
Book Review

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**The Impact of European Institutions on the Rule of Law and
Democracy: Slovenia and Beyond**
Authored by Matej Avbelj and Jernej Letnar Čerňič
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In the discourse on the state of the rule of law and democracy in the EU member states, Hungary and Poland are particularly in the spotlight. Europe is concerned about the regression of the two countries and is trying to find a way to stop this. However, there is another country in the EU that faces backsliding: Slovenia. The monograph *The Impact of European Institutions on the Rule of Law and Democracy: Slovenia and Beyond* tries to close the gap of the less researched and practically missing literature about Slovenian democracy and rule of law. This analysis of Slovenian constitutional democracy was written by two professors of the New University of Slovenia, Matej Avbelj and Jernej Letnar Čerňič, with one chapter contributed by Gorazd Justinek.

The first two chapters rapidly trace the course of Slovenia's history; from its independence in 1991 to the economic crisis of 2008 and through its process of integration as a full member of the international community. In addition, the concept of constitutional democracy is explained, as well as how it was first implemented in the country. Slovenia achieved good results in terms of foreign policy very quickly, becoming by 2004 a full member of the EU and NATO. For this reason, since its independence, it has theoretically been an example for other countries to follow. From 2008, however, Slovenian political and economic unsustainability was revealed. It became apparent that the implementation of constitutional democracy and the rule of law were not being applied in practice in the country. This was because it needed support from the population which was not being acquired.

The 3rd chapter exposes the reasons for the failures of the rule of law and constitutional democracy in Slovenia. After democratisation, Slovenia tried to adopt measures to break away from totalitarian communism. However, transnational justice has so far been inefficient due to the wide ranging influence of the political elites in society. Moreover, Slovenia has had, throughout its history, difficulties moving from the rule of law *de jure* to the rule of law *de facto*, meaning that they have not been able to operationalise the laws in a practical way.

As mentioned previously, Slovenia experienced good political-economic integration during the first 15 years after its independence, but then this growth stopped. Chapter 4 continues along this line by explaining the main reasons for this shock, after 2008, which

led to a very large economic recession with more than 80% public debt in 2015. Slovenia, unlike other countries such as Slovakia or Estonia, opted for a gradual transition to a constitutional democracy, which limited its long-term growth and the possibility of reforms. In addition, during those years the country had a negative attitude towards foreign capital, registering one of the lowest shares of FDI among OECD countries.

Chapter 5 exposes the current crisis regarding human rights, rule of law and constitutional democracy in Slovenia. It is argued that national human rights institutions must act on the basis of pluralism but that this differs greatly from reality, because unequal protections of human rights can be observed due to the political bias of the actors. Although according to its constitution Slovenia has a full separation of powers, judicial power is subject, in most cases, to the legislative and executive powers. This is where the lack of impartiality towards the judiciary is hinted at, which is practically not taken into account when it comes to preserving their rights.

Chapter 6 focuses on the contribution of the judiciary to the rule of law in Slovenia and its faults for optimal operation. According to this chapter, the main weak points of the judiciary in the country are the lack of judicial independence, and consequently of impartiality, the presence of judges who violated human rights during the communist system and the infringement of the right to a trial in a reasonable time. Moreover, cases and reforms of the judiciary, such as the Lukenda case developed by the ECtHR in 2005, which have turned out to be inefficient in practice, are also presented.

In Chapter 7 the ideal democracy is described as free and equal; the legitimisation comes from the people (demos). 2500 of the latter were erased from the register and stateless in 1990 during the transition from Yugoslavia to the independent state of Slovenia. A look at the party landscape shows it is not set up pluralistically and it consists of many weak and financially dependent parties. The voters are mostly not aware of the political programs and vote based on the leader. The growing apathy of the voters derives from the little influence they have through elections; this paves the way for populism. With a look on the output legitimacy the Slovenian state seems more like a captured kleptocratic state than a democracy. Slovenia's government is stuck in the communist mindset.

