Международное право

International law

UDC 341:342

THE CRISIS OF DEMOCRACY AND THE RULE OF LAW IN SOME NEW MEMBER STATES OF THE EUROPEAN UNION

ANGELA DI GREGORIO[a]

[a]*University of Milan, 7 via Conservatorio, Milan 20122, Italy*

The paper analyses one of the hot topics of the constitutional debate in Europe, that is democratic backslidings in some new EU Members States. Although many works in the international literature have been devoted to this subject, a general analysis of the political and constitutional causes of this regression is lacking. It is therefore necessary to analyze the characteristics of the transition to democracy; the EU "rule of law" mechanisms and their failure, including the failure of the system of democratic conditionality; the cultural and constitutional framework of the new EU Member States, including some defects in their constitutional engineering.

Key words: rule of law; European conditionality; constitutional engineering; constitutional courts.

КРИЗИС ДЕМОКРАТИИ И ВЕРХОВЕНСТВА ЗАКОНА В НЕКОТОРЫХ НОВЫХ ГОСУДАРСТВАХ – ЧЛЕНАХ ЕВРОПЕЙСКОГО СОЮЗА

АНЖЕЛА ДИ ГРЕГОРИО[1)]

[1)]*Миланский университет, 7 via Conservatorio, 20122, г. Милан, Италия*

Рассматривается одна из горячих тем конституционной дискуссии в Европе, а именно демократический кризис в некоторых новых государствах – членах Европейского союза. Несмотря на то что в международной литературе этому вопросу посвящено много работ, общий анализ политических и конституционных причин этого кризиса от-

Образец цитирования:
Ди Грегорио Анжела. Кризис демократии и верховенства закона в некоторых новых государствах – членах Европейского союза // Журн. Белорус. гос. ун-та. Право. 2017. № 3. С. 105–111 (in Engl.).

For citation:
Di Gregorio Angela. The crisis of democracy and the rule of law in some new Member States of the European Union. *J. Belarus. State Univ. Law.* 2017. No. 3. P. 105–111.

Автор:
Анжела Ди Грегорио – профессор сравнительного публичного права.

Author:
Angela Di Gregorio, full professor of public comparative law.
angela.digregorio@unimi.it

сутствует. Исследуются характеристики перехода к демократии; механизмы защиты правового государства в ЕС и их неудачи, включая недостаточность системы демократической обусловленности; культурный и конституционный контекст новых стран – членов ЕС, в том числе некоторые дефекты в их конституционной инженерии.

Ключевые слова: верховенство закона; европейская обусловленность; конституционная инженерия; конституционные суды.

Introduction

One of the hot topics of constitutional discussion in Europe during the last few years is the non-compliance with the principle of the "rule of law" in a number of European Union Member States. The situation has become particularly worrying in the last 2 years, as the "constitutional backslidings" or "constitutional crises", included a shining example of the "new" European nations, one rated as first-in-class for economic progress and democratic stability, namely Poland.

Of these constitutional crises and the threat they pose to the preservation of European values much has been written. Opinions more or less agree in acknowledging a regression of democratic and constitutional culture in the new EU Member States owing mainly to the absence of constitutional traditions and the haste of their admission into the Union [1–3].

A broader classification also includes Italy and Greece because of the general inefficiency of public administration, the high rate of corruption, the slow pace of justice, the pervasiveness of organized crime, or, as in the case of France, regarding the treatment of Roma (in 2010) [4]. The first concerns about the compliance with democratic values within the EU arose, as is well known, in connection with the electoral success of a far-right party in Austria in the 1999 parliamentary elections. In this case, as for Italy, France and Greece, concerns have faded away because of electoral turnover, or the shelving of the more controversial projects. However, the question remains unresolved for Hungary and Poland.

