. The main aim of education is to prevent social exclusion and nurture talent.³²

The legislation has been the focus of controversy since its adoption. The most controversial provisions are: state control of education by exercising financial and employment rights (problem of centralisation/decentralisation), the absence of a career model for teachers, - most notably in the form of low teacher salaries³³ -, the quantity of teaching materials, outdated and controversial learning methods (problem of lexical or competency-based learning) and the lack of teacher competences. To achieve the goals of Act, it identifies a greater role for the state, so advocated centralisation rather than a decentralised structure of public education under the former municipal responsibility. The legislator's argument is that raising educational standards can be achieved through state involvement.

At the end of November 2012, Parliament adopted an Act on the state maintenance of public education institutions, which from 1 January 2013 also included the right to employ teachers, their salary financing and the provision of teaching equipment among the competences of the state. The Klebelsberg Centre for Central State Education (KLIK for short) is officially established. It has undergone several changes since its establishment. One reason for this is the slow and bureaucratic

³⁰ Every Hungarian citizen shall have the right to education. (2) Hungary shall ensure this right by extending and generalising community culture, by providing free and compulsory primary education, free and generally accessible secondary education, and higher education accessible to everyone according to his or her abilities, and by providing financial support as provided for by an Act to those receiving education. (3) An Act may provide that financial support of higher education studies shall be subject to participation for a specific period in employment or to performing entrepreneurial activities for a specific period, regulated by Hungarian law. In Article XI (1) Fundamental Law. In <https://net.jogtar.hu/jogszabaly?docid=A1100190.TV> (01.09.2022).

³¹ Act CXC of 2011. on national public education In <https://net.jogtar.hu/jogszabaly?docid=A1100190.TV> (01.09.2022).

³² Ibidem, 1. § (1).

³³ A teacher's obligatory weekly teaching hours are between 22 and 26 (including discrepancies, i.e., getting paid the same amount for 22 hours as for 24 or 26); this does not cover preparation time and obligatory substitution work. The problem is that teachers' salaries are still based on the minimum wage of 2014 (around 272 EUR) and do not include the cost-of-living increase of the current minimum wage (as of January 2022 this is 260 000 HUF, i.e. around 706 EUR), which has almost doubled since then, resulting in inequalities between teachers and other labour segments. This explains how, in 2019, a skilled worker could earn more than a beginning teacher with a Bachelor's degree. In Anna Frenyó: *Hungarian teachers protest despite governmental restrictions and intimidations*. <https://cz.bo-ell.org/en/2022/03/31/hungarian-teachers-protest> (01.10.2022).

There is currently a shortage of around 16,000 teachers in public education, with 50% of teachers over the age of 50. For the 2022/2023 school year, there were no applications for physics and chemistry teachers, which anticipates one of the most pressing problems in an education system that is already facing a significant shortage of teachers. In *16 ezer tanár hiányzik Magyarországon. Kritikus évek elé nézhet az oktatási rendszer*. <https://www.portfolio.hu/gazdasag/20220821/16-ezer-tanar-hianyzik-magyarorszagon-kritikus-evек-ele-nezhet-az-oktatasi-rendszer-562325> (01.10.2022).

administration and the increase in debt. Its local organs became the newly established *school districts*. The *school districts* took over the supervision of primary and secondary schools, while the *county school districts* took over the supervision of vocational schools, colleges and specialised pedagogical services. A director was appointed at the head of each school district to manage the schools. But the transition was not smooth, to say the least. From the financial point of view, there were huge problems from the outset, as the resources needed for nationalisation were not available in sufficient quantities.

By 2016, it was clear that reforms were needed and that the KLIK could no longer continue to operate as it was. Even Zoltán Balog, the Minister of Human Resources, said that the centralisation envisaged by Fidesz-KDNP was not working properly. On RTL's programme "Outside the House", Balog said that „we have overdone the bicycle a bit”.³⁴ Subsequently, after 1 January 2017, its official name became the Klebelsberg Centre, which was the central management organ overseeing the restructured school district centres. From the previous nearly 200 school districts, the restructuring process resulted in fewer than 60 school district centres with their own budgets and legal entities. However, the quantity and content of teaching materials and the extremely low level of teachers' salaries are also areas of education policy which are still under discussion and need to be resolved.