The next chapter points out that the media in Slovenia fails to operate as the fourth branch of government due to the politically monopolised and biased media landscape. Even though freedom of press is formally protected by the Slovenian constitution, the implementation in practice fails. The media should play an important role in a democracy by watching the government to uncover grievances, but this does not occur. The Slovenian media not only remains silent about political irregularities but also affects the electoral process by influencing the citizens. This condition can be bridged to some degree by social media or other independent investigative portals, but further measures must be taken.

A positive relic from the communist era is described in Chapter 9. The chapter focuses on socioeconomic rights; the Slovenian welfare system is compared to other countries in the world ranked above average. At a closer look there are discrepancies between theory and practice. Whereas the Central and Western regions of Slovenia are wealthy, in the poorer Eastern parts the residents receive more social assistance and have a higher risk of poverty and poor health. To achieve equal living conditions in Slovenia, a functioning constitutional democracy which translates the socioeconomic right properly into practice is required.

Chapter 10 explains the Council of Europe and its influence on the Slovenian Rule of law. In 1990 the Venice Commission was founded within the Council of Europe to support Central-Eastern countries in their transition from communism to constitutional democracy. The Venice commission provides experts' opinions on specific questions concerning constitutional law and rule of law. Slovenia asked once for these opinions in 2000 regarding legislative elections in the country, and the answer upset Slovenian politicians. Furthermore, the European Court of Human Rights, another institution of the Council of Europe, found over 300 violations of the European Convention on Human Rights by the Slovenian government. These violations can again be attributed to the lack of transfer of formal standards into practice. Nevertheless, it can be said that the normative influence has reached all three branches of government.

Chapter 11 points out that the influences of the EU on constitutional democracy in Slovenia have both positive and negative elements. It strongly depends on the timeframe that is observed, but it can be said that the positive influence of the EU was greatest during the pre-accession phase. Before Slovenia was a member of the EU, the desire for independence and participation in the European context was great. Therefore, the government and the citizens worked hard together to adopt various reforms. Shortly after joining the EU, Slovenia was seen as a reliable and trustworthy member state, but this perception of it did not last long. When the Slovenian authorities were no longer being watched, it was easy for them to revert to previous practice. After the economic crisis started and EU sanctions were issued to prevent Slovenia from receiving a bailout, the EU-scepticism grew among the politicians and citizens. However, the EU should have taken stronger action earlier and not turned a blind eye on practices that need to be criticised and monitored. Nowadays, the number of young and educated citizens that leave Slovenia due to dissatisfaction with the government is rising and reduces the possibility of a paradigm change.

The last chapter draws conclusions and proposes suggestions on how to improve Slovenian Democracy and Rule of Law. First, for a country to be resilient and resist political shocks, the state has to have good institutionalisation, a certain degree of active citizens that participate in political affairs and a healthy privatised economy. It must be recognised that it is more difficult for the countries of Central Eastern Europe to achieve resilience because of their short democratic history. This can lead to backsliding to old systems and the existence of two realities; the reformed theoretical one and the old practical one. It is important to address this issue on national and supranational level as well as with long-term and short-term measures. The latter must be transferred into long lasting reforms. On a supranational level, the Council of Europe must no longer turn a blind eye to the undesirable behaviour of Central European countries and must fight arbitrary violations of human rights and the rule of law. Further, this chapter presents concrete proposals to improve Slovenia's constitutional democracy. The proposals are organised by impact area and represent a comprehensive package of measures. It addresses the legislative, executive and judicial branch as well as the "fourth branch" also known as the media. Additionally, it includes measures regarding the wider public and the private sector.

To sum up, the monograph by Matej Avbelj and Jernej Letnar Čerňič tries to close a gap of the less researched and practically missing literature about the declining rule of law and democracy in Slovenia and transfers the gained knowledge into the broader area of Central East European countries. The main findings of the authors are the discrepancy of formal rules and informal actions by the politicians. This is the result of the hasty

transition to constitutional democracy, but also of the intended slow transition in the form of a lack of lustration measures. The book critically describes the role of the EU as helpful at the beginning but in the long run not cooperative in implementing deeply rooted democratic institutions. This is as it looked the other way when the constitution was violated. The country is thus left to rely on the political education of the new generation to banish communist thinking from politics and eventually implement a functioning democracy. Therefore, Slovenia, a very new country in terms of democracy, still has a long way to go.