The most serious "constitutional crises" among the new EU Member States are in fact those of Hungary and Poland. There is also the case of Romania which however is treated, depending on the commentator, as further proof of the weakness of the rule of law in the country or as an example of successful post-access compliance, given the "happy" resolution of the confrontation between the Government, the President and the Constitutional Court in the crisis during the summer of 2012 (concluded with a political solution in an institutional context forever at risk of permanent stalemate). Therefore, there are important similarities between Hungary and Poland while the Romanian case, despite some common features (the Constitutional Court has been under attack) is very different for the political situation (at the time of the crisis there was political cohabitation between the Government and the President in Romania). My comments will be focused on a series of issues:

1) how to frame and limit the principle of the "rule of law", being mindful of the different concepts at both national and international levels;

2) similarities and differences in the constitutional crisis in Hungary, Romania and Poland;

3) the role of Constitutional Courts in the former communist countries;

4) the failure of European democratic conditionality;

5) problems and perspectives for the constitutional crisis.

The "European" rule of law

We must first delimit the rule of law principle, since we could have a broad or narrow, formal or substantial definition of it. There are different cultural traditions on the subject including a past notion of "socialist rule of law" or socialist legality, which continues to influence to some measure former communist countries. However, as academics have amply demonstrated, thanks to the role of constitutional and international courts, a broad convergence on the content of the principle has been reached over time to the point of mitigating the original differences.

In recent years several publications have appeared, which are dedicated to the topic of the international or European rule of law [5–9] which seems to derive more from a sum of elements of different traditions rather than being a summary or synthesis of them.

This is clearly not the place for a thorough examination of this pillar of the liberal-democratic State. However, I would like to state that the concept to which we currently refer in Europe to measure the extent or fact of the violation of the rule of law is based on some documents that merely summarize the characteristics of the principle. These have been "produced" by the Venice Commission of the Council of Europe, by a number of European Union institutions and by the OSCE. So when we speak of violations of the rule of law by new EU Member States, we refer to the reconstruction of the principle carried out by the European institutions

and used as a benchmark for democratic conditionality prior to admission to the EU, the Council of Europe or the OSCE [10; 11].

However, a too broad notion of the rule of law (as evidenced in the Venice Commission's Rule of Law Checklist which contains 6 different requirements each of which is subdivided into further sub principles) is likely to distort this concept thus making full compliance with it impossible, even for well-established democracies. In fact, the definition is vague as evidenced by some authors and ends up being a summation of other principles. When called upon to give a comprehensive summary and definition researchers are struggling to find a general consensus.

If we examine the application of the principle to the events of Hungary, Poland and Romania where the breach of the rule of law occurred, we notice that it is mainly about the violation of the division of powers and particularly the interference by political powers in the activity of the courts. Thus delimited, the principle of the rule of law regains its autonomy from similar principles despite being closely related to them. In sum, the Hungarian and Polish events help us to reflect on concepts that until now were quite abstract.

Constitutional crises in some new EU Member States

As mentioned, constitutional scholars cite a number of reasons for the constitutional "backsliding" in some new EU Member States. There are two main reasons offered; the first is the inability of the countries of Central and Eastern Europe to achieve full democratic maturity because of their communist past and the second is the absence of constitutional traditions. The responsibilities of European institutions for the framework of the application criteria for entry into the EU and the complex procedures put in place to prevent or to correct democratic deficiencies in the candidate countries have not been extensively analysed.

The seriousness of the ongoing processes in Hungary and Poland lies in the fact that through the tool of constitutional law the role of important checks and balances such as constitutional courts is in the process of changing or has already changed, and mainly for the worse. Generally, the institutions that naturally counterbalance the power of the political majority are currently being weakened (ombudsman, self-governing bodies of the judiciary, authority for the media or the press, prosecutors, etc.). Looking at the wider context, we notice a crisis of the very principle of majoritarian democracy, one which is justified in the name of governability. Other important defects in this context are the limits of post-communist constitutional "engineering". In fact, certain choices, which were appropriate for a transitional context in which checks and balances were still fluid, proved to be unsustainable in the current super-majority scenery.

