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Democracy versus the rule of law in conditions of disturbed political balance

Jacek Zaleśny[1]

[1] Faculty of Political Science and International Studies, University of Warsaw

Poland

Abstract— **The article advances the hypothesis that republican relations are losing their importance in contemporary states in favour of democratic ones, which are at the same time a façade for globally implemented oligarchic relations. Crises concerning the rule of law and democraticality are taking place in the vast majority of states which until recently were considered to be law-abiding and democratic. To test this hypothesis, the paper uses the comparative method. The processes occurring in the contemporary world provide the background for an analysis of the conflicts taking place in Poland between democraticality and the rule of law. It is shown that a reduction in the rule of law is connected with a return to a socialist understanding of power in which politics prevails over the law.**

Keywords— contemporary states, democracy, rule of law, oligarchization, crises.

I. INTRODUCTION

Today's world is witnessing a process in which the globalization of power relationships is being deepened and extended. Alongside a weakening of global and regional powers, global private law entities are implementing global strategies to accumulate and monopolize economic relations on the global scale, a phenomenon which was accelerated during the pandemic period. Such entities are imposing their own rules of conduct, ones that are not neutral towards legal and political relations (Młynarska-Sobaczewska & Zaleśny, 2022).

Parallel to this process, there is an outflow in the rule of law and, to a significant degree, the development of a façade of democraticality. Just as Samuel Huntington wrote about waves of inflow and outflow of democracy, a similar process can be observed with regard to the rule of law or economic relations: inflows and outflows of economic freedom.

With reference to the typology of Aristotle (Aristotle 2021), it can be said that in contemporary states republican relations are losing out in importance to democratic relations, which are at the same time a façade for globally implemented oligarchic relations described above.

What is taking place globally overlaps with processes occurring regionally and locally, within the frameworks of particular countries and taking account of their local character. Such a process is occurring in Poland in the form of a recurrence of socialist relations based on the principle of democratic centralism and legal nihilism.

In the conditions prevailing in Poland today, one can speak of a reduction in the rule of law while democraticality is maintained, but the reservation has to be made that the maintenance of democraticality is no longer certain. This is suggested, in particular, by remarks made by the chairman of the ruling party that there is a risk of the next parliamentary election being rigged - in a situation where the election administration is appointed by the party in power - and by the possibility of local elections not being conducted within the appointed time. Meanwhile, communis opinio prevails in this area in the doctrine: without regularly conducted, free elections, democracy dies. In the doctrine, in formal classifications of democracy, such as that formulated by Samuel Huntington (as distinct from the material classifications of democracy, such as the polyarchy of Robert Dahl), regular and free elections are an indicator of democracy. This is the minimum below which definite political power relationships are not considered to be democratic ones.

II. DEMOCRACY VERSUS THE RULE OF LAW

Democracy versus the rule of law, or respectively politics versus law, are not new conflicts. By one name or another, they have been part and parcel of the history of social relations and power relations for thousands of years because, while

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technology changes, power is a human phenomenon. As Thomas Jefferson put it, if people were angels no power would be needed. But people are not angels. Reason, passions and the desire for power are human features inseparably connected with the process of creating and applying laws. And although most people desire law and justice, or at least do not scorn them, at the same time they themselves often spread lawlessness and injustice. In ancient Athens it was for seeking the truth that Socrates was sentenced to death. In later periods, power relationships became more total, and violations of human rights took on a more mass character.

The raw materials of democracy are reason and passions (Filipowicz 1992). Plato saw that democracy does not feed on truth, but on passions and flattering the people, and since that time little has changed. When we want to have a stool made – says Plato – we go to a carpenter, yet we place the most subtle and complex matters -those related to politics - in the hands of a shouting crowd. Similar conclusions were arrived at by other ancient observers of political thought, including Aristotle and Cicero. Political Olympics (or 'gigantomania'), which consist in carrying out irrational, inflationary but Byzantine public policies or investments, have a centuries-old history. In increasingly pluralistic, demanding societies undergoing segmentalization and atomization and craving emancipation, the demand for reflection and reason wanes. Virtual communication, where everybody can be both the sender and the recipient, only strengthens these irrational tendencies (Rydlewski 2021).

