

Bobek | Bodnar | von Bogdandy | Sonnevend [Eds.]

Transition 2.0

Re-establishing Constitutional Democracy
in EU Member States



Nomos

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Michal Bobek | Adam Bodnar
Armin von Bogdandy | Pál Sonnevend [Eds.]

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Preface

In the logic and the counting of this project, Transition 1.0 was the large-scale political, social, economic, and legal transformation that led to the (re)establishment of constitutional democracy in the countries of Central and Eastern Europe after the fall of the Communist rule, culminating in those countries joining the European Union. The would-be members of the European Union had a number of conditions and requirements to meet in order to join first the Council of Europe, and then the European Union. These included the so-called Copenhagen criteria, later transcribed into Article 2 TEU. Those requirements notwithstanding, the moment of constitutional and legal creation in the early 1990s had been unconstrained by international or EU law. Even if naturally seeking inspiration and assistance from abroad, each country exercised a high degree of local choice as to how to deal with its past, how to resolve internal democratic challenges, and how to shape its constitutional and legal future.

The rule of law decay or outright backsliding in some of those Member States meant not only that some of them ceased to comply with their own constitutional requirements. They equally fell short of their commitments under EU law. This has been observed in different statements and opinions by EU institutions and those of the Council of Europe. Even more importantly, it was equally confirmed in a number of judgments of the Court of Justice of the European Union and the European Court of Human Rights. Case law of both of these judicial bodies, together with documents emanating from different EU institutions, and those of the Council of Europe, OSCE and the UN, has put a number of legal constraints in place. It articulated what type of structural, legal, or judicial changes are not permissible in a State that is bound by EU law or by international human rights treaties.

Transition 2.0 is a project about the future. Its central question is as follows: assume that the current governments in those Member States are one day defeated in elections to the benefit of democratically and rule of law oriented political parties. What and how may a new government do in order to re-establish constitutional democracy, as well as repair its membership within the European Union, while respecting the previously imposed European and international constraints as to what changes are permissible within a rule of law governed constitutional democracy? In contrast to Transition 1.0, Transition 2.0 is supposed to happen with the States concerned still members of the European Union and the Council of Europe. In the past years, in the context of backsliding, EU law and other international commitments have mostly played the role of constraints to certain types of systemic changes. They can, however, equally offer tools and assistance for facilitating the way back to full constitutional democracy and repaired EU membership. The various contributions in this volume, reflecting the personal views of their respective authors, explore the constitutional, legal, and social framework of such a Transition 2.0.

Brno, Warsaw, Heidelberg, Budapest
June 2023

Editors

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