The Polish and Hungarian constitutional crises have many common features. The principle of separation of powers has been undermined against the backdrop of a right-wing populist and demagogic political vision, intolerant of democratic checks and in favour of a plebiscite-majoritarian idea of institutions. In both cases, the right-wing nationalist parties, who are in Government, challenge the manner in which the transition to democracy took place in 1989 although they came from the opposition to the old communist regime. The position of the Hungarian FIDESZ is clear on this point. Whereas the communists reformists have played a key role in the transition from the communist system of government and despite the fact that the heir to the Hungarian Socialist Workers' Party, namely the socialists (MSZP), has ruled several times since the first free elections of 1990, officially bringing the country into the EU, the new Hungarian Fundamental Law is expressly directed against this political force.

In the case of Poland, the Law and Justice Party, or PiS, created by the Kaczyński twins in 2001 is a fragment of the Solidarity movement that promoted, along with other actors (including the Catholic Church), the transition from communism. At that time the Kaczyński's were opposed to the policy of "tabula rasa" with the past but in the end just such a policy prevailed. In 2006–2007, when Jarosław Kaczyński was the prime minister in a coalition Government, the twins attempted to make the lustration mechanism more severe as it was originally designed, but the Constitutional Tribunal in 2007 rejected this attempt, making the lustration law virtually unenforceable [12; 13].

The intolerance towards the new post-communist and pro-European course was expressed openly once PiS obtained an absolute majority of seats in the parliament in the 25 October 2015 elections. Following the Hungarian model the new Polish leadership has gradually and systematically started to bring back the main counter-majoritarian powers under the control of the governing majority, starting with the Constitutional Tribunal[1] and continuing with the media. Ordinary judges and prosecutors have been also affected by negative changes in both countries. One of the most negative aspects of the Polish Government's initiative is the refusal to publish (some) judgments of the Constitutional Tribunal, and the general disrespect towards it (which has also happened in Hungary, where the provisions declared unconstitutional by the Constitutional Court, however, have been included in the Constitution). In the meantime, other laws restricting fundamental rights have been adopted (concerning media, prosecution, police, civil service, immigration, etc.).

[1]For an up to date constitutional information both in Poland and Hungary please refer to *www.verfassungsblog.de*.

However, there are relevant political and institutional differences between the two countries. In Hungary the FIDESZ, together with the small centre-right ally KDNP, obtained 133 seats, accounting for 66.83 % of the National Assembly in the 2014 elections, which is precisely the two-thirds majority threshold they enjoyed in the previous 2010–2014 legislature. Such a huge majority, favoured by the electoral system (which was changed to the advantage of the ruling coalition in 2011) allowed the majority to adopt a new constitution with subsequent amendments thereto, and to carry out further changes to the system of checks and balances through the passing of "cardinal" laws. Opinions about the current situation of the rule of law in Hungary are contradictory and depend on interpretation. Some believe that as a result of the reforms carried out by the Government and especially the replacement of the ordinary and constitutional judges, the courts have now been "housebroken". Others believe that as a result of the opinions of the Venice Commission and of the European Commission infringement procedures, some of which led to the ECJ decisions, the most controversial provisions have been amended or shelved entirely (For the first position see, Z. Szente [14]. For the second one, F. Hoffmeister [15, p. 231] and also J. Nergelius [16, p. 307–308]).

The Polish case is different as until October 2015 it was difficult to find a stable and cohesive ruling majority because of the political framework and the electoral system. In fact this was the first time in the history of the former communist Poland that a one-party Government was formed. Another political aspect that is worth noting is that the centre-left forces are completely unrepresented in parliament (which has not happened in Hungary).

Despite the differences in party and electoral systems, in both countries there is a majority conservative Government with overwhelming power. But while FIDESZ has had a constitutional majority since 2010, the PiS could limit itself to implement its legislative program and take advantage of some mistakes of the old laws regulating the activity and composition of the Constitutional Tribunal, such as the election of constitutional court judges by a simple majority of the Sejm (this is a communist heritage as the election by a simple majority was provided for in the Sejm Regulation of 1986). As we know, this procedure had many negative consequences.

