

would have to implement all of the *acquis* before accession, and this “implied that the accession countries needed to improve their administrative capacities at the regional level in order to manage Structural Funds.”⁴³ In addition to the Accession Partnerships—for example those of Bulgaria, the Czech Republic and Slovakia in March 1998—that explicitly stated that the countries in question should set up regional administrative structures in order to be able to take advantage of the structural funds, the Commission’s pressure was also based on the direction of PHARE resources towards regional assistance, and the setting up of twinning programmes. The Commission’s Regular Reports made remarks on the extent of administrative reforms in the relevant states, though there is a very clear emphasis on the administrative capacity for the management of structural and cohesion funds, and on effective monitoring, financial management and control at regional level rather than on democratic self-government and autonomy.

The *acquis* includes (in Chapter 21) the requirements of regional administrative capacity, inter-ministerial co-ordination of regional policy and means for monitoring structural programmes. The candidate states must also organize their territory to fit within the so-called NUTS (*la Nomenclature des Unités Territoriales Statistiques*) classification system used to implement the Structural Funds.⁴⁴ Regarding these, the regions need to be autonomous enough to be credible partners to the Commission in the Structural Fund partnership process: the principle behind the co-management of the Structural Funds is to create policy not just for the regions, but also by them—that is, to ensure that local governments and NGOs, etc. are involved in the administration and management of the funds, within a collaborative process. The Structural Funds implement over 90% of all EU structural funding, the most important objective of which is the promotion of development in economically backward regions with GDP per capita of less than 75% of the EU average.

When evaluating the importance of the EU accession factor in the decentralization of CEE states, it should be emphasized that a high degree of regionalization in the countries of the region could well have occurred anyway, without any such pressure from the EU. Brusis has shown that much of the impetus towards regionalization came about due to the traditions of the countries and their move away from Communism, and also due to the preferences of the political actors on the scene in the 1990s.⁴⁵ Indeed, in relation to local government, many CEE states introduced reform well before the Commission or other EU bodies became active in promoting regionalization. For example, Poland did so in 1990 and then introduced another reform in 1993, the Czech Republic did so in 1990, with Hungary

Central and Eastern Europe: Implications for EU Structural Assistance (Brussels: European Commission/DG for Economic and Financial Affairs, 1997), p. 25.

⁴³ Brusis, *id.* at 542.

⁴⁴ See Dan Marek and Michael Baun, “The EU as a Regional Actor: The Case of the Czech Republic,” *JCMS* 40 (2002), pp. 895–919 at 897–898.

⁴⁵ Brusis, *op. cit.* n. 42, pp. 546–548.

starting from 1991. It is true that, with the exception of Hungary, the reform of regional government (in which there were more vested interests and disinterest in reform) did not take place until after 1997 when the Commission began to pressure explicitly for regionalization. Could it be said that the EU directly influenced these moves? Whilst it certainly may be true that the agenda for reform came about due to EU pressure, the actual formation of the new regions did not always correspond to NUTS areas. The general picture is that regions were created in the country (the real regions) and then amalgamated to form administrative regions *only for* NUTS purposes. This occurred in Bulgaria, the Czech Republic, and in Hungarian and Romanian regions (with the larger regions being formed to comply with NUTS II). The Polish regions were created in 1999 to comply with NUTS but they are “managerial and administrative rather than political entities.”⁴⁶ It is not clear how effectively the NUTS-driven units will interact with the original “real” regions. Of the examples mentioned above, all but Poland have weak institutionalization of the NUTS areas (being merely administrative concepts created for the purpose of the Structural Funds), which “indicates that they constitute artificial elements in the traditional (and re-created) territorial-administrative structure.”⁴⁷ Indeed, in the Czech Republic, the artificiality of the NUTS areas created “a potentially awkward situation by grouping together, in some of the NUTS II units, regions that have not always historically co-operated, and in some cases have even been rivals.”⁴⁸

The evaluation of the EU factor is also difficult because the pressure from the EU—in the Reports and through PHARE funding—was not towards any specific, detailed model for the construction of regions: their size, form of funding, exact capabilities, and level of fiscal autonomy were largely left open. The Commission has been very cautious in dispensing its advice: it merely required “that “appropriate” systems of regional administration and governance be in place by the time of accession, without trying to define these in any concrete way.”⁴⁹ Consequently, there are big differences between the regional structures in the various countries of CEE: between Bulgaria, the Czech Republic, Hungary, Poland and Slovakia, the size of the regional units varies, as does the level of integration between territorial state administration and regional self-governments.⁵⁰ The form that regionalization takes is dependent upon the geographical and political contexts, thus such differences are not surprising given that the CEE states have different population densities and sizes.

