

already developed the mechanisms of self-regulation, and the absolutist state. All the achievements of the system of rule of law, i.e. its elements that have been integrated in the constitutions of Central and South Eastern European states, were the result of a long-standing process of breaking the absolutist forms of governance. In that process political representatives of the civic society, that had developed both economically and culturally meanwhile, played a key role. As the advocates of different interest groups they were the source of powerful, sometimes even forcible pressure, and played the creative role of constructive imagination.

The case of post-communist states, particularly in the region of South Eastern Europe, was quite the opposite. They developed a traditional relationship between a weak society and a strong state, i.e. authoritarian regime. Accordingly, these countries not only failed to embrace the principle of rule of law as a basic constitutional tenet in the long period of their statehood, but could not ensure its solid and irreversible implementation when they eventually did so. Once the momentous of political and constitutional changes did take place in these states, allowing the principle of rule of law to be firmly woven into the positive constitutional system, the question surfaced if it could be implemented in the societies struggling with insufficient functional differentiation, weak legal traditions and modest economic growth.

From this point, however, it is impossible to define, either in principle or politically, the historic sequence of events and the duration of a period that gave rise to social conditions which allowed for the system of rule of law to be introduced first, and then constitutionally adopted. An attempt to do so would be a speculative imitation of the history of Western European and North American development, and the project would be doomed to failure. To all appearances, the historic sequence of moves is likely to be different, even though the general situation might seem paradoxical. In South Eastern Europe, the state is to encourage social growth in the liberal spirit and, consequently, create conditions for the system of rule of law. The paradox is that precisely the instance that should be permanently limited by the system of rule of law, is given the authority to create it. In an ideal case, the role of the state is deliberately self-restricting. The state should create constitutional and legal conditions that would allow for autonomisation of the society, not only in the spheres of economic entrepreneurship and a new economic system in general, but also in the domains of human rights, interest-based self-organisation, the affirmation of free political public and the like. The first systemic act in this direction is the promulgation of a new constitution, which affirms the principle of rule of law normatively. Thus the odyssey of the rule of law in these countries has just begun.

II

The only state in the region that is yet to adopt its constitution of discontinuity with the old regime is the Federal Republic of Yugoslavia and, accordingly, its two federal units, Serbia and Montenegro. This observation is true if we do not regard the present-day constitutions, promulgated in 1990 and 1992, as the constitutions of discontinuity, even though they had introduced normatively many elements of the system of rule of law. The fact is that at the beginning of the 1990s no political break with the old system actually took place, which is why the constitutional provisions promoting the rule of law remained a dead letter. It was not before the October overthrow in 2000 that historic and political circumstances allowed participants in that "peaceful revolution" and their political representatives to embark on a total constitutional review as the first step towards a genuine rule of law.