The case of Romania is very peculiar. The Romanian constitutional crisis – with the involvement again of European institutions, primarily the European Commission and the Venice Commission – "exploded" rather suddenly between June and July 2012. The crisis was resolved almost immediately even though it was preceded (and followed) by unresolved problems of political and institutional nature.

Let us just summarize the main events. In February 2012 a political crisis occurred, which led to the resignation of Prime Minister Boc belonging to the same party as President Basescu (i.e. PDL, the democratic-liberal party). After a failed attempt to appoint a caretaker Government pending elections scheduled for December 2012, the centre-left parties (USL, Social Liberal Union) managed to form a new Government headed by Victor Ponta in May 2012. The new Government, while continuing the same austerity policies as the previous one, soon found itself in open conflict with President Basescu and tried to invoke his suspension by Parliament and then by popular recall.

The new Government very rapidly introduced a number of measures affecting the principle of separation of powers. It adopted a series of emergency orders circumventing parliamentary procedures, ignored the Constitutional Court's ruling that prohibited the Prime Minister to represent the Government in the European Council without the express authorisation of the President (justifying it with the excuse that the ruling had not been officially published), removed the ombudsman and replaced him with an individual loyal to the ruling part[1], limited the Constitutional Court's competences through an emergency order[2], withdrew the right of Parliament to manage the Official Gazette, openly criticized the Constitutional Court, etc. These are behaviours and acts directly or indirectly targeted against the President (and against the Constitutional Court, perhaps not entirely incorrectly perceived as favourable to the President), which was suspended by Parliament at the end of this "crusade". To defend themselves against these acts Basescu (who considered himself a victim of a real coup d'état) and the Court have invoked the protections provided by European institutions.

Even in this case we must consider the constitutional crisis of the summer of 2012 in a wider context. We must examine the limits of the transition to democracy and the flaws of the 1991 Romanian Constitution, adopted in haste by former communists suddenly recycled in a democratic "revolution" and with a highly unbalanced institutional system. Despite the constitutional amendments of 2003, the political and institutional balance between the President on the one hand and the Prime Minister, the Government and the parliamentary majority on the other hand, continued to be uncertain, as evidenced by the involvement of the Constitutional Court on several occasions even before the summer of 2012. To all this we must add a very different political context from that of Hungary and Poland. Romanian politics has

[1]The ombudsman is the only institution allowed to challenge a priori the emergency orders of the cabinet before the Constitutional Court.

[2]This would be excluded by the Romanian Constitution as outlined in the opinion of the Venice Commission adopted at its 93rd Plenary Session (Venice, 14–15 December, 2012), in *www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)026-e*.

never had the problem of "tyranny by the majority". In fact, because of the electoral system, the party system, the ethnic composition of the population, a political climate marked by corruption scandals, transformism and general instability, the shelf life of Romanian cabinets has always been short and unstable. Under President Basescu (head of State from 2004 to 2014) the political situation became more complicated because of the President's strong leadership, coinciding in the summer of 2012 with the involvement of European institutions. The latter tried to settle what looked like a real struggle for political power with no holds barred. The Constitutional Court itself, while painted as the last bulwark of democracy and the rule of law, has over the years issued contradictory rulings, been often in favour of the head of State without clear legal grounds. But in the case of Romania the pressure levers of the EU were much more effective. Considering the political and democratic immaturity of the country, after its hasty admission into the Union in 2007, a post-admission monitoring mechanism, the "Cooperation and Verification Mechanism", has been put in place for both Romania and Bulgaria. This will especially target the fight against corruption and the independence of the judiciary and mandates six-monthly verification reports.