There is some evidence, however, that the Commission Reports made a difference to the trend towards regionalization. Most fundamentally, the influence of the EU

⁴⁶ Report of the Reflection Group, *op. cit.* n. 8, p. 120.

⁴⁷ Brusis, *op. cit.* n. 42, p. 553.

⁴⁸ Marek and Baun, *op. cit.* n. 44, p. 903.

⁴⁹ *Id.*, p. 898.

⁵⁰ Brusis, *op. cit.* n. 42, pp. 538–539.

institutions was crucial in putting the very issue of regionalization on the agenda. As the authors of the “Dehaene Report” observed,

[w]ith the exception of Poland, where regional reform was recognised early on as a[n] essential part of the transition process, regionalisation only became an issue following pressure from the Commission which directly or indirectly shaped the process in a number of CEECs.⁵¹

The pressure was also occasionally effective in remedying specific detailed problems. After the Czech Republic was criticized in 1997 because higher units of territorial administration were lacking, it remedied the situation by 2001. Furthermore, other aspects of regionalization that were criticized in the Reports (such as financial management) were also at least partially remedied, with the Commission noting substantial progress in its 2002 Report. As Marek and Braun observe, EU pressure and the prospect of accession “probably accelerated the process of regionalization in the Czech Republic”.⁵² In addition, to fulfill the requirements of decentralization contained in the PHARE cross-border co-operation programme, the Czech Republic established Euroregions—cross-border structures along the Czech borders with its neighbours—and even more decentralized regional bodies used for administering the small projects fund which invest in border areas. These were, however, seen as a big success by the Commission and recommended to other countries of CEE.

On balance, the effect of EU accession upon regionalization in the candidate states has been positive, though indirect, diffuse and not particularly strong. This is for a number of reasons. First, there is no single West European model to imitate in this respect, and consequently there is no specific *acquis* regarding the details of the organization and status of regional governments. Although Professor Alessandro Pizzorusso may be right when he notes that recognition of a form of regional autonomy belongs to the common constitutional traditions in Europe, nevertheless he himself acknowledges the existence of a great variety of forms of such recognition, ranging from a federal design (as in Germany, Austria and more recently in Belgium) to unitary states in which autonomy is “purely administrative” (as in France, the Netherlands or the Scandinavian states).⁵³ Hence, it is understandable that the pressure from the Commission was only by “indirect and underformalized methods”.⁵⁴ Secondly, the societal pressure from below was relatively weak in the

⁵¹ Report of the Reflection Group, above n. 8 p. 121, referring to Jim Hughes, Gwendolyn Sasse and Claire Gordon, “The Regional Deficit in Eastward Enlargement of the European Union: Top Down Policies and Bottom Up Reactions,” *ESRC “One Europe or Several?” Programme*, Working Paper 29/2001.

⁵² Marek and Baun, *op. cit.* n. 44, p. 903.

⁵³ Alessandro Pizzorusso, *Il patrimonio costituzionale europeo* (Bologna: Il Mulino 2002), pp. 150–151.

⁵⁴ Brusis, *op. cit.* n. 42, p. 535.

states of CEE, perhaps with the exception of Poland. This is due to a number of factors: the small size of many of the candidate states, the newness of these states, the relative frequency of boundary shifts in the past—all of these contributed to the relatively low intensity of the sense of regional identity, with the regions created being more “artificial creations rather than historically and culturally anchored regional units”.⁵⁵ The demands for strong regional autonomy based on historical identity in those few cases in which they occurred—in Silesia in Poland, or in Moravia in the Czech Republic—were quickly marginalized and rejected by all major parties in these countries. As Brusis explains, the relative weakness of regionalism in CEE can be explained by lack of correlation between ethnic and historical regionalism: significant national minorities do not have traditions of regional units (as is the case in Estonia, Lithuania or Slovakia), while historically entrenched regions lack separate ethnic identity (as is the case of Czech Republic; Poland is an exception but the ethnic German minority in Silesia represents less than one percent of the population).⁵⁶ However, this weakness of indigenous support for regionalization at the same time indicates that, without the external pressure, there would have been no attempt to regionalize at all and that the matter would not even have made it on to the political agenda. Thirdly, the EU push towards regionalization has been largely offset by the by-and-large technocratic nature of the accession process, which has inevitably led to centralization: the EU demand for speedy implementation of the *acquis* and efficient use of resources strengthened national actors to the detriment of regional ones.