Both Aristotle and Cicero pointed to the need to seek a political balance between various tendencies (democratic, aristocratic and monarchist) as a condition for a stable, predictable political system. There is no stable system without stable political, legal and economic relations. Maintaining the proportions is decisive to the state's prosperity and the durability of its system. This same idea lies behind the separation and balance of powers, or the American political system at the moment when it was created. What conditions should be fulfilled to maintain the political balance necessary to protect citizens' freedoms and rights? This question kept the Founding Fathers awake at night, and upon the answer they built the American political system - based on a vertical and horizontal separation of power, on appreciating what is democratic in the first chamber of Congress and what is aristocratic in the second chamber of Congress, on appreciating what is monocratic in the one-person presidency, and on appreciating what is balanced in the form of mechanisms of checks and balances, including independent courts having the authority to control the legality of each act of the legislative and each act of the executive.

Whatever the place or time, the same questions concerning democracy and the rule of law are answered in a similar way in similar civilizations, since human nature and the mechanisms of power are similar.

III. UNIVERSALITY OF THE DISAPPEARANCE OF THE RULE OF LAW

The ongoing crisis in the political system in Poland is nothing extraordinary in contemporary countries of Europe or North America. Processes of negating the rule of law similar to those in Poland are occurring – within a broader or narrower range and in different dimensions of social relations – in most modern states. Dissatisfied with the results of an elections, the sovereign burst into the Capital on 6 January 2021 not in some failed republic, but in the United States. It is worth noting that, despite much more significant political controversies related to the reliability of the voting results of the presidential election in 2000, Al Gore accepted the result. Nowadays, in an increasing number of states, those who lost question the election results not through the existing procedure but by marching to the Capitol or by mass events, such as took place in Kyrgyzstan or Armenia not long ago.

The example of Cyprus from 2013 also comes to mind, where the constitution was violated without any statutory basis (with simultaneous opposition from the parliament which refused to pass it ex post) and the government, pressured by the European Commission, confiscated part of some citizens' bank deposits in order to satisfy the financial claims of creditors of the state debt (German and French banks). Those assets were confiscated in a state considered to be democratic and law-abiding, whose constitution forbids any unlawful confiscation of property – and this took place at the inspiration of the European Union, also regarded as democratic and law-abiding.

Decisions which defy both the binding constitution and the citizens' will are made and unconditionally executed. As written by David Runciman, this kind of revolution is taking place without tanks, soldiers or arrests (Runciman 2019).

After the French, and three days later the Dutch, rejected the Constitution for Europe with a majority of votes by way of a referendum, similar legal regulations were introduced in the Treaty of Lisbon - this time without asking the citizens for permission. They were adopted by the parliaments of the EU countries, not by the people themselves (Kużelewska 2011). Only in Ireland was a confirmatory referendum was held, and when the nation voted against the Treaty of Lisbon, another referendum was organized, the idea being that the Irish would just have to vote again and again until they learned what was good for them.

When in a 2015 referendum the Greeks rejected a program to considerably reduce public expenses and increase taxes enforced by "the Three" (the European Commission, the European Central Bank and the International Monetary Fund), the Greek government waved the will of the sovereign aside and a few days later introduced a package of public expenditure reductions even more restrictive than those the nation had rejected (Sygkelos 2015; Xezonakis, Hartmann, 2020; Manavopoulos, Triga, 2017).

In the pre-pandemic period, there was a state of emergency in France that lasted nearly 2 years (Kilpatrick 2020; Hennette

Vauchez, 2018) which saw widespread use of violence by the police, including shooting at the so-called 'yellow vests' – citizens executing their constitutional right to peaceful protest. Similar events took place this year in the Netherlands directed against protesting farmers, and last year in Canada, where legally, peacefully protesting truck drivers were deemed by the government to be a threat, which led to the introduction of a state of emergency. Fuel for trucks was confiscated. The government threatened that anyone bringing supplies for the drivers on strike, including food and cleaning products, could be arrested, and proceeded to block a legal collection of money on the internet. Initially, the platform used to raise money, GoFundMe, which collected over 10 million Canadian dollars for the protest, declared that the money that had been blocked would be transferred to selected charitable organizations. It was only after protests, including by Tesla CEO Elon Musk, , who called GoFundMe a "professional thief", that GoFundMe returned the money to the donors. These are some of the many examples of behavior by states once considered law-abiding and democratic.

