

LETTER TO THE EDITORS

Matej Avbelj, Jernej Letnar Čerňič, and Gorazd Justinek

Dear Editors,

We are writing to you in response to the review by Jaka Kukavica of our book on *The Impact of European Institutions on the Rule of Law and Democracy: Slovenia and Beyond*. We are honoured and grateful that your esteemed journal published the review and, in the best possible academic tradition, do not want to engage with the author's own evaluation of the book. As the old maxim goes, *de gustibus non est disputandum*.

However, to ensure the highest standards of academic quality that your journal certainly subscribes to, at least two factual errors in the review need to be pointed out.

First, it is plainly not true that the book 'fails to define a normative standard against which the situation in Slovenia should be measured'.¹

This normative standard is constitutional democracy, in Habermasian words: a paradoxical union between two contradictory principles: democracy and the rule of law. The gist of constitutional democracy as a theoretical and normative concept is explained already in the introductory chapter and in particular chapter two, whereas the individual elements of democracy and the rule of law are then closely and carefully examined in individual, specific chapters, discussing the standards as stipulated on books and as actually, e.g. sociologically, carried out in practice.

Second, the review untruthfully argues that 'the book fails to identify these mythical post-communist elites and leaves them completely anonymous

¹ Jaka Kukavica, 'Matej Avbelj and Jernej Letnar Čerňič, *The Impact of European Institutions on the Rule of Law and Democracy: Slovenia and Beyond* (Hart 2020)' (2022) 14(1) *European Journal of Legal Studies* 267, 275.

(with very few exceptions)'.² Again, this is plainly incorrect in descriptive terms. The book draws directly from the cutting edge Slovenian sociological research explaining the 'elite retention rate' and quotes directly from Bojan Bugarič's work who clearly identified this post-communist elite as follows:

Second, many 'rule of law' institutions (courts, the civil service, and the media) have been deeply politicized by the former 'nomenclature officials.' Instead of defending the rule of law, these institutions, unable to withstand the strong political pressure of their 'principals,' were engaged in legal enforcement favouring partisan political interests. Since the left-liberal political bloc (former communists (Social Democrats, SD) and the reformed Communist Youth Organization (Liberal Democracy of Slovenia, LDS)) had dominated the political space for almost fourteen years, this strongly impacted the formation of the Slovenian elite in general. Consequently, the majority of Slovenian elites gravitated towards the 'retention' elite, represented by the LDS and SD political parties. This elite managed to create better contacts with the business sector, media, academia and, most importantly, with a substantial part of the public sector, including the judiciary, civil service, state-owned companies, etc.³

At the same time, it is true that beyond this general framing of the post-communist elite, the book has not engaged in name-calling, because this was not its object and purpose, and it would be, at the same time, totally uninteresting for the international audience which is unfamiliar with the Slovenian socio-political sphere and individual actors.

Dear Editors, it goes without saying that we as the authors do accept full responsibility for any factual and theoretical errors contained in the book, but the highest academic standards and the academic fairness in particular do not allow fallaciously attributing to the authors' those errors that not they,

² Ibid 276.

³ Bojan Bugarič, 'Crisis of Constitutional Democracy in Post-Communist Europe: "Lands In-between" Democracy and Authoritarianism' (2015) 13 *International Journal of Constitutional Law* 219, 229 (citations omitted). See Matej Avbelj and Jernej Letnar Čerňič, *The Impact of European Institutions on the Rule of Law and Democracy: Slovenia and Beyond* (Hart 2020) 26ff.

rather the reviewer has committed. It is for this reason that we request to publish this response in your journal.

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