

Talking with Géza Herczegh, former Hungarian judge of the International Court of Justice

Interview by Eszter Kirs

During the university studies in the field of Public International Law the name of Géza Herczegh arises firstly related to the International Court of Justice. He is the only one Hungarian expert of international law who could participate the work of the judicial body in the Hague as a judge. I was in that fortunate situation that during our conversation Professor Herczegh narrated his life readily and with kind naturalness and so let us to see a little part of his life full of experiences.

E.K.: What kind of personal factors did you incite to choose your profession in the field of Public International Law?

G.H.: I attended the Faculty of Law at the University of Szeged where I was the only one student in the class who knew any foreign language at that time.

In 1948 arrived Professor László Buza from Kolozsvár to Szeged where a university assistant collected enough people for creating audience so that Professor Buza could deliver his lectures. I went to his lectures and I stuck there as he spoke extremely interesting and accurately. Actually, two or three of us attended his course but he had the principle of *“tres faciunt collegium”* so he gave lecture also in the case that only two students were there.

In 1949 I applied for the job of demonstrator at the Department of Public International Law with support of Professor Buza. Later I arranged the tasks of demonstrator though without appointment.

E.K.: After that one could suppose that you stayed in Szeged as a lecturer but your future worked out in another way. What was the reason of that?

G.H.: Right before getting my degree I was told that I may not build this career at the University of Szeged. On the other hand they suggested to go to Budapest to the Institute of Jurisprudence. There I translated the contents of legal papers or when necessary also some articles as a documentator. Later I found some possibility to deal with Public International Law as well. I realised that the end of colonialism would change the world fundamentally. I had already a lot of quotation from Lenin and Stalin serving as ground and reasons of the importance of this issue. I succeeded to “sell” it in the Institute of Jurisprudence. It was published as an article at the first time and in 1962 as a book. The formation of colonialism does not belong to the most beautiful

chapters of humanity's history and the unsolved problems left behind means another matter.

E.K.: How did the way lead from the Institute of Jurisprudence to the education at the University of Pécs and what kind of role did this activity play in your life?

G.H.: The professor to Budapest retired and the professor to Pécs took his place. So in 1967 I got the educational status to Pécs which I kept during 23 years till 1990.

If one tastes this activity later won't be able to leave it and it becomes love for him. For me the education of Public International Law meant pleasure and at the same time disappointment. It was a pleasure that the students liked this subject very much as it affects many interesting issues. On the other hand it meant disappointment that everyone knew that the continuous and deep inquiry of this subject could not lead to any concrete aim. In that era –after the opinion of one of my friends– the way to this Ministry went through the Department of Internal Affairs. To get into the Department of Foreign Affairs one had to suit 99 requirements and among these conditions the 77th was the knowledge of Public International Law. It was clear also for the students so they liked coming to the lectures but they did not want to deal with Public International Law seriously.

E.K.: How did your relation come true with the humanitarian law?

G.H.: The Hungarian Bank of Values' Turnover negotiated about the damages of the victims of nazism. I wrote a study about the international situation of Hungary after 1944 and the Bank used it. Then the Department of International Relations at the University of Economy invited me to give a lectures about history of diplomatic relations. In that time Gyula Juhász published about the Hungarian factors and I wrote about the circumstances qualified as "universal" related to the period of 1914 till 1944. During this work we got entangled in the issue of the Soviet-German agreement of 1939 and its secret annex which was about partitioning of Poland. No matter how cunningly I tried to draft the essence, the lector crossed out every allusions related to this, saying that as after the Soviet historians' opinion this contract did not have any annex we could not write about it anything. After this instruction although I was incited to publish these notes as book as well, I did not want it anymore. The book was published only after more than 30 years in 1999.

Turning back to your question László Réczei, the Head of the Department of International Relations recommended me to participate the preparatory negotiations about the Additional Protocols of the Geneva Conventions of 1949. So I participated the Geneva diplomatic conference between 1974 and 1977 as a representative of the government.

I worked in the 3rd Commission dealing with protection of the civilian population. We were arguing about the necessary elements of the more effective protection in time of war and about the suitable distinction of the civilian population and the so-called guerillas, the freedom-fighters. There were many interesting legal issues to talk about but the enforcement of these rules in reality means another difficulty to solve.

Actually, I became known in the international sphere as an expert of International Humanitarian Law at this conference.

E.K.: I suppose that this contributed to your appointment to the International Court of Justice in the Hague in 1993 after 3 years spent at the Constitutional Court of Hungary. How did your appointment come true?

G.H.: In that year Manfred Lachs the Polish judge died and his place had to be filled in for the rest of his period. That meant 9 months. Here must be mentioned that from 1946 till 1993 only Polish judges had represented the region of East and Middle Europe at the Court. Everyone said to me that I hadn't got any chance but I thought that in this case it's not a shame to lose. But meanwhile there was a government crisis to Poland and the head of the government called off the Secretary of Foreign Affairs who was their candidate. After this I stayed alone as a candidate and I met success.

E.K.: Which of your personal experience would you like to show us related to your work at the Court as you saw its inner side?

G.H.: The international jurisdiction is an extremely interesting field of work and I can tell the best also about my colleagues at the Court. After the construction of the Court 15 independent judges work together there and one must suit only his own conviction.

E.K.: So is the principle of independence of judges carried out in case of an international judicial body in reality?

G.H.: I did not ever meet any case or effort of influence. Though it can be interesting in this point of view that '*ad hoc*' judges can be appointed by a Party of the debate if there isn't any proceeding judge which has its nationality. Naturally this '*ad hoc*' judge won't protect the other affected state's interests against his own state but he will underline the strong sides of his own state's official position. At the same time no one of the judges may be ordered by his state and I did never meet such a situation.

E.K.: The work of an international judicial body is totally different than the work of a national legal forum. How should we imagine the system of work of a judge at the International Court of Justice? What are the main lines of work and the factors which determines them?

G.H.: The system of work at the Court was created in a period when the Court was not yet overloaded. One of my elder colleagues said that earlier he had not even known some of his colleagues because the Court was not even convened for a long while. This situation changed considerably till the 90th. One case followed the other. In one year the Court can deal with two big and two less significant cases.

First of all everyone receive the written materials. The extent of them depends on cases but it can be even more than 10-12 thousand pages. I would not swear that I read all of the pages in all of the cases but there were some documents which I had to wade through more times to see the case clearly enough.

Then that follows the verbal part of the procedure which takes some days but it can drag on weeks long. After that each judge writes his own opinion, official position. They read the standpoint of each other and then they negotiate about their arguments. Then the Drafting Commission is appointed. The leader of this organ is the Head of the Court and it includes two or more members. They create the first variation of the resolution and after some following negotiation and the creation of the second

variation the judges votes. Always the youngest judge votes at the first time so that the decision of the “elders” will not influence him.

E.K.: I suppose that in those years full of tasks there were some of your favourite activities which fell into the background in lack of enough time. Over this period what are you recently dealing with?

G.H.: Recently one of my articles was published about Péter Esterházy. My latest study about Anonymus was published in the Magyar Szemle in February and the second part of this one is available in April.

E.K.: I am sure that a lot of them who read this interview will feel like searching for these studies of you.