Nevertheless, accession is likely to consolidate and deepen the push towards regionalization. If we look to the lessons of history in this regard, there have been some examples in the EU of regional identities being created—or at least, greatly fostered—within regions set up initially for administrative reasons, as is the case of North-Rhine-Westphalia; a consensus seems to exist among many scholars that the EU cohesion policy has mobilized support for regions in the existing member states and strengthened their political position.⁵⁷ There is no reason to believe that a similar effect will not occur in CEE. The example of some Polish regions having established their own interest groups to lobby in Brussels on their behalf may suggest that the EU exerts some pull towards increasing regional awareness, if not in terms of cultural or political identity, then at least at the level of economic and political interests.

6. CONCLUSION

Since the fall of Communist rule, the countries of CEE have profoundly transformed themselves into constitutional, liberal democracies. Much of the transformation has

⁵⁵ Report of the Reflection Group, *op. cit.* n. 8, p. 123.

⁵⁶ Brusis, *supra* n. 42, pp. 550–551.

⁵⁷ See *ibid.*, p. 1, referring to the literature of the subject.

been by imitation, emulation and transplant of Western (including Western European) templates of democratic institutions. Since the early 1990s, the transformations have been also dictated by “conditionality”: a set of more or less vague requirements that had to be met if a state were to qualify for membership in the EC/EU. The combination of the relative inflexibility and rigor of principle of conditionality, on one hand, with the relative malleability, open-endedness and speed of the political transformations in post-communist states, on the other, contributed to the high degree of effectiveness of the attempt to transplant the rules of the “club” to the “applicants”. The EC/EU could dictate the terms because the candidates had more interest in joining than the Union did in enlarging. The democratic forces in the CEE states could bravely design new institutions because the forces of the *ancient regime* were demoralized, traumatized and easily embarrassed. The constellation of external and internal conditions was therefore favourable to rapid and thorough democratization although the specific parameters varied from country to country and from issue to issue. In general, the interaction between the “external” factors of conditionality and the domestic calculus of the costs and benefits of transforming an institution (or adopting a rule) provides the best lens through which to evaluate the impact of “conditionality” upon the speed, depth and resilience of adoption and maintenance of particular democratic rules or institutions in the candidate states.

This explanatory lens will maintain its validity also after accession, although the patterns of incentives will change somewhat, as was suggested in Part 1 of this chapter. The three specific areas in which accession is likely to make a difference for the institutional set-up in the new Member States are the relationship between the executive and legislative branches, the position of constitutional courts, and the significance of regional and local administration and self-government, discussed in Parts 2–4 of this chapter. In all of these three areas the changes will not be qualitative in character, but will instead continue the trends already set in motion by the process of accession negotiations and preparations. Their overall significance for democracy in general is difficult to assess; from my point of view, the strengthening of constitutional courts and the weakening of the legislatures both give cause for concern, while the decentralizing tendencies should be applauded. Others will attach different values to these trends. What *is* important is to realize that accession will not leave the political systems in new Member States untouched, and that a prudent strategy at this point for these countries would be to anticipate and attempt to limit the possible negative effects of accession (for instance, strengthening the legislatures by providing them with better expert infrastructure, or by introducing constitutional amendments in order to prevent constitutional courts from “dictating” legislative changes to parliaments), while at the same time taking advantage to the greatest degree possible of the positive effects.

In the end, the most fundamental positive effect will be at a macro- rather a micro-level: by providing the democratic forces within the post-communist states with additional support, encouragement and discursive assets against the threats from authoritarian, populist, nationalistic forces, the democratic transition itself has