The three countries examined are not comparable in terms of their historical and democratic development. However, from a constitutional perspective each has specific defects of its own in terms of their constitutional engineering. In Hungary, the procedure for amending the Constitution and for adopting a new Constitution is the same. The process is easy to implement not only in terms of the majority required but also because the initiative for amendments is easy to put forward as it only requires a request from a single deputy and there are no explicit limits to the constitutional amendments. Yet, there is an excessive use of cardinal laws and the rules for the election of constitutional judges have been simplified for the benefit of the ruling majority. In Poland the constitutional judges are elected by one house of the Parliament based on a simple majority (the proceeding is required by law but not by the Constitution). Also, the requirements to elect judges provided by the Constitution are quite vague. In Romania the roles of the President and the Prime Minister are not well demarcated and this causes problems even outside of cohabitation (a distorted and incomplete copy of the French model). There is also an excessive use of emergency decrees by the Government.

The role of the constitutional courts in the post-communist transition

Considering that in all three countries constitutional courts have been under attack by the political majority, it is worth reflecting on their role in the post-communist transition. Most of them had a very active role, which has repeatedly brought them into conflict with the Government in office.

This strong role has been possible for a number of reasons. First, some of these courts have been super-equipped and have often delivered judgments on the relationship between the branches of government, so determining the real functioning of the form of government, thereby counterbalancing the shortcomings of the constitutional text and of the political system. The access to the courts is very broad. In some cases the constitutional courts have been forced to work with interim or otherwise incomplete constitutional texts, or with constitutional "patchworks" (as in Poland until 1997) so they had a great deal of freedom of action (and made free use of international standards on human rights). The "moral" legitimacy of constitutional judges has been a relevant factor in some countries in order to increase the authoritativeness of the courts [17].

The powerful role of the courts has been criticized by some commentators because it was perceived they had overshadowed the legitimacy of new parliaments [18, p. 22]. In fact such a leading role was acceptable and necessary perhaps only in the first few years following the transition.

The common features of the so-called "fourth generation" constitutional courts, however, should not overshadow the differences between countries. The Polish Constitutional Tribunal arises from a communist concession to the opposition forces and had a series of functional limitations until 1997. Only after 1997–1999 was there a definitive consecration of res judicata for the judgments of unconstitutionality of laws. The Constitutional Tribunal was therefore of fundamental importance in the terminal phase of the communist period, especially from the symbolic point of view, but it was not as disruptive an institution as in the Hungarian case.

The Hungarian Constitutional Court was even called a "Supreme moral authority analogous to a Politburo" (in an interrogative form [19, p. 44]), both with reference to its width of competence, and to the fact that through the principle of human dignity extrapolated from the "invisible Constitution", the Court addressed and resolved many sensitive issues from the perspective of human rights. The Court ensured that the transition to democracy was not monopolized by a particular interest group. All this despite (or perhaps because of) the absence of a complete Fundamental Law as a basis for a wide and stable national unit.

The Romanian Constitutional Court, according to the original version of the 1991 Constitution, had few competences and the parliament was the final arbiter on the constitutionality of laws. Although the situation has improved since the 2003 constitutional amendments, the Romanian Court had never had powers or authority comparable to the Hungarian and Polish ones and it also had various responsibilities in the 2012 constitutional crisis.

Advantages and drawbacks of European democratic conditionality

Coming to the issue of European Union democratic conditionality, with the admission of the post-communist States the peculiarities of these countries have not been taken into account, especially the welfare state crisis. Instead values and conditions have been imposed. The "negative" liberal constitutional model, adopted in reaction to the communist past, was not suitable for this context, at least not initially. The great sacrifices required to "join Europe" were not rewarded with a treatment equal to that reserved to the other member States. This has encouraged, in many cases, a jealous attitude to national sovereignty. The importing of Western models has not proved successful in all respects. While for the catalogues of rights there was no alternative, more gradualism in the dismantling of social benefits and a measured transition to a market economy would have been preferable.

As for the membership in the Council of Europe (and the influence of the Venice Commission and the Court of Strasbourg), conditionality was less stringent than in the EU, because of the different purposes of this regional organization, meant primarily during the last 26 years to promote in general terms "rule of law, democracy and human rights" in the new members of the communist tradition.

