



Towards a second phase of HRD- protecting guidelines: some lessons from Hungary

Attila Mráz

Hungarian Civil Liberties Union

attila.mraz@tasz.hu

Phase 1:

Guidelines for the protection of HRDs

❖ **Some milestones:**

Declarations: Budapest Summit Declaration (1994)

Instruments: UN Human Rights Council resolutions on HRDs and civil society space (HRC/RES/22/6, 2013; 27/31, 2014)

OSCE Guidelines on the Protection of HRDs (2014)

❖ **Contribution** of the Guidelines to the protection of HRDs:

- ✓ **Specifying the aims:** what should we achieve if we want a safe environment for HRDs?
- ✓ **Evaluating risks and damages** to the protection of HRDs
- ✓ **Advising liberal states** on how to protect HRDs
- ✓ **Providing a shared framework of reference** for liberal state actors and HRDs (mostly in legislative advocacy)

→ **What are the challenges for Phase 1 Guidelines?**

Semi-liberal EU member states no longer lack *knowledge* – they lack *motivation* to protect FR&RL

Insufficient steps by semi-liberal states are often misinterpreted as a preliminary stage in a *bona fide* process.

Liberal states

Motivated to protect FR&RL...

...**and** motivated to keep up appearances

EU Member States: assumed to belong here (cf. TEU Art. 2 & 49)

HRDs: **not** necessarily a special problem (reinforced protection may be appropriate)