been strengthened. In this sense, the position of democratic elites in new member states will not be all that different from the position of liberal and democratic forces in, say, Italy or Austria, where those with authoritarian tendencies invariably find themselves in the “anti-European” corner, because the institutional and ideological structure of the European Union tends to support liberal and democratic arguments. Thus, the EU increasingly becomes a community of values, not merely a community of interests, and the values that these days predominate within the Union resemble closely the values of civic liberal-democrats in the post-communist area of Europe. The anxiety that the leaders of most of the EU member states displayed in response to the likelihood—and then, the reality—of a coalition government including a nationalistic, xenophobic, authoritarian party in one of its member states (I have in mind, of course, the Austrian debacle of 2000) illustrates clearly that the EU can be mobilized against such trends, and that there is a degree of transnational solidarity on the part of liberal-democratic forces that can count on the political resources of the Union. When the awareness that a possible lapse into a nationalist-authoritarian option in new Member States in the CEE is not merely an “internal domestic affair” but rather an immediate “European” problem penetrating the public opinion in these states, the political mechanisms for preventing and countering such collapses will themselves become more resilient. Accession to the EU may not be a panacea for all of the problems of political democracy but it may well be a reasonably good protection against possible future disasters.

This will be a principal democracy dividend stemming from the reconfiguration of traditional focal points of identity and sovereignty that will necessarily follow upon the accession to the EU. That reconfiguration—a process of “transnational articulation of societies”⁵⁸—has already begun to occur, but it will be greatly accelerated after the actual accession. Many social forces in the new member states—political parties, NGOs, women and environmental organizations, etc.—will find their counterparts in the other member states to be the most obvious partners for co-operation and common action. Indeed, the process of transnational party co-operation, with CEE parties included within EU party federations and various political internationals, has already begun, and the introduction of parliamentarians from CEE into the European Parliament will be a powerful additional stimulus to such political transnationalization. Traditional patterns of loyalty will be altered: as “local” matters become, by definition, “European”, the notion of “washing one’s dirty linen at home” will lose its persuasive force. Just as the appeal to the Strasbourg Court has established—and legitimated—a route outside the state to make one’s grievances heard, so will the EU-based institutions, procedures and organizations erode the trumping power of “state sovereignty”, once capable of silencing the voices raised in defence of democratic and liberal values.

⁵⁸ Stefano Bianchini, “Post Communism, Post-Westfalianism, Overcoming the Nation-State,” in Bianchini, Schöpflin and Schoup (eds.), *op. cit.* n. 2, p. 197.

The identity of the polities will also undergo significant changes. For example, the extension of the right to vote in elections to the European Parliament to any EU citizen regardless of where they happen to be, and also, in local elections, to resident non-citizens of member states—such changes will drive home to many people the contingency of citizenship and the weakness of ethno-national criteria in defining the membership of a polity. The understanding of who is part of the *demos* will inevitably be transformed: traditional loyalties and the ethnic and cultural sense of belonging will need to give way to something more akin to “constitutional patriotism”, under which the polity is bounded by common civic rights and duties rather than by tradition and ethnic identity. The same will apply to an increasing knowledge of foreign languages and the consequent evaporation of the “monopoly over language” by the nation states,⁵⁹ as to the EU-driven removal of legal prohibitions upon the purchase of real property by non-citizens. In a longer-term perspective, the adhesion to the Euro-zone will undercut another traditional symbol of national identity: a local currency and the dominant position of a central bank. All of this will put the nationalistic forces (who also happen to be, more often than not, authoritarian and illiberal) on the defensive. Attempts to re-establish identity along the lines of national, ethnic or religious patterns will no doubt be undertaken, but, with the growing integration of the new Member States in the EU, those doing so will be facing increasingly uphill battle. Accession will reconfigure political and discursive assets and incentives in ways that help the liberal-democratic and hinder the authoritarian political forces in new Member States. This is perhaps the best thing about the democracy dividend of the EU accession process.

⁵⁹ See *id.*

2. The Eastern EU Enlargement and the Janus-headed Nature of the Constitutional Treaty

Vittorio Olgiati

“*Ce sont des problèmes pour lesquels Thémis n’a pas de balance*”*

1. INTRODUCTION

Leafing through the history of European unionism, cleavages and differences within and among socio-legal orders do not seem to have been taken on as a major concern when favorable conditions for the enlargement of the Community borders occurred. If and when a *status necessitatis* provided for such conditions, geo-political *arrondisages* were immediately pursued, often in spite of other, not less relevant, governance issues.¹ Following the fall of the Berlin Wall, the accession of Eastern European countries as EU Member States is just the last case in point at present.

Hence, one wonders: is there a socio-technical *archè*, i.e. an original source, or core matrix, laying behind current affairs that presides over, or works for, the type of strategy that the EU adopted so far? What structural and symbolic limits or boundaries, if any, can be ascribed, or are inherent to geo-political EU incrementalism? In sum: is it there an inner format that can explain the relationship between the logic of EU enlargement and the way in which EU institutions have been constructed?

