

ABSTRACTS

ESSAYS

Anna Unger criticizes current conceptualizations of the Hungarian political system. She argues that instead of calling it ‘plebiscitary leader democracy’ or ‘competitive authoritarian hybrid regime’, it can be best described as electoral autocracy, based on Andreas Schedler’s theory. The paper shows how the patterns of institutional design and institutional manipulations described by Schedler appear and function in the Hungarian government’s politics, and how they distort and manipulate electoral politics and its wider environment (like the party system, media, elected offices). The author thus emphasises the need for clearly differentiating between hybrid and authoritarian regimes. While in a competitive authoritarian hybrid regime there are real democratic elements, and there is always a chance to take a turn towards democratization, the system of electoral autocracy has only democratic-like, but strongly manipulated features which function as a façade of democracy, and cover the real face of autocratic governance.

Eszter Bodnár and János Mécs studies the jurisprudence on voting rights. The Hungarian Constitutional Court is supposed to have a pivotal role in defending the right to vote. However, as they show in their study, the recent case law of the court between 2014 and 2018 questions that it would be willing to carry out this task. The analysis shows that both at the admissibility stage and when deciding on the merits there are failures that lead to the insufficient protection of the right. In the study the authors endeavor to highlight the most important characteristics and flaws of the case-law focusing on the period between the elections held in 2014 and 2018, thus providing an opportunity for the fluid case-law to stabilize and consolidate in a manner that is in line with the constitutional task of the body.

Emese Pásztor draws the attention to a paradox related to the enforcement of the notion of family enshrined in the Hungarian Fundamental Law. Even if several scholars have already justified that the notion of family enshrined in Article L (1) is incompatible with the European human rights standard, the provision still forms an effective part of the Fundamental Law. By flashing different examples of the notion of family introduced by different branches of law on different levels of the Hungarian legal system, Pásztor argues that – from a rule of law perspective – the constitutional notion of family shall provide a consistent framework for the interpretation of these. Based on the analysis of the relevant case law of law enforcement bodies, the study concludes that currently no such systematic relationship can be demonstrated. This lack of connection is definitely desirable considering the level of protection provided for fundamental rights, but it is also detrimental from the angle of the rule of law and the implications entailed by the legislative hierarchy. The study argues that by loosening the restrictive approach of the constitutional notion of family, the demands of formal and substantive constitutionality could be equally acceded.

FORUM

Orsolya Salát in her short essay originating from a Facebook post raises the question of conceptual and linguistic frames of lawyers’ public, non-litigative expression in a condition where rule of law has long ceased to be a defining feature of the legal system. She argues that lawyers risk legitimizing instead of criticising the government if they stick to the linguistic and mental frames and standards which are meant to structure lawyerly debate in a normal rule-of-law state, especially if the lawyerly perspective, which has its place in courtrooms, is presented as an all-encompassing view about reality.

In his essay, Gábor Halmai argues that the preservation of the legality of a non-rule-of-law constitutional system such as the current Hungarian one may serve the establishment, or, in the case of Hungary, the re-establishment of a regime governed by the rule of law. Similarly to the pre-1989 situation, it is worth preserving formal legality of the constitutional law in the hope that the current non-rule of law constitutional law contributes to the emergence of a constitutional culture and a constitutional system governed by the rule of law.

In his essay, Viktor Zoltán Kazai focuses on the difficulties concerning the analysis of the recent jurisprudence of the Hungarian Constitutional Court. Kazai argues that in an illiberal political regime, such as Hungary, legal scholarship should concentrate more on the socio-political environment in which the Constitutional Court operates to adequately evaluate its decisions. To illustrate his argument, Kazai briefly analyses the decision of the Constitutional Court to suspend its proceedings in the case of the amendment to the Act on higher education (“lex Central European University”).

Zoltán Fleck argues that under circumstances of new authoritarianism, lawyers, human rights defenders and the academic community can play a crucial role in understanding transitions, maintaining norms as well as democratic and rule of law oriented discourses. They can voice arguments and offer interpretations that influence and shape the individuals’ knowledge and understanding of law, even against inhuman legislative tendencies.

Gábor Mészáros focuses on the problem of legality and the rule of law in an autocratic political regime. The author tries to understand the possible ways in preserving democratic and constitutional values in a “rule without law” system. Is it possible to use the “rule of law” term in an anti-constitutional model? Which is the most serious threat if we’d like to preserve legality in a long term? Shall we accept that the rule of law means following the formal legal mechanism and therefore we can say, that with a two-third majority every amendments of the Constitution will be legal without doubt? Or it is possible to analyze the rule of law in a substantive manner and therefore one can say that legality means much more than a detailed legislative mechanism.

Agnieszka Grzelak presents the dilemma about the legitimacy of the Polish Constitutional Tribunal. She unfolds three cases in which the Polish Ombudsman tries to avoid decisions on his abstract applications by members of the Tribunal who have been chosen contrary to the Constitution.

DOCUMENTS AND COMMENTARIES

Róbert László provides a critical overview of the recent changes that have been made to the rules on electoral procedure. The author argues that even if a lot of small-scale rules were changed or refined in order to improve the electoral procedure, major amendments focused primarily on those issues that previously caused inconvenience for the ruling Fidesz party. These problems were solved in the interests of the Fidesz, while many genuine anomalies were not addressed at all.

Éva Balogh’s article examines the recent developments in the practice of the Hungarian Constitutional Court regarding criticism of public figures. The analysis shows that case-law of the Hungarian Constitutional Court in the full constitutional complaint procedure is controversial regarding the measures of criticism of public figures. There are uncertainties in the reasoning of the Court regarding the interpretation of its relation to its own previous case-law, the formation and the application of new measures and the determination of further constitutional requirements to the ordinary courts.

AFTER DECISION

In this column summaries of some of the recent decisions of the European Court of Human Rights, and the Hungarian Constitutional Court are presented.

RIGHTS DEFENDERS

In her essay, Lilla Farkas, an emblematic figure of Roma rights litigation in Hungary presents a subjective overview of her experiences with Roma rights protection. She provides a critical assessment of the policy choices along the road, influenced by American transplants and donor organizations.