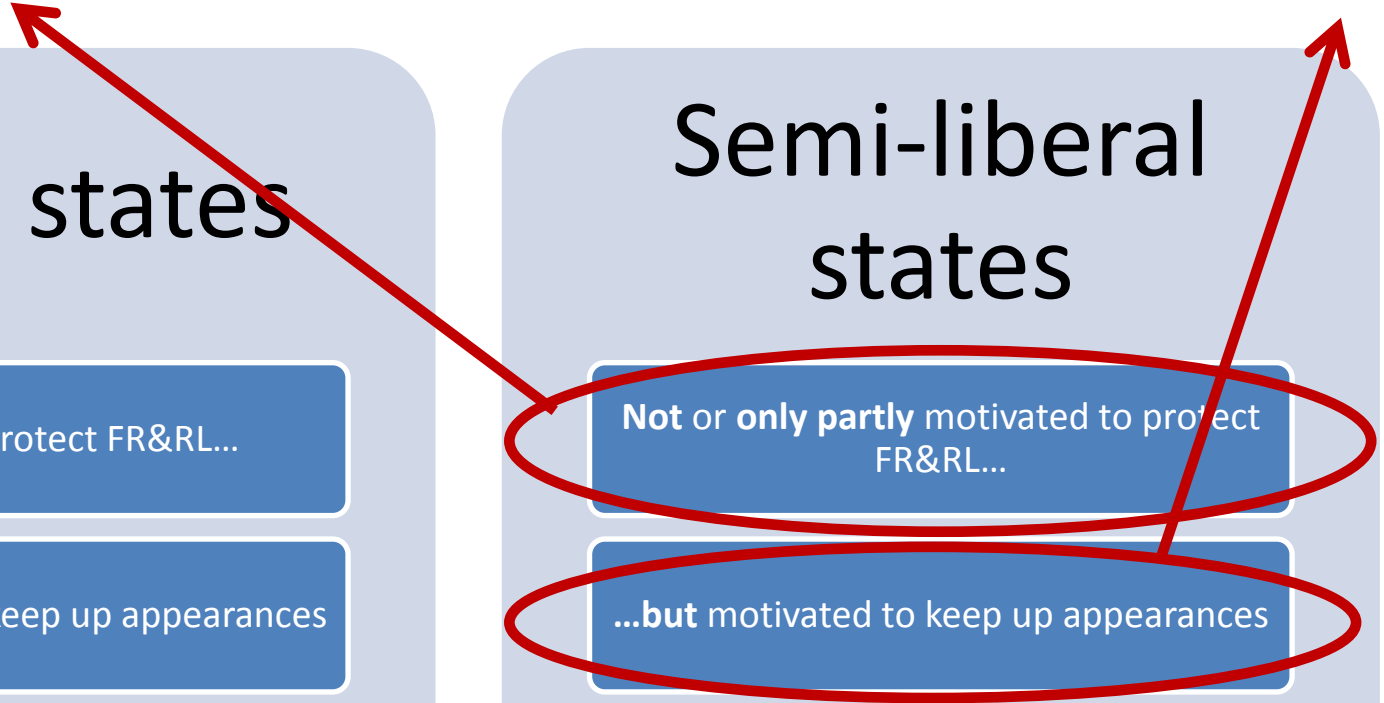
Semi-liberal states

Not or only partly motivated to protect FR&RL...

...**but** motivated to keep up appearances

Hungary is a clear example

HRDs: again, not a special problem (a symptom of the general deterioration of FR&RL)



Contribution of Phase 1 Guidelines in semi-liberal states

- ? **Specifying the aims**: what should we achieve if we want a safe environment for HRDs?
(not necessarily feasible aims)
- ✓ **Evaluating risks and damages** to the protection of HRDs
(uniform, objective benchmark)
- ✗ **Advising states** on how to protect HRDs
- ✗ **Providing a shared framework of reference** for (most, or some) state actors and HRDs

Opportunities for protecting HRDs in semi-liberal states

Leverage motivation to keep up appearances in the intl. community

- EU and UN advocacy, e.g.:
- Pre-Article 7 mechanism in the EU – more on that later
- In extreme cases, also to attract media attn:
UN Special Procedures (SR on Human Rights Defenders, Free Exp., Free Assoc.)

Use still functioning elements of FR&RL

- At least to resist further deterioration
- e.g. Regular courts in Hungary are still independent and competent, overall:
Courts ruled in favor of the Hungarian Helsinki Committee in its libel lawsuits against the government, after the govt.'s stigmatizing, libellous statements
- (but NHRI = Ombudsperson failed to stand up against unlawful investigations targetting NGOs)

Capitalize on motivation to keep up appearances domestically

- Build a positive reputation of HRDs
- Take the govt. to court: FOIA requests, judicial challenging of admin. decisions
- Report on govt. harrassment to the press

Article 7 and Pre-Article 7 mechanisms in the EU

- ❖ **Systematic** threats to the rule of law
- ❖ Applicable **w/o the breach of any specific EU law**
- ❖ **Post-accession, post-transition** availability

Article 7: the "nuclear option" (Pres. Barroso)

- ❖ If "clear risk of a serious breach" of the values referred to in TEU Art. 2, Member States' rights (but not obligation) may be suspended
- ❖ Too strong, general unwillingness to use it

Pre-Article 7 Framework: formalized, but softer
(COM/2014/0158, March 2014)

- ✓ **Aim**: prevent the emerging of a systemic threat to the **rule of law** in a Member State that could develop into a "clear risk of a serious breach" within the meaning of Article 7 TEU
- ✓ **3 stage-process**: Commission assesses, recommends, follows up on recommendation
- ❖ **NEITHER** has been used for the protection of HRDs, but Pre-Article 7 may be used for that purpose – HRDs as a RL issue!

Conclusion:

What should Phase 2 of HRD-protection look like?

- (1) **For practical purposes, forgoes the assumption that "the primary responsibility for the protection of human rights defenders rests with states"**
 - though it should! (OSCE GL, 5.)
- (2) Focuses on enforcing the **obligations of alternative responsible agents both below and above the state level** (e.g., independent authorities – NHRIs: adherence to Paris Principles!; supranational institutions)
- (3) Strategically engages with states to increase their motivation for defending FR&RL, and HRDs specifically
(As an aspiration, we should aim to reinstate the primary responsibility of states for the protection of human rights defenders.)
- (4) Develops and shares **strategies for HRDs to defend themselves**, the fruits of their work, and opportunities for their continuing activities promoting HRs
 - including **strategies to improve domestic reputation as a safeguard against stigmatization and criminalization**

Thank you
for your attention.

Attila Mráz

attila.mraz@tasz.hu