As one can easily see, these questions are not rhetorical. It is even possible to reframe the above interrogatives into technical/doctrinal legal terms as follows: is it there a coherent mix in the *Ratio Status et Ratio Juris* of the EU enlargement process and policy? Is the ongoing mixture of the *necessitas rerum jus constituit* and *auctoritas, non veritas, facit legem* reference standards, i.e. the combination of legal realism and legal formalism, either in the form of decisionist/jusnaturalistic tenets of legal institutionalism or voluntaristic/rationalistic tenets of legal constructivism, a coherent normative framework to manage the problems raised by EU expansionism? Is the constitutionalization of the EU a plausible and socially adequate response to current and prospective EU governance systems?

* Carl Schmitt (Glossarium).

¹ Ian Ward, “A Decade of Europe? Some reflections on an aspiration”, *Journal of Law and Society* 30 2 (2003), pp. 236–257.

The leading hypothesis of this study is that the entry of Eastern European countries to the EU gives room to the official claim of there being actual subsistence in “common” European legal tradition, but by contrast exacerbates a variety of paradoxical outcomes of late-modern EU legal arrangements. This is the inevitable challenge for creating a wider and stronger European Union which has to deal with—as Szucs, following Braudel, put it—the irrepressible spatial existence of a historical variety of Europes (Western, Central and Eastern).

In this respect, the temporal coincidence of EU enlargement towards Eastern countries and the drafting of an EU Constitutional Treaty not only provides us with a veritable laboratory-like field to test the consistency of the above interrogations. It also provides us with a highly problematic socio-legal scenario.

2. THE “DEMOCRATIC TRANSITION” OF EASTERN EUROPEAN COUNTRIES AND THE EU ENLARGEMENT POLICY

As a starting point for our discussion, a *tour d’horizon* on the major socio-institutional changes that have occurred in the last decade in Eastern European Countries seems opportune.

As we know, both Western and Eastern European countries depicted the EU enlargement/accession strategy as a common task. In practice, however, it was not so, for it concerned quite different needs, interests and expectations. The solution given to such a mismatch has been the enactment of (i) an enormous flow of financial investments, and (ii) a large program of legal implantation of Western-styled legal standards, so as to (a) soften social-institutional problems of the transition and (b) raise a sufficient political-ideological loyalty towards the newly-created order.

The flow of financial investments has been extraordinary indeed. The EU only devolved to Eastern States over 40 billion Euro as pre-adhesion support between 1994 and 1999. Besides, EU Member-States individually provided financial support to implement specific economic projects and favor the so-called de-localization of Western private enterprises. If one then adds the amount of money poured in by USA formal and informal agencies and corporations since the fall of the Berlin Wall, one can easily imagine the overall political result: to render licit and consensual—if not legitimate and voluntary—a veritable form of aggressive economic merger. As a matter of fact, the privatization wave concerned foreign investors above all. Hence, as the pre-existing economic system had to be dismantled, and the newly created one had to be shaped in this manner, one can reasonably decipher the final outcome as a process of socio-economic colonization.²

The legal implantation of Western-style legal standards has also been pursued as a veritable colonization process. Surely, this implantation has been made appealing and has been socially and institutionally accepted by virtue of the flow of financial

² Josef Langer, “Shortcomings of Enlarging the European Union Eastward”, *ISIG Quarterly of International Sociology*, XII, 1–2 (2003), pp. 16–18.

investments mentioned above. Yet it is fair to say that it also gained ideological and political support on the part of those local/national groups that were concerned with the advancement of enlightened ideals and life-styles. In any case, such a legal strategy has implied top-down (a) enactment of foreign legal tools produced by foreign legal sources (e.g. EU accession criteria, EU directives, international quality standards, etc.), (b) settlement of foreign institutional/professional agencies/expertise, (c) importation of western-style legal culture, and, last but not least, (d) politicization of judicial systems (the so-called “judicial activism”).

To sum up, if one considers the way in which the process of either the “democratic transition” or EU-oriented alignment have been carried out, it is apparent that the rationale of Western EU Member States’ policy—leaving aside the special cases of Eastern Germany, Czechoslovakia and Yugoslavia—has been that of (a) maintaining, in as far as possible, those State borders already in existence (in accordance to the *uti possidetis* legal principle), so as to (b) ease a systematic overturn of the overall Eastern socio-institutional contexts in terms that could hardly be matched with the legal principle of national self-determination.