IV. SOCIALIST DEMOCRACY VERSUS THE RULE OF LAW

The crisis of the rule in law taking place in Poland is conditioned both exogenously and endogenously, and encompasses a complete change of the governing paradigm. The crisis, which has taken on increasingly new forms, is an expression of the change in political relations that took place in Poland in 2015 as a result of a two-fold victory by one party – in both the presidential and parliamentary elections. The sovereign's trust reflected in 2015 was confirmed in successive elections. It also reflects not only a natural re-orientation in the structure of political forces in the bodies of public authority, but the policies implemented in the state, as well. It involves issues of fundamental importance for the political system of the country – how to understand the principle of the sovereignty of the nation, how to cultivate democracy and, through it, how to form the role of parliament as an organ that implements the nation's will. What is the will of the parliament expressed in the law? What is its legal force?

In the period between the world wars, the answers to such questions were based, in most European states, on French doctrine, which emphasized parliament's freedom to shape, legal relations and stressed that what parliament passed was law. The catastrophic experiences of World War II caused a radical change from this way of thinking in favor of the idea – contrary to what the French had argued - that the law, as a work of parliament, can be employed to usurp power and commit acts of violence against individuals' freedoms and rights. Those European countries that emerged from totalitarian or authoritarian relations therefore established judicial control over their legal regulations as an institutional guarantee of protection from any reactivation of totalitarian power relations. A similar process occurred after 1989 in the states of Central and Eastern Europe, which were emerging from socialist power relations. By passing new constitutions, they established constitutional courts as an institutional guarantee protecting the constitutional order of the state from parliamentary usurpation.

In the 1980s, the Polish Sejm arrived at conclusions similar to those reached by the states of Western Europe. It saw there was a deficit in the rule of law. In the 1990's, it seemed that certain political conflicts had been definitely settled. In 1989, for example, one such conflict was whether judges could be active in, or members of, political parties. At the time, opinions both "for" and "against" were expressed, but eventually a consensus arose around the necessity of judicial neutrality and apoliticality. A similar process took place in connection with the essence of the principle of the state of the law. A consensus over this issue had been reached in the final years of People's Poland, which was then consolidated after 1989.

Over the next 25 years, the idea of amending he law aroused no objections from the key participants in political relations. It was seen as something obvious. This only ceased to be the case after the parliamentary election in 2005, and again in 2015. At the same time, it needs to be mentioned that in other periods, while the principle was not undermined, it would be hard to argue that it was carefully cherished. Nevertheless, it was implemented. The rule of law and the principles of proper legislation were values which, while sometimes perceived as uncomfortable and burdensome, were deemed necessary in order to maintain the legal, political and social order.

The Constitution of the Republic of Poland was accepted at a time of intense political conflict (Jaskiernia 2006) by building a consensus – first, inside the parliament, and afterwards outside. The authors avoided the temptation to impose their own opinions on their opponents. And their opponents did likewise: they did their best to thwart the passing of the Constitution in the May referendum,, but when that did happen, they applied the Constitution. When they won the parliamentary elections a few months after the May referendum, they all took the oath to be faithful to it. None of them claimed that it was some sort of neo-constitution or non-existent constitution, and therefore not applicable. Even if used instrumentally, relying on legal argumentation supports a rational, orderly political discourse. When the significance of legal argumentation wanes, democratic disorder spreads, and constitutional provisions cease to be taken into account.

Nowadays, the dispute over the rule of law is a broad one that is supposed to mobilize everybody and every means. The issue has no established limits, and it is therefore very difficult for all the participants in political relations to come to an agreement. This was clearly expressed by the Senior Marshall of the Polish parliament in the previous term (2015) in his speech opening the first sitting of the Sejm. He stated that the good of the people is above the law. This statement, which was enthusiastically greeted by the parliamentary majority, represents a Jacobin

understanding of the law. Symbolically, it called into the question the understanding of the law that had been formed in Poland on the basis of 19th-century German doctrine, and called into question how the rule of law was to be formally guaranteed. And the parliamentary majority (and not only) remained within this current of Jacobin thinking about the law, which in Poland had been strengthened by legal nihilism - first of the Russian kind in the later 19th and early 20th centuries, and later of the Soviet kind. Another concept of political relations was laconically outlined. This was the concept of the supremacy of the political will over the legal requirements. But in order to identify the essence of the dispute concerning the rule of law, its main feature should first be outlined.