A limit observed during the conditionality process is the fact that the difference between democracy and rule of law has not been sufficiently explained. The triad "rule of law, democracy and human rights" have not been perceived as inseparable since in Romania, Hungary and Poland the Governments have invoked the principle of democracy as a means of using the majority will of the voters to contest a legalistic approach to the rule of law.

As for the involvement of European institutions, as authoritatively argued [15, p. 231] in Hungary, Romania and Poland there have been grounds for the application of Article 7 TEU, the so called "nuclear option" which could entail the suspension of voting rights' of the Member States. But the EU has adopted different solutions in the three cases as a result of purely political considerations. All of this emphasises the weakness of the EU, especially when combined with the many legal and political problems that art. 7 raises (e. g. it is not clear what is meant by "serious and persistent", i. e. "systemic", risk of violation of the rule of law). Furthermore, in all three cases the approach of the European institutions was different and this is likely to weigh against the EU's credibility in actively protecting and upholding EU values[1]. There is also a problem of competences, because the principle of the rule of law is not part of the Union's powers despite being a "supposed" acquis.

Conclusions

As we have tried to demonstrate so far, an out-of-context analysis may not show all aspects of the question of "the rule of law violation in new EU Member States". An analysis that includes a diachronic (historical development) and synchronic comparison (relative to other countries in the region), combined with the inconsistencies and limitations of European conditionality could help answer the main question which is: Is what happened to or is happening in the new EU members the effect of a failed transition or is there a case to be made for the concurrence of guilt on the part of European bodies?

Secondly, we must avoid making general remarks given that Hungary and Poland were considered first-in-class until recently. If the Polish case is so striking even more so than the Hungarian one, it is because its democratic stability was taken for granted. We must also distinguish the inconsistencies in the constitutional text from those of the political system (including the electoral system) and the "resilience" of the constitutional culture that has arisen so far, an aspect that is very well described by Solyóm in the Hungarian case [1].

We must therefore look back at the modalities and protagonists of the transition and the following period. Some negative things come out of the transition period such as certain opaque institutional mechanisms whose danger over time is compounded if left in the wrong hands. As mentioned above, the hostility towards the role of constitutional courts, both in Poland and in Hungary, is based on their counter-majoritarian role and in particular on their potential threat to the parties currently in power. But if it is easy to identify the reasons for this offensive against the court in the Hungarian case given, as mentioned earlier, its high prestige and the fact that it virtually dictated the constitutional law of the transition period (Solyóm), it is less obvious in the Polish case. Here, the roots of the conflict are to be found not so much in the authoritativeness of the Tribunal but rather in a series of rulings that it delivered in 2006–2007 during the first Government ruled by PiS.

This leads us to a number of further reflections concerning the post-communist constitutionalism in general, and that of the most advanced countries, such as Poland and Hungary, in particular. Firstly, we need to

[1] *Hungary*: Infringement procedures for individual violations of the EU law; *Romania*: Strong pressure thanks to the Cooperation and Verification Mechanism or the CVM. Sanctions applicable under the CVM mechanism do not carry out, such as those provided for by the art. 7, the suspension of the voting rights in the European Council; *Poland*: rule of law mechanism.

consider the limits of post-communist constitutional engineering. Secondly, the mistakes due to the haste of post-communist constituent legislatures. Finally, the clauses for the protection of democracy and the rules on anti-constitutional parties: post-communist constituents took into account a way of precluding a return to the past, but such remedies, although strong, remain in the hands of constitutional courts.

Given this complex context, the peculiarities of the countries of Central and Eastern Europe particularly from a constitutional point of view, will remain for a long period, because they are based on the "differential aspects" of an ethnic-national, institutional and social nature. In addition, their economic transition was based on a great injustice, i. e. the appropriation of public assets by the old nomenclature that is, by those who already enjoyed significant privileges in the past. Also individualism and egalitarianism are not good for a society so socially and ethnically fragmented.

How can these countries get over these crises? I do not believe they are insoluble. We need to wait for the electoral turnover, and hope (paradoxically) in the reunification of the leftist (former communist) forces, while continuing with moral and perhaps economic persuasion.