The two opposition organisations representing the interests of teachers the *Democratic Organisation of Teachers* (PDSZ) and the *Teachers' Organisation* (PSZ) protested several times after the adoption of the Acts. It should be mentioned, that in the ten years since the adoption of the law, other NGOs critical of the government have also been campaigning for educational reform. One of these is the *I would teach Movement* (TM for short), which in its 2016 video series elaborated a six-points proposal in a professional debate with education politicians. Their ideas can be grouped in six categories: 1. child and person-centered learning and teaching, 2. opportunity (need to reduce the segregation in public education), 3. learning to learn that prefers the learning based skills and competences, 4. equality, 5. freedom and 6. autonomy because the school system is too centralised.³⁵

The movement's founding was directly preceded by an open letter published on 5 January 2016, in which the board of education of Herman Ottó High School summarised its criticisms of public education. Also noteworthy is the *Students for Teachers Association*, which has participated in numerous demonstrations in solidarity with the efforts of these teachers' organisations. Let's see some examples:

The representatives of TM first spoke out at demonstrations organised by the Teachers' Trade Union on 3 February 2016 in Miskolc and on 13 February 2016 in Budapest. At least 30,000 people took part in the demonstration. The umbrella and plaid shirt became the symbol of the movement because of the organisation's demonstrations in rainy weather and the protest against the earlier comments by István Klinghammer, the State Secretary for Higher Education, about teachers in plaid shirts. On 30 March 2016, a civil disobedience action was initiated, with participants in the action staging a walkout between 8 and 9 in the morning. The demonstration, which was joined by the PDSZ and PSZ with calls for a walkout, was considered a success by the representatives of the Teachers' Union. In September 2016, at the beginning of the school year, the September Manifestum was published³⁶, in which, in addition to criticism of education policy, other social problems were raised, such as child hunger, young people falling out of school, the state of the health system, poverty, freedom of the press.

³⁴ BALOG, Zoltán: *Túltoltuk a biciklit*. In https://hvg.hu/itthon/20160126_Balog_Zoltan_klik_kozpontositas (02.09.2022).

³⁵ <http://www.tanitanek.com/2016/12/26/igy-tanitanek-a-tanitanek-mozgalom-hatreszes-filmsorozata-az-oktatas-alapertekeirol/>, *Tanítanék*, 2016. december 26. (02.09.2022).

³⁶ <http://www.tanitanek.com/2016/09/06/szeptemberi-kialtvany-negyed-szazaddal-a-rendszervaltas-utan/> (02.09.2022).

On 12 December 2016, a candle was lit at the Herman Ottó High School in Miskolc, and a national black plaid day was declared³⁷ for 19 December to draw attention to the poor state of public education and the weaknesses of the Public Education Act passed five years earlier. The action was joined by teachers' and students' organisations. On the same day, a demonstration and candle-lighting of around 1500 people was organised on Kossuth Square under the title „More light!” - Candle-lighting and protest for the freedom of education and for the future of our children. On 5 February 2017, a demonstration entitled „It's our time now” was held on Kossuth Square. The State Secretariat for Education of the Ministry of Education criticized the organizers of the event in a statement, saying that they were using the issue of education policy for political purposes and that „...while they are demonstrating, the government is acting.”³⁸ On this occasion, the TM together with the Civil Platform for Public Education, stood up for those NGOs that they believe are threatened by the government's campaign against certain NGOs.

In June 2017, they sent a letter to President of State and the Education Ombudsman to protest against the amendment to the Public Education Act concerning children with integration, learning and behavioural difficulties. They held a balloon flash mob in front of the Sándor Palace entitled *I have a dream* to demand that the President of the Republic not sign the amendment. Since he signed it, on 12 June 2017 the movement joined the LMP's petition to the Constitutional Court to withdraw the amendment to the Public Education Act.