To assess the importance of how the rule of law (including as regards a constitutional judiciary) has come to be understood differently from in the past, we must look at the conditions under which the state makes decisions. Here, referring to the doctrine of the French Republic, great significance is attached to the parliament. The special position of the parliament in the system of government is perceived in the context of the principle of the Nation's sovereignty, which the parliament personifies. The Nation does not exercise its power in an amorphic way, but through the parliament. The Sejm and the Senate, which are elected by the whole Nation, are an expression of the sovereign's supreme power – its supremacy in the state. The supreme character of the Nation is reflected in the political position of parliament, which shapes the legal relations occurring in the state. The content of the principle of the Nation's sovereignty is the Nation's right to make decisions in an independent and autonomous way. The Nation's sovereignty cannot be divided, nor can it be transferred to different bodies of the state. The representatives of the Nation (which has supreme power in the Republic of Poland – Art. 4 item 1 of the Constitution of the Republic of Poland) are the members of the Sejm and of the Senate. It is parliament, and only parliament, that expresses the Nation's sovereignty.

The principle of the Nation's sovereignty entails an objective necessity to vest the parliament – elected in democratic elections – with a proper place in the system of state power and in the state's decision-making process. This results directly in the need to appoint one managing center in the state that aggregates the Nation's will and transforms it into acts of law. It must be a body whose acts prevail in the national normative order and have the highest legal force, making them unchallengeable. The nation, gathered in parliament as the source of all laws, should be the only body entitled to interpret the constitution - to decide what is consistent with the constitution and what contradicts it. Anything else is a usurpation of the Nation's power and as such should be rejected.

While in this understanding of the state's decision-making process a constitutional review of draft laws within parliament is admissible, nothing is said about a constitutional review of the law outside the parliament. The law, as an act of parliament, is an expression of the Nation's will and an emanation of the Nation's sovereignty. If the principle of the Nation's sovereignty is treated as more than an empty platitude, the law should not be submitted to extra-parliamentary review. The Sejm and the Senate express the common will, which exists objectively and is aggregated by the majority. The majority speaks with the voice of the Nation, which is the voice of common interest. Therefore, the law cannot be questioned, much less rejected. Its acceptance - with affirmation being the highest and most desired form - is necessary. Affirmation of the Nation's will is an expression of wisdom and of care for the Nation's welfare as articulated by parliament.

Under this view, therefore, the Constitutional Tribunal, like any other body of state power, should be made to speak for the Nation's will as expressed by parliament. In cases when it refuses to do so, or does not recognize the Nation's will, it should be brought into line. This can be accomplished either by changing the political system or by undermining the importance of the tribunal's ruling, attributing to them the status of legally non-binding or insignificant statements. In Poland, the tribunal's authority was undermined by introducing to it legally doubtful persons burdened with serious dysfunctions who were therefore unable to properly perform as judges.

Unanimity in expressing and implementing the Nation's will is indispensable in the work of the bodies of state power. The Jacobins argued that there is but one will of the nation, and one state idea, carried out by the parliamentary majority. This can be achieved by unifying the activities of the parliament and by subordinating other state bodies to it, since the system of state bodies requires concentration and coordination - not confrontation, since this involves the principle of a balanced division of power. No orchestra can play harmoniously without a conductor; likewise, no state can function in a unified way without the coordinating role of parliament. Under communism, the idea was similar: no state can function efficiently without the political bureau of the party (or an equivalent center of political decision-making).

Sticking to the principle of parliamentary supremacy makes it possible to effect a transformation and implement the reforms needed to repair the situation in the state as awaited by its citizens for years. In this view, the parliament is the epitome of national wisdom. It can liberate the Nation from privation. Through an act of voting, it can liberate the Nation from a shortage of money or a shortage of dignity. The law is an instrument for enthroning positive social goals, for making the "good change".

The French Revolution sought to create "a new man", "a new system of political relations", a new social order - but these came up against a small number of nevertheless influential opponents. In Poland, the story goes, if not for the selfishness and depravation of this significant minority, representatives of the ancien régime, re-Polonization – restoration of proper social and economic relations – would have taken place long ago. Social harmony is difficult to achieve when power is divided

and changes can be blocked at any moment by a constitutional court driven by reasons other than democratic ones and which was neither established by the sovereign nor given permission for this type of activity. The same applies, in this view, to the National Council of the Judiciary or the National Electoral Commission: they have no democratic legitimacy. Dominated by judges who were not elected democratically, they became degraded, becoming a seat of self-perpetuating power. Hence the good change made after 2015 in the form of strengthening the democratic legitimacy of those bodies, i.e., bringing them under the control of the Nation gathered in the Sejm. Now it is the sovereign in parliament who establishes the personal composition of those bodies ensure that the rule of law is upheld in the courts, and democracy in elections.

