

## BOOK REVIEWS

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Vladan Kutlešić, *Les constitutions postcommunistes européennes. Étude de droit comparé de neuf états*, Bruylant, Bruxelles 2009, p. 202.

First, a clarification: *The Constitutions of Former Socialist European Countries – Comparative Study* is a book by Vladan Kutlešić, a distinguished Serbian constitutional lawyer, which appeared for the first time in Serbian language in 2004. As the book attracted international attention, it was published in French five years later by an eminent Belgian publishing house Bruylant.

Comparative constitutional legal studies were extensively developed mostly during the second part of twentieth century. That type of studies have been somewhat rare beforehand, and limited mostly to the research of the so called “great legal systems” (the analysis of English, United States and French constitutions). In the beginnings, the approach typical for political sciences prevailed over the methods of constitutional law. This can be well illustrated by the famous comparative study *Modern Democracies* by James Bryce, in which the author examines six famous democracies in the first half of twentieth century. The wave of new constitutionalism and rapid increase in number of formal constitutions all around the world, enhanced the interest in comparative research. Comparative constitutional law studies became, little by little, more or less, separated from the predominant method of political sciences. Another study, *Modern Constitutions* (1951) by Kenneth Wheare, represented a pioneering endeavour in this direction, and made a powerful influence on Miodrag Jovičić, Serbian “coryphaeus of constitutional comparativism”, as Kutlešić identifies him. The books *On the constitution* (1977) and *Great Constitutional Systems* (1984) by Jovičić still represent the highest achievement of comparative constitutional law in Serbian legal science. By all accounts, Vladan Kutlešić has decided to carry on a mission initiated by academician Jovičić.

The book *Les constitutions postcommunistes européennes – etude de droit comparé de neuf états* (the title of the book in French is some-

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what modified version of the title of the aforementioned Serbian edition) presents, according to the author, the product of his several-years study of the post-communist European countries constitutions. Earlier studies were usually limited to particular constitutional issues or to particular states. A welcome feature of the work is that the author depicts, in a comprehensive and systematic manner, constitutional acts of nine post-communist countries. This makes the work especially handy for reference. He discloses a number of motivating and controversial constitutional topics. The structure of the book reveals some of these issues, as it is well reflected by the chapters' titles: I. Contents, volume and architectonics of the constitutions; II. Preambles; III. Main provisions; IV. Freedoms, rights and duties; V. Constitutional organization (Parliament, President of the Republic, Government, Constitutional Court, courts and public prosecution, other constitutional bodies); VI. Local self-government; VII. Amending the Constitution; VIII. Conclusions.

There is basically no important dissimilarity between Serbian and French edition of the book when it comes to its content, offering a welcome work of synthesis, survey, and fresh observations on many constitutional problems. However, the French edition is more articulated and apparent. Within the chapters there are subtitles indicating clearly to what subject and to what institution they refer to. It makes the text easier to follow, enabling the reader to go directly to the issues he is interested in. Slobodan Milačić, Professor Emeritus at the Montesquieu Bordeaux IV University, who is the author of the preface, considers Kutlešić's selection "not solely extensive, considering the countries he has covered, but also prolific, having in mind the diversity of the cases he unifies" (*Préface*, p. X).

Why did the author select nine post-communist countries (Bulgaria, Croatia, Hungary, Poland, Check Republic, Romania, Russia, Slovenia, Slovakia and Slovenia), avoiding the analyses of the Constitution of his own country? Kutlešić provides a simple answer. The book deals with the countries which "have been stable with regards to constitutional law, as this makes it possible to draw lasting conclusions regarding their constitutional solutions" (*Avant-propos*, p. XVIII). As for the Constitution of the Republic of Serbia, at the time when the initial study in Serbian was written, the 1990 Constitution was in force, pending the adoption of a new Constitution. Certainly, the 2006 Constitution of the Republic of Serbia could have been included in the French edition of the book. The chance to draw up a high-quality analysis of constitutional law with regards to both post-communist Serbian Constitutions (1990, 2006), and to perform their comparison, might have been missed. It could have been a separate part of the study, placed at the very end. Almost certainly, it would not jeopardize the author's basic criterion of selection. It was a good chance to offer the European readers with a possibility to find out, and more importantly to accept, the fact that the 1990 Constitution of

Serbia was in many respects the first post-communist Constitution reverting to the attainments of liberal democratic constitutionalism. In other words, Serbia was not the last post-communist country to adopt a democratic constitution in 2006, as it is usually perceived.

Nevertheless, the study written by professor Kutlešić will present an intriguing piece for the readers from Western Europe, as it is one of the first comparative studies referring to the post-communist countries composed by the author originating from these areas, as Milačić rightly stresses. Milačić also suitably points out that the author confined himself to the “formal comparison” (*les comparaisons formelles*). Followers of the idea of “real” (“live”) constitution, as well as those who claim that it is not possible to draw a line between the norms and reality, might protest that this book does not deal with the actual life and scope of the constitutional institutions. Those who are interested in the real functioning of constitutional institutions in the analyzed countries, will have to search for another book.

This is not a “scrapbook”, but a fine, systematic and informative study relating to the formal constitutions of nine interesting countries. It was written by the constitutional lawyer with a talent for legal reasoning, a researcher who does not wander, but who knows always where he goes. The stated qualities are particularly evident in the French edition. Hence, the praise should be given also to the translator, Mr. Pascal Donjon. Slobodan Milačić, Professor Emeritus of the Montesquieu Bordeaux IV University, also did his best to make the French edition representative and accessible by writing an inspired preface.

French edition of Kutlešić’s book is not only an informative lecture for European readers, but it also represents a strong incentive for new researches of comparative constitutional law in Serbia. The study gives a good example of how a single attempt may serve well to a multiple results – both in the international and national legal science. The book reflects years of serious research and efforts, showing that the way in gaining scientific reputation is not paved mainly by taking part in more or less prestigious international conferences using the same papers (with different titles), or not having them at all. There are therefore only a few fresh and valuable comparable books on the topics of constitutional law in the recent Serbian literature. The author of this review himself feels a bit awkward having to direct a diligent student, looking for the latest books of that kind written by Serbian writers, to the editions written twenty or more years ago. Therefore, there is a hope that some new studies by professor Kutlešić, but also by other renowned connoisseurs of constitutional law, would fill the gap in Serbian constitutional literature, and that they will also gain an international recognition as this one did.