

Preface to the Second Edition

When the first edition of this book appeared, it was about 15 years after the first transformations of what had been earlier known as the Soviet bloc: the democratic transitions which began in Poland, followed by the collapse of the German Democratic Republic and the reunification of Germany, the “velvet revolution” in Czechoslovakia, the violent collapse of Communism in Romania, the round-table “pacted” change in Hungary, and the snowball effect that followed throughout the whole Eastern part of the Continent. Now as I am writing these words, preparations for the celebration of the 25th anniversary of the first non-Communist government in the post-War history of the region (the Mazowiecki government in Poland, formed 4 June 1989) are underway.

In the 10 years which have passed, a great deal has happened as far as the topic of the book, constitutional courts of Central and Eastern Europe (CEE), is concerned: new decisions in all fields of rights adjudication covered in the first edition of the book have been handed down and, most importantly, constitutional courts changed from novel, almost experimental devices, into fully consolidated, permanent fixtures of the constitutional landscape of the region. This new, second and fully updated edition attempts to take note of the most important developments since the end of 2004 (which was the limiting date of the first edition). Of course, choosing the most important judgments to be included here is an inevitably subjective exercise, and can be criticized as arbitrary – but then the same charge could have been levelled against the original choice of case law described in my first edition, as indeed against any book of this type. I must take full responsibility for this selection.

At the same time, having re-read my 2005 book carefully, and having reflected once again upon its more theoretical arguments and discussion of structural issues, I concluded that I do not see any reasons to modify my general framework and conclusions. Hence, while this second edition attempts to record all the important structural developments and changes, I have not revised much in the first part of the book and in the Conclusions. Most of the changes will be found in the second part, where thorough updating was necessary. My aspiration was to produce a work which can be read as a self-contained and up-to-date book written in 2014 rather than just a new edition of a 2005 book.

There has been one major area of change in the region, compared to the time of completing the first edition, and that is the accession of 11 countries of the region to the European Union, in 2004 (Estonia, Latvia, Lithuania, Poland, Slovakia, Czech Republic, Hungary and Slovenia), 2007 (Romania and Bulgaria) and 2013 (Croatia). The phenomenon of Europeanization which accompanied the accession was incomparably more robust and consequential than earlier Europeanization resulting from the accession of all the countries of the region (except for Belarus) to the Council of Europe, and to the system of human rights protection under the European Convention on Human Rights. However, for the central focus of this book, namely the protection of constitutional rights by constitutional courts, the consequences of accession to the EU are only indirect, so I have decided not to devote a separate section of the book to this issue. However, if readers would like to get acquainted with my views about the relationship between constitutional courts of the region and the EU law, in particular the supremacy of the EU law over national law (including, as some would claim, over national constitutional law), I refer you to my recent detailed study of this issue, in Wojciech Sadurski, *Constitutionalism and the Enlargement of Europe* (Oxford University Press 2012), chapter 3. Readers will find there also a rather detailed analysis of the relationship between constitutional courts of CEE region and the European Court of Human Rights, the adjudicative body within the Council of Europe's system of protection of rights and liberties (id., chapter 1).

In preparing this second, updated edition, I have been helped by some of my colleagues and friends, who provided me with information, comments and advice; in particular I would like to thank Lech Garlicki, Vlad Perju, Jiri Priban, Renata Uitz and Mirosław Wyrzykowski. I have also benefitted from the assistance of two gifted researchers, Margot Brassil and Michał Marek Ziółkowski. I will not be repeating here the names of all those who had helped me with the first edition of my book but I wish to acknowledge, with gratitude, the ongoing inspiration, from conversations, discussions and intellectual interaction on issues related to postcommunist constitutionalism or transitional constitutionalism more generally, with Sujit Choudhry, Adam Czarnota, Stephen Holmes, Ran Hirschl, Sam Isacharoff, Martin Krygier, Patrick Macklem, Leonardo Morlino, Rick Pildes, Michel Rosenfeld, Kim Lane Scheppele, Daniel Smilov, Alec Stone Sweet, Roberto Toniatti, Joseph Weiler and Jan Zielonka. I am very grateful to two remarkable educational institutions: to Sydney Law School, with which I have been permanently and happily affiliated for many, many years, and which provided me with a grant towards writing this edition, and to the Straus Institute at NYU Law School, which offered me a generous fellowship and a great institutional setting at which I completed my work on this edition.

Wojciech Sadurski

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Sadurski, W.

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