

The Special Issue of the Hague Journal on the Rule of Law on the Crisis of Constitutional Democracy in Central and Eastern Europe

Jernej Letnar Čerňič¹ · Matej Avbelj²

Published online: 5 April 2018
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This Special Issue of the Hague Journal on the Rule of Law derives from the debates at the workshop on How to Resolve the Crisis of Constitutional Democracy in Central and Eastern Europe? held at the Graduate School of Government and European Studies in Ljubljana, Slovenia, on 9 and 10 December 2016. The workshop was organised under the auspices of the project on the Reform of the Rule of Law and Democracy, generously funded by the Slovenian Research Agency [J5-7359 (A)]. The contributions to the workshop examined the state of the constitutional democracy and the rule of law in the Central and Eastern Europe.

In the constitutional democracy, all of the three elements of democracy: input and output legitimacy and the political process through which they are connected, have to take place within the framework of the rule of law. Simultaneously, there can be no rule of law if the laws by which the individuals are ruled do not come into being in a democratic manner. Democracy and the rule of law thus presuppose each other, but at the same time their relationship is not entirely symbiotic. There is a dormant democratic threat that the democratic majority will trump the rights of the outvoted minorities. This is what the rule of law is there for to prevent. This counter-majoritarian problem, as it came to be known, is, however, only a seeming one. If democracy is not understood as a simple rule by the majority, but rather as a system of the organization of political power whose central value is the protection of equal human dignity, then the constitutional self-limitation of the democratic majority is not democracy's denial, but its vindication. Against this theoretical

✉ Jernej Letnar Čerňič
jernej.letnar@fds.si

✉ Matej Avbelj
matej.avbelj@fds.si

¹ Graduate School of Government and European Studies, Ljubljana, Kranj, Slovenia

² Associate Professor of European Law, Graduate School of Government and European Studies, Nova Univerza in Slovenia, Predoslje 39, 4000 Kranj, Slovenia

background, this Special Issue proceeds from the fact that the constitutional democracy has been in an incremental, but definite decline across the European Union, but in particular and most acutely, in the Central and Eastern European States. On this basis, the Conference centred on the following question: How to redeem the status of constitutional democracy properly in the praxis of Central and Eastern European countries?

This Special issue includes six contributions. The first two engage in a more general, analytic and theoretical discussion of the contemporary challenges to constitutional democracy in this part of the world. Gianluigi Palombella's opening contribution entitled "Illiberal, Democratic and Non-Arbitrary?" dissects the theoretical issues related to the epicentre and circumstances of a Rule of Law Crisis and explores some complexities of rule of law and democracy in Europe. On the other hand, Bojan Bugarič and Alenka Kuhelj examine the phenomenon of constitutional populism and queries how the latter impacts on the rule of law. The following four articles form an applicative part of the Special issue, by presenting four case-studies in the state of constitutional democracy in respective CEE jurisdictions. Matej Avbelj suggests a sociological turn in the scholarship on constitutional democracy and on the Slovenian example suggests a better understanding of what the real causes of constitutional democracy in this part of Europe are. Tatjana Papić and Vladimir Djerić, on the other hand, provide a timely and illuminating insider's perspective on the role and impact of Serbian Constitutional Court on the quality of constitutional democracy in this former Yugoslav republic. David Kosař and Katarína Šipulová return the debate in the Visegrad context and in their critical contribution address how the European Court of Human Rights really approached the Baka case and what have been its broader consequences for the state of constitutional democracy in Hungary. Finally, Jernej Letnar Čerňič, dissects the role and impact of the ECtHR on the rule of law and constitutional democracy in Central and Eastern Europe even more in general and emphasizes the missed opportunities.

All six contributions provide insights into the selected aspects of the functioning of constitutional democracy and the rule of law in Central and Eastern Europe and the actual and potential impact of European Institutions. As a result, they all share common concern over old and new crises in the region. The Special issue does not exhaust all of the many facets of constitutional democracy and the rule of law in Central and Eastern Europe. Its aim has been to put forward a pluralistic contribution to already existing debates by taking stock of recent events and proposals and thereafter drafting alternatives to move beyond crises of constitutional democracy and the rule of law in the region.

The Editors would like to thank the contributors to this special issue as well as to profesor Ronald Janse, the editor-in-chief of the journal for his support and patience. Further, we would like to thank the Graduate School of Government and European Studies for providing the institutional support in organising the conference. The generous financial support of the Slovenian Research Agency is acknowledged too. This special issue has benefited from a discussion the editors and contributors have had at the conference and in the past years with Andrew Drzemczewski, Martin Krygier, Matthias Goldmann, Hent Kalmo, Marko Novak,

Sara de Vido, Alen Uzelac and Jaz Zobec. We hope that this special issue will stimulate further debates on the state of the rule of law and constitutional democracy, which remain at peril across the region.

Ljubljana, March 2018
Jernej Letnar Čerňič
Matej Avbelj