During the period of the covid epidemic, these protests were cancelled, but they were organised before the 2022 parliamentary elections and are currently taking place. The primary and secondary school teachers went on a warning strike on 31 January. As a result, the government adopted the Decree 36/2022 (II. 11.) that restricted teachers' right to strike. According to decree the 50 % of students' classes and all classes of final-year students must still be held and the day spent on strike would be deducted from the striking teacher's salary. To protest, the teachers of schools all over Hungary resorted instead to civil disobedience throughout the second half of February.

At the same time, the two-hour strike on 31 January was also a milestone for the judiciary. While in a first instance ruling the teachers' warning strike was ruled lawful, the Municipal Appeals Court of Budapest now ruled otherwise. The appeal decision argued that the first decision had not become final because of the government's appeal and that the strike was therefore illegal. The decision did not discuss the teachers' demands, but ruled that the warning strike was illegal because it lacked the legal force.³⁹ The Court of Appeal's decision was eventually overturned by the Kúria, which ruled that the warning strike, together with the still-sufficient services offered by the unions - which did not include teaching during the strike - was lawful. This was justified by the fact that the first instance decision had not yet become final when the strike began, and did not automatically mean that the warning strike was illegal.⁴⁰

As a result, the teachers called a new national strike on 16 March 2022, during which they added a new point to their demands: strike action is a fundamental constitutional right and cannot be restricted. After the parliamentary election a significant change is that public education is now the responsibility of the Ministry of the Interior. Sándor Pintér promised order in schools and

³⁷ http://eduline.hu/kozoktatas/2016/12/12/fekete_kockas_nap_tuntetes_december_19_5PK9R5 (03.09.2022).

³⁸ http://eduline.hu/kozoktatas/2016/12/19/Gyertyagyujtas_Tanitanek_Kossuth_ter_CSBMSY (02.09.2022).

³⁹ The new decree (36/2022) also refers to the review procedure to be submitted to the Kúria (the supreme court of Hungary) in the case of a strike declared unlawful, stating that in the case of such a request. „Until the decision in the review procedure, no reference may be made to the court decision in individual cases concerning the illegality or unlawfulness of the strike, and the legal time limits relating to the court decision on the illegality or unlawfulness of the strike shall start to run on the day following the notification of the decision in the review procedure.” In. Kúria Mpk.VIII.10.051/2022/4. In <https://kuria-birosag.hu/hu/sajto/tajekoztato-kuria-mpkviii1005120224-szamu-vegzesrol-2022-januar-31-en-megtartott-pedagogus> (01.10.2022).

⁴⁰ Kúria Mpk.VIII.10.051/2022/4.

condemned the civil disobedience movements in his inaugural speech as minister-designate.⁴¹ Several members of the government, for example the State Secretary for Education, highlighted the element of the unlawful nature of civil disobedience, and he is trying to take control of the situation.⁴²

The current civil disobedience movement can be traced back in part to restrictions on the right of teachers to strike.⁴³ So in this sense it is used as an ultimate instrument. Its moral basis is the violation of the right to education, that involved both education and teaching. Its moral character can become questionable. If the government refuses to meet the teachers' requirements, education may become impossible. This is where one of the essential elements of Habermas's theory is most apparent. The lack of democratic political culture. Teachers, in the view of the government and its voter camp, are taking away students' chances of learning by their unlawful actions. This is true in a narrow sense, to a certain extent. Missed classes or ineffective teaching are to the disadvantage of the students. At the same time, education is provided with the cooperation of the teachers, and their demands have been ignored by the government for years. But what is distinctive of this movement, unlike the political protests of the past decades, is its *long duration*.

Since the start of the school year, several teachers have received warnings from the school district director about the consequences of civil disobedience. Several teachers have been dismissed, adding to the demands of those involved in the resistance. In the government's view the unlawful activity is grounds for termination of employment. Among the various forms of protests currently taking place, the most striking was the national strike announced for 5 October – World Teachers Day –, forming a chain stretching for kilometers, and protests against the government policies in Budapest and several towns. By the evening, thousands of protesting teachers, students and parents occupied the Margaret Bridge in Budapest.⁴⁴

Although civil disobedience presupposes a democratic political culture, it is a kind of morally based correction of the democratic institutional system against the decision of the majority, the situation of the Hungarian public education shows that society must be learned that this form of protest is an essential part of democracy. It will be a good example of the power of civil initiative against the political authority. The deep division between those who support the movement and those who oppose it is recently ideological, but it could nevertheless be a milestone in the democratisation of society.