The Nation's goals of social emancipation, political reconstruction and the resulting changes in economic relations cannot be stifled by a handful of judges. Their resistance and disregard of the Nation's will arouse the astonishment and distaste of both the parliament and the Nation itself (present in the former). Resistance against the good social change initiated by the parliament can only bring about societal irritation. Only people of evil intentions and the depraved can see in this a violation of the constitution. This is why a definite end must be put to such treatment of acts of parliament. Contrary to the claims of the elite of the old order, it is the usurpatory power of the constitutional court that has to be rejected in order to restore democracy, and democratic law and justice. There is no law without democracy, and there is no justice without democracy. In fact, democracy is a synonym of law and justice. This kind of thinking about the relationship between law, justice and democracy finds no validation in Aristotle or Plato, who – to use modern language – describe a dichotomy between democracy and the rule of law. Nevertheless, it fits in well with the French and Enlightenment understanding of that relationship, as well as with the French understanding of the sovereignty of the nation present in parliament.

In this view, shackles needed to be thrown off from the state's system. And thrown off they were, in an act of parliamentary emancipation. The constitutional court as traditionally understood, the argument goes, is a trick of the political elites that serves to prevent the good of the Nation from being achieved when it is not consistent with the interests of degenerated elites and serves to maintain the privileges of those elites, strengthening social inequality. is the constitutional court is an instrument by which the elites try to persuade society at large that no good change is possible. In the period of the French Revolution the establishment of a judicial review of laws was cautioned against. So today it is said that the constitutional court blocks socially desirable changes in the law and hinders or entirely prevents social reform and the revival of the Nation. For this reason, if such a court is included in the Constitution and therefore must exist, it should at least cease to create obstacles to carrying out the will of the sovereign.

It therefore seems obvious, the argument goes, that the assumption that the Constitutional Tribunal decides what is constitutional and what is not should be rejected. The only and final judgment in such matters should be made by the parliament, and the role of the Tribunal should only be to proclaim this will and eliminate any acts that undermine it - which means that the tribunal should check the consistency of normative acts with the basic laws and review international and European Union law, which is law that could disrupt the work of parliament. Everything which is adjudged by the Constitutional Tribunal is acceptable, as long as it is consistent with the will of parliament. Only this consistency confirms the validity of the Constitutional Tribunal.

It can be readily seen that this is a direct reception of the Jacobin doctrine and – more broadly – the French doctrine of the end of the 18th century, which means a return to ideas that have been known for more than 200 years to have been the springs of the iniquity and mass crimes committed in their name in France at that time.

When the concept of the supremacy of the political will over the rule of law is implemented, when the Constitutional Tribunal decides that a law is unconstitutional, it not only undermines the binding force of that law – it also undermines the quality of parliamentary activity, paralyzing the principle of the Nation's sovereignty, and hence the state. To paraphrase Konstanty Grzybowski, it can be said that, in this understanding, the Constitutional Tribunal as a body of constitutional review is either anti-democratic or unnecessary. It is an obstacle to achieving the good of the Nation embodies in parliament. As Kornel Morawiecki, the Senior Marshall of the Sejm said, if the law is not consistent with the will of the Nation expressed by the Sejm, it needs to be removed. Whenever the Constitutional Tribunal does not agree with the will of parliament, it disavows the very sense of its existence and renders itself useless. However, because it cannot be abolished formally, its actual capacity to repeal the Nation's will as expressed in the law has to be abolished.

In the process going on in Poland today, the principle of a balance of powers, one of whose key elements is a judicial review of laws, has come to be considered counterproductive to effective governance because it hampered the activity of parliament, making it impossible for the government to achieve its electoral mandate. This idea reflects both legal and political impossibilism. Not much good can be done in such a state, it is said, because the different centers of power obstruct each other. Further, it is said, under the principle of the separation of powers it is forgotten that there is only one power - the Nation - which rests in the hands of the Nation's elected representatives. Therefore, the contradictions which are an immanent feature of balanced rule should be abolished in favor of the supremacy of the Sejm as a democratically elected representation of the sovereign. By creating the possibility of a law being found to be inconsistent with the constitution, the judicial review of laws strikes at the very foundations of a democratic state and at the principle of the sovereignty of the

Nation, on whose behalf parliament speaks.