This does not mean to say that, by assessing an extreme variant of the neo-liberal theory of the interdependence of legal-economic orders, the same did not foster socio-institutional pluralism as well as the rise of a new sort of civil society.³ But such transformations did not change the nature of the trend since bottom-up social trends played the role of mere secondary adjustment patterns so much so that—contrary to the principles of national independence and sovereignty officially proclaimed in their new-born democratic constitutions—either political leaders attached to the previous regimes or the new ones not only did not consider a fight for self-determination as an alternative way, but simply worked to domesticate and localizing the incoming foreign models and goods.⁴ Within this framework, it comes as no surprise therefore that—as Stompka put it—common people lacking personal resources and/or disoriented by ongoing changes, did not raise social protests, but rather inclined towards individual quests for functional substitutes of trust in a better future, such as EU welfare’s providentialism.⁵

Given the above, it is noteworthy to mention the way in which either repeated re-adjustments of constitutional systems, or the impact of judicial activism—otherwise labeled “transitional justice”—have been analyzed and discussed in the meanwhile. In fact, studies carried out by Eastern scholars stressed the unstable country-specific space-time juncture, and noted recurrent conceptual shifts as regards the political meaning of the legal items under consideration. In particular,

³ Jacek Kurczewski and Joanna Kurczewska, “A Self-Governing Society Twenty Years Later: Democracy and the Third Sector”, *Social Research*, 68, 4 (2001), pp. 937–976.

⁴ Nina Bandelj, “Particularizing the Global: Reception of Foreign Direct Investments in Slovenia”, *Current Sociology*, 51, 3–4 (2003), pp. 375–392.

⁵ Piotr Stompka, “Trust and Emerging Democracy. Lessons from Poland”, *International Sociology*, 11, 1 (1996), pp. 37–62.

the rising politicization of the justice systems raised a number of theoretical and political “dilemmas” as regards the very notion of “transition” to Western-styled democracy: “dilemmas” that could not be easily resolved just because of concurrent social changes and constitutional variability.

By contrast, studies undertaken by Western scholars emphasized the importance of slow yet evolving “achievements”, and the support provided by both the elite and the people. Therefore they stressed the rising effectiveness of the democratic transition, despite the need to further improve it with additional “aids”. In brief, they provided quite a linear interpretation of the problematic issues under consideration. So much so that some analysts were even inclined to give credit to a substantial equivalence between the politicization of the law and justice systems occurring in Eastern countries as well as the politicization of the law and the justice systems that occurred in the same period in Western countries.⁶

Needless to say, official EU representatives had no difficulty in assuming this sort of scientific literature as a reference framework. Relying on it, and recognizing that in the case of self-styled or newly-created democratic society to “reckon with the past” cannot be carried out to the point of damaging the economy and the State,⁷ a lenient attitude towards the so-called lustration was suggested. Then, the accomplishment of western-style parameters was declared step by step. The official admittance of ten North Eastern Countries in May 2004 is the certification that such accomplishment has been formally achieved.

3. THE RISING POLITICAL AND LEGAL DILEMMAS OF EU ENLARGEMENT

The fact that the transition towards a Western-style constitutional democracy and market system of former Socialist countries was considered accomplished with the “adoption” of a cluster of imposed, and heteronomous, formal-official parameters is not the only striking issue of the 2004 EU enlargement. In fact, it perfectly clashes with the period of gestation and the drafting of the EU Constitutional Treaty.

As epochal events of this sort do not happen by chance, and occur even less by chance in the same time-frame, one might wonder whether the formal-legal certification of the accomplishment of the democratic transition has, or has not, resolved the conceptual/political “dilemmas” mentioned above. If not, did these “dilemmas” raise further questions within the EU inner circles? In other words: is the coincidence of the two epochal events a sign that the EU project reached such a problematic geo-political contour to require the enforcement of a formal-official EU identity framework to stabilize and defend its promoters? After all, how could one ignore that typical of post World War II transitions is the attempt to promote a

⁶ Wojciech Sadurski, “Decommunisation, Lustration and Constitutional Continuity: Dilemmas of Transitional Justice in Central Europe”, EUI Law Department Working Paper, 2003/15.

⁷ Helmut Quartisch, *Giustizia politica. Le amnistie nella storia* (Milano: Giuffr  1995).