CONCLUSIONS

Classical theories of civil disobedience refer to the public, non violent and conscientious breach of law with the aim of bringing about changing in laws or governmental policies. For Rawls, Dworkin and Habermas, liberal values were an integral and unquestionable element of a democratic political system. Arendt, gave democracy a normative character, assuming that democracy more than participating on parliamentary election. In a democratic political culture, citizens want and/or

⁴¹ PINTÉR, Sándor. *I do not accept civil disobedience*. In <https://olkt.net/pinter-sandor-nem-fogadom-el-a-polgari-engedetlenseget/> (03.09.2022).

⁴² MARUZSA, Zoltán. *Maruzsa calls on teachers' unions not to support teachers' civil disobedience*. In <https://www.portfolio.hu/gazdasag/20220831/maruzsa-zoltan-keri-a-pedagogus-szakszervezeteket-hogy-ne-tamogassak-a-tanarok-polgari-engedetlenseget-564183> (03.09.2022).

⁴³ Act V of 2022 on regulatory matters relating to the cessation of emergency situations 14§ (1) The provision of sufficient services during the teachers' strike: no lessons can be missed in classes that are about to graduate, but the provision for children with special educational needs must not be affected. In other cases, the school must keep 50 % of classes, but provide continuous supervision, preferably without consolidating classes. <https://net.jogtar.hu/jogszabaly?docid=A1100190.TV> (01.09.2022).

⁴⁴ The program of strike on 5. October. In <http://www.pdsz.hu/cikk/38030> (01.10.2022).

should manage the common goals of political community and the civil society is able to control the governmental policies.

The current civil disobedience in Hungarian public education does not fit in with the liberal theoretical approaches for several reasons. Despite the fact that it bears some elements of the Rawlsian definition, i.e. it is used as a non-violent and public protest in that the participants are aware of the illegality of their behaviour and accept the sanction for it, the political culture, the democratisation of civil society is in its infancy. Hungarian political culture is in the state of transition. The few decades since the regime change can be described rather as a learning process.

The successful use of political forms of protest against the authorities presupposes the strength of activism and a certain social solidarity of civil society.

Since 2010, the Hungarian political system of Fidesz-KDNP, which has won its fourth 2/3 electoral victory, declared itself an illiberal Christian, conservative and nationalist political force. Until 2010, only a few civil initiatives had been successful, but there is no doubt that a learning process has begun as to how a previously passive society, alienated from public affairs, can successfully assert and defend its interests against governmental power. In recent political system the critical social and professional opinion or even political protest, is „punishable”. The public interest is defined from above - by the political elite - and only the views of those NGOs that agree with the government are taken into account.

The success or failure of civil disobedience in Hungarian public education cannot be ignored. On the one hand, its duration is much longer than that of any previous political protest. On the other hand, it does not appear as a corrective mechanism against the democratically elected majority - or more precisely against its decision - but rather as an example of what the authorities can do with this type of protest. Government decisions and the rhetoric of government members foreshadow authoritarian solutions⁴⁵. However, the last decade of 'illiberal democracy' has not seen this type of protest, which has attracted the interest of an increasingly part of society. The „Hungarian case” may also be a lesson in whether civil disobedience in a society that hasn't previous experience of democratic politics is an adequate form of protest to bring about a change in legislation or government policy.

⁴⁵ 4/2023 ((.12.) Government Decree 1§ 3-4 para: According to the decree, an employer has the right to dismiss a worker with immediate termination until 1 August 2023 if the employee takes part in civil disobedience. It should also be pointed out that the Fidesz-KDNP government is using the state of emergency as an argument to regulate in the form of decree the rules for dismissals under the Labour Code. In <https://uj.jogtar.hu/#doc/db/1/id/A2300004.KOR/ts/20230113/lr/chain2> (20.01.2023).