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Abstract of the doctoral dissertation

Populistic discourse on law and lawyers

As Slovenian constitutionalist Bojan Bugarič rightly observed, only recently have lawyers started to tackle the idea of populism and its legal implications¹. The more frequent populism phenomenon shows that the rule of law and liberal democracy are at significant risk as their fundamental rules no longer enjoy wide public support². Populists, in their strategies, strive to undermine citizens' public support for the state under the rule of law; that is why it is crucial to convey a study on populist discourse on law and lawyers. In this dissertation, I focus on areas signalled by Bugarič as four pillars of liberal democracy that come under attack by populists. The first pillar is tools and institutions authorised to exercise control over the executive and legislative power³. The second support is the free media criticising populists' activity and perceived by them as the tool in the hands of the elites that try to discredit the 'will of the people.' Civil rights and liberties come as the third target of the attacks from populists⁴. The right to vote is the last element of liberal democracy falling prey to populists, which they reshape for their political benefit⁵. The subject of this dissertation is the analysis of populist discourse on law and lawyers in Poland from 1993 to 2021. After four years since the first free election and failed vetting attempt, decommunization, and judiciary reform, a part of the post-Solidarity camp's politicians used a narrative that created certain myths about the judiciary that inspire contemporary populists till this day, that justify the time censorship. In the conducted

¹ B. Bugarič, *Central Europe's Descent into Autocracy: A Constitutional Analysis of Authoritarian Populism*, „International Journal of Constitutional Law” 2019, vol. 17, p. 609.

² B. Bugarič, A. Kuhelj, *Varieties of Populism in Europe: Is the Rule of Law in Danger?*, „The Hague Journal on the Rule of Law” 2018, vol. 10, p. 32.

³ B. Bugarič, *Central Europe's Descent into Autocracy...*, p. 605.

⁴ Ibidem.

⁵ Ibidem.

discourse study, I have focused on statements about law and lawyers uttered by public actors that researchers recognise as populists⁶, i.e., modern and postmodern populists represented by a camp broadly defined as the United Right. I have narrowed down the discourse study to this group as they gained power and, by applying populist strategies, were able to preserve it; furthermore, during their tenure, a systemic violation of the rule of law was observed⁷.

In this background, the dissertation objective is to answer the following question: 'Is the analysed political discourse on law and lawyers that comes from formations recognised as populist in the academic literature, in fact, a populist discourse upon the meaning of populism adopted nowadays by social sciences?' In other words, the objective of the posed research question is to assess to what extent the rhetoric of politicians recognised as populists-concerning the law and lawyers – shows the characteristics of populist discourse? The further question is whether the vision of law and lawyers implicit in populist discourse may be reconcilable with a liberal concept of the rule of law adopted in Poland after 1989 and binding in the European Union upon Articles 2 and 19 of the Treaty on European Union? I also put forward a thesis that this vision utilised in the discourse as an element of populist strategy, in principle, aims at discrediting the legal environment and all legal protection authorities (at both national and European levels). Effective execution of this populist strategy constitutes a considerable threat to a democratic law-governed state that may result in a lack of public acceptance of the legal practice and the legal protection authorities' activity. The reconstruction of the populist vision of law and lawyers observed in the discourse of Polish populists is the original research input of the dissertation. In order to research the influence of populism on discourse on law and lawyers extensively, the study has built a specific bridge between social sciences that, through their methodologies, study populism and legal sciences that must not stay neutral in the face of the attacks on the rule of law. From the internal axiological legal perspective, this study shows a significant threat to the rule of law populists present.

Chapter I, *Populism in a historical perspective*, is dedicated to a chronological presentation of populism. The first part depicts populism from the Ancient Times to the Middle Ages (which

⁶ Here I particularly have in mind all politicians that the researchers such as Bojan Bugarič, Wojciech Sadurski et al. unanimously acknowledge as populists. See e.g. W. Sadurski, *Poland's Constitutional Breakdown*, Oxford University Press, Oxford 2019; G. Halmai, *Populism, Authoritarianism and Constitutionalism*, „German Law Journal” 2019, vol. 20, iss. 03; N. Lacey, *Populism and the Rule of Law*, „Annual Review of Law and Social Science” 2019, no. 15; B. Bugarič, A. Kuhelj, *Varieties of Populism in Europe: Is the Rule of Law in Danger?*, „The Hague Journal on the Rule of Law” 2018, vol. 10; B. Stanley, M. Cześniak, *Populism in Poland*, [in:] D. Stockemer (ed.), *Populism Around the World*, Springer Nature Switzerland AG 2019

⁷ W. Sadurski, *Poland's Constitutional Breakdown*, Oxford University Press, Oxford 2019

is acknowledged as premodern in reference to this period). In the next point, the definition of the origins of modern populism was presented, considering Russian and American populisms of the 19th century and postcolonial Southern American ones (by the example of Peronism). The subchapter conclusion describing modern populism presents the first Polish organizations of the end of the 20th century and the beginning of the 21st century that laid the groundwork for contemporary postmodern populism. The history of populist movements was summarised by the definition of postmodern populism and the characteristics of its precursors. The conclusion also describes the evolution of the Law and Justice party from modern to postmodern populism.

In Chapter II, entitled *Populism as an object of academic study*, the research focused on presenting the definition of populism assumed by social sciences in terms of three generations of researchers, starting from the authors of classic concepts to contemporary creators of the definition of postmodern populism. The summary of Chapter II provides the assumptions of using the concepts mentioned above and definitions of postmodern populism and their application from the perspective of legal sciences.

Chapter III, *Populism and law – general and theoretical considerations*, presents the law and its origins in the Polish populist discourse and describes selected ideas that may have served as a source of inspiration for Polish populists or can constitute an effective tool to describe the notions presented by them. Further in the chapter, the approach of Polish populists to the legal form and liberal model of the rule of law and the vision of the law itself were outlined.

Chapter IV, entitled *System transformation, transitional justice, and European integration in Polish populist discourse*, analyses the populist discourse of the system transformation of the 90s, transitional justice, and European integration, which populists exploit to create a bone of contention and shape social dichotomy.

The discourse analysis continues in Chapter V, entitled *Selected fundamental rights in the Polish populist discourse*, which discusses the populist rhetoric concerning the fundamental rights that arise emotions and attract and polarise society when used in populist strategy.

Chapter VI, entitled *Execution of populist visions of law and lawyers – review of selected issues*, presents selected legal acts passed in 2015-2021, which means during the rule of the United Right, that may suggest the agency of the populist discourse.

The considerations of the dissertation are closed by the Conclusion that describes the research results, answers to the research questions, and the final conclusion.

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