Again, as in Jacobin doctrine, it is now being argued that the Nation gathered in the Sejm knows perfectly well what is good for it. It recognizes good correctly, and can embody it in the law. At the same time, there is no great risk that the partial and particular interests of only certain social groups will be expressed by the parliament. The low level of such a risk follows from the essence of political parties as the major participants in parliamentary relations. Political parties harmonize various interests and, by voting, express the objective, social interest, i.e. the public interest. Through the implementation of the public interest constitutional values are upheld. This happens to an even greater extent when the Sejm majority is a coalition, a union of different political parties having different forms of social sensitivity. At the same time, friction between different opinions over the plans of the parliamentary majority party de facto takes up much of the parliamentary debate. Superfluously, in fact, since the common good was already specified in the discussions inside the coalition. Hence, that debate can be reduced without any harm done to the law or to the enactment of the Nation's will.

V. Conclusion

For the reasons discussed above, the successive controversies concerning the rule of law are not simply disputes over how power and position are to be distributed or affirmations of the will to act. They manifest a deep political conflict over the institutional framework for protecting democratic relations. That dispute seemed to have been settled in European states in the middle of the 20th century, yet a few decades later it turns out that the situation has changed, and basic political institutions which not long ago were treated as obvious both in Poland and abroad are no longer so for the key participants in political relations. They are being subjected to re-definition, and the scale of the potential adverse consequences is hard to establish. The political character of the controversy, and the fact that it concerns political principia, mean that large social groups will be affected, largely to their detriment. At the same time, these are natural dysfunctions in the sense that they were noticed in the doctrine long ago and were explained by, for example, Aristotle and Cicero. They were also understood by practitioners such as the Founding Fathers of the United States, who created a system of checks and balances because of these very threats. Finally, the violations of freedoms and civil rights perpetrated in countries which, like France, Italy or Germany, established their political system differently for ideological reasons revealed all too clearly the limitations of the paradigm of concentrated power and the potentially disastrous consequences of an outflow of the rule of law.

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VII. References

Arystoteles (2012), Polityka, Wydawnictwo Naukowe PWN, Warszawa.

Filipowicz S. (1992), O demokracji, Wydawnictwo Naukowe PWN, Warszawa, p. 14.

Hennette Vauchez S. (2018), The State of Emergency in France: Days Without End?, European Constitutional Law Review, Volume 14, Issue 4.

Jaskiernia J. (2006), Konstytucja RP jako efekt kompromisu politycznego, [in:] Z. Maciąg (red.), Stosowanie Konstytucji RP z 1997 roku – doświadczenia i perspektywy, Oficyna Wydawnicza AFM, Kraków.

Kilpatrick J. (2020), When a Temporary State of Emergency becomes Permanent. France as a Case Study, Transnational Institute, Amsterdam.

Kużelewska E. (2011), Proces ratyfikacji Traktatu ustanawiającego Konstytucję dla Europy i jego następstwa, ASPRA-JR, Warszawa.

Manavopoulos V., Triga V. (2017), The 2015 Greek Bailout Referendum as a Protest Action. An Analysis of Media Representations of the 'Yes' and 'No' Campaigns, [in:] T. Papaioannou, S. Gupta, Media Representations of Anti-Austerity Protests in the EU, Routledge.

Młynarska-Sobaczewska A., Zaleśny J. (2022), GAFAM – globalne korporacje cyfrowe jako uczestnicy procesów politycznych, Przegląd Prawa Konstytucyjnego, No. 3, pp. 225-236.

Runciman D. (2019), Jak kończy się demokracja, Fundacja Kultura Liberalna, Warszawa, pp. 43-44.

Rydlewski G. (2021), Rządzenie w epoce informacji, cyfryzacji i sztucznej inteligencji, Dom Wydawniczy ELIPSA, Warszawa, pp. 59.

Sygkelos Y. (2015), A Critical Analysis of the Greek Referendum of July 2015, Contemporary Southeastern Europe, Vol. 2(2).

Xezonakis G., Hartmann F. (2020), Economic downturns and the Greek referendum of 2015: Evidence using night-time light data, European Union Politics, Vol. 21(3).

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