If there is a crisis of constitutional democracy in new EU Member States, this is as much due to the limits of the EU itself and of the entry criteria for admission into the Union. The role of the Council of Europe proves to be equally weak, unless you consider it, as it indeed is, a venue for the continuous promotion of democratic development. But you cannot promote democracy by force, or with the threat of sanctions or constant criticism. Applying or threatening to apply sanctions is likely to create new cleavages in Europe. Undoubtedly it takes time for the "sedimentation" of democratic values. But we are talking about European countries where, in spite of a troubled history and earlier periods of authoritarian rule, constitutional development is generally solid and in some cases was started before the actual collapse of the communist regime.

References

1. Von Bogdandy A., Sonnevend P. (eds). *Constitutional Crisis in the European Constitutional Area. Theory, Law and Politics in Hungary and Romani*a. Oxford ; Portland, 2015.

2. Perju V. The Romanian double executive and the 2012 constitutional crisis. *Int. J. Const. Law.* 2015. Vol. 13, No. 1. P. 246–278.

3. Di Gregorio A. Lo stato di salute della rule of law in Europa: c'è un regresso generalizzato nei nuovi Stati membri dell'Unione? *DPCE online.* 2016. No. 4. P. 173–202.

4. Kochenov D., Pech L. Monitoring and Enforcement of the Rule of Law in the EU: Rethoric and Reality. *Eur. Const. Law Rev.* 2015. Vol. 11, issue 3. P. 512–540.

5. Costa P., Zolo D. (eds). *The Rule of Law: History, Theory and Criticism.* [Netherlands], 2007.

6. Pech L. *The Rule of Law as a Constitutional Principle of the European Union*. Jean Monnet Working Paper 04/2009.

7. Sellers M., Tomaszewski T. (eds). *The Rule of Law in Comparative Perspective*. [Netherlands], 2010.

8. Krygier M. Rule of Law. In: Rosenfeld M., Sajo A. (eds). *The Oxford Handbook of Comparative Constitutional Law.* Oxford, 2015. P. 233–249.

9. Adams M., Meuwese A., Hirsch Ballin E. (eds). *Constitutionalism and the Rule of Law: Bridging Idealism and Realism.* Cambridge, 2016.

10. Venice Commission. *Report on the rule of law*, 25–26 March, 2011. URL: www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)003rev-e (date of access: 30.07.2017).

11. Venice Commission. *Rule of Law Checklist* CDL-AD(2016)007, 18 March, 2016. URL: www.biicl.org/documents/897_vc_rol_checklist_-_cdl-ad2016007-e.pdf?showdocument=1; ODHIR and the Rule of Law, www.osce.org/odihr/103448?download=true (date of access: 30.07.2017).

12. Massias J. P. *Droit constitutionnel des Etats d'Europe de l'Est*. Paris, 2008.

13. Di Gregorio A. *Epurazioni e protezione della democrazia*. Milano, 2012.

14. Szente Z. Challenging the basic values-problems in the Rule of Law in Hungary and the failure of the European Union to tackle them. In: Jakab A., Kochenov D. (eds). *The Enforcement of EU Law and Values. Ensuring Member States' Compliance*. 2017.

15. Hoffmeister F. Enforcing the EU Charter in Member States. In: von Bogdandy A., Sonnevend P. (eds). *Constitutional Crisis in the European Constitutional Area. Theory, Law and Politics in Hungary and Romania.* Oxford ; Portland, 2015.

16. Nergelius J. *The Role of the Venice Commission in Maintaining the Rule of Law in Hungary and in Romania*. Oxford ; Portland, 2015. P. 307–308.

17. Di Gregorio A. *La giustizia costituzionale in Russia*. Milano, 2004.

18. Holmes S. *Back to the Drawing Board. East Eur. Const. Rev.* 1992. Vol. 2, No. 1. P. 22.

19. Klingsberg E. Safeguarding the Transition. *East Eur. Const. Rev*. 1993. Vol. 2, No. 2. P. 44.

Received by editorial board 24.06.2017.