

## Integrating the Western Balkans: the Rule of Law Challenge

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By Taulant Hasa

As a core value of the EU, the rule of law from an institutional perspective, is commonly perceived as the benchmark for the European institutions and the *acquis communautaire*. Since the start of European integration, upholding and developing the rule of law has been one of the most important criteria to join the European Community and later on the EU. After the fall of the Berlin Wall and considering the accession perspective of Eastern European countries, the rule of law was codified in the Copenhagen Criteria of 1993—the point of reference for enlargement policy. 14 years after the big “Eastern Enlargement”, the European Commission still places tremendous importance on upholding the rule of law in EU member states, for example through concerns voiced regarding the Visegrád Group, including Poland<sup>1</sup>, Hungary, Slovakia, and the Czech Republic. Since joining the EU in 2007, Romania and Bulgaria are assisted in their judicial reform with the transitional measure of the Cooperation and Verification Mechanism (CVM), through which the European Commission demands more efficiency against corruption and organised crime.

Within the context of the ongoing enlargement process, the EU has taken a major interest in the Western Balkan countries as the closest “satellites” for the EU’s normative power beyond its borders. Since the first furor of enlargement policy in the Western Balkans after the 2003 Thessaloniki Summit, the EU has been struggling to strengthen

the rule of law as the paramount criterion of European integration. As a result, the Instrument of Pre-Accession (IPA) was developed and has established the rule of law as the most important criterion to fulfil. Regarding “Assistance for Transition and Institution Building”—the first component of the IPA—the EU has placed a special focus on judiciary independency and its effectiveness, allocating almost 40 per cent of the IPA budget to this cause. Alongside public administration reform, judicial reform has been one of the most difficult areas for implementing the European Commission’s recommendations, making it the driving force for development in the Western Balkans.

In the case of Albania, a constitutional amendment regarding the justice system was the main criterion to fulfil in order to receive the green light on opening the negotiation process of the 35 *acquis* chapters—a decision that will probably be taken under the Bulgarian presidency of the Council of the EU in June 2018. Considering the lack of political dialogue, the extent of corruption in the public administration, as well as the threat that the new justice system signifies for the Albanian political class, the approval of the new justice system took almost three years of active public and private diplomacy from EU representatives in Albania, as well as considerable efforts from the Commissioner of Enlargement Johannes Hahn, the US Department of State, the Venice Commission, and the European

Parliament. The technical mission of the EU in Albania, EUROALIUS<sup>2</sup>, also played a crucial role by closely monitoring the preparation and consolidation of the new justice system. Among the 26 articles of the Albanian Constitution that regulate the justice system, the constitutional amendment changed 21 of these articles, required the approval of more than 50 laws, and created 13 new institutions. One of the most important reforms is the installation of a “vetting” process, which is an ongoing review of scanning judges and prosecutors in corruption cases. This reform lays the ground for improving the efficiency of prosecutors and has established a means of verification for the moral and professional conduct of judges. The implementation of this reform will be the lighthouse for European integration of the country.

In the case of Serbia, the European Commission has recommended to reform the justice system, with an emphasis on judiciary independency, since opening chapters 23 and 24<sup>3</sup> in 2015 in order to speed up the negotiations. Aside from the dialogue with Kosovo, reforming and guaranteeing the rule of law is the biggest challenge for Serbia to join the EU. As is the case with Albania, judiciary independency and its effectiveness are key issues, which will require Serbia to amend its constitution. These potential constitutional amendments may also affect Serbia’s relationship with Kosovo, as the preamble of the Serbian Constitution refers to Kosovo as an integral part of its territory.

Since 2008, the EU has deployed its biggest mission on the rule of law in its history, with a staff of 800 people, in Kosovo. The European Union Rule of Law Mission (EULEX) was created only a few days after Kosovo’s declaration of independence, and has provided assistance to the judiciary power, including judges and prosecutors from EU member states. The EU has provided the most important regulatory instruments for Kosovo regarding economic development as well as regional cooperation and stability. Furthermore,

along with NATO’s KFOR, the EU is the most credible actor to keep Kosovo on the track of maintaining stability and development. This has been the first time that the EU has acted as a “judicial power”, adding state competences to its foreign policy and thereby making enlargement policy a key factor for conflict prevention and stability in the Balkans.

In the case of Bosnia and Herzegovina, European integration has been blocked due to the lack of implementation of the ruling on the Sejdic-Finci case, delivered by the European Court of Human Rights in 2009. The European Court of Human Rights deliberated that the preamble of the Bosnia and Herzegovina Constitution collides with article 14 of the European Convention on Human Rights, which guarantees equal treatment of minority groups without any discrimination. According to political and ethnic inclinations as articulated in the constitution, only Croats, Serbs and Bosnians can be elected to a political office, such as the “House of Peoples”. Other minorities—in this case Jacob Finci who is of Hebrew heritage and Dervo Sejdic who is of Roma decent—are not able to be elected. Since the ruling in 2009, the EU has been calling for a constitutional amendment. However, this has appeared to be strenuous due to opposition from the Republic of Srpska, hidden behind an independence project and somehow backed by the Serbian political class. Despite these challenges, the EU has not included this element in its public diplomacy with Serbia, instead mainly focusing on a dialogue between Serbia and Kosovo. The Republic of Srpska puts up the fiercest resistance to a functional federation, which is affecting political dialogue and much needed governance reforms required for further progress in the European integration project. Currently Bosnia and Herzegovina remains at the first stage of accession, namely that of being a potential candidate. The Dayton Peace Agreement and subsequently the Bosnia and Herzegovina Constitution, have created a reality where ethnicity is above the state, with the European standard being the exact opposite.

In the case of Macedonia, the EU has played a crucial role in the stability of the country since 2001, after the ethnic conflict which ended with the signing of the Ohrid Framework Agreement. This document has served as a legal guarantee regarding conflict prevention for a multi-ethnic state, providing a benchmark for the normal-functioning of the Former Yugoslavian Republic of Macedonia (FYROM). The EU was very attentive to the regress in the rule of law and democratic standards during the rule of VMRO-DPMNE<sup>4</sup> (2006-2016) under the nationalist leadership of Nikola Gruevski. The EU High Representative for Foreign Policy, Federica Mogherini—supported by other institutions such as the European Parliament—stood up against the authoritative Gruevski and embraced the progressivist line of the social democrats led by Zoran Zaev. Similar to other candidate countries, Macedonia has also received financial assistance through the IPA in order to fulfil the Copenhagen Criteria. Specifically for Macedonia, two major challenges still have to be overcome. On the one hand, legal and social coexistence between different ethnic groups needs to be established in Macedonia, and on the other hand, regional cooperation needs to be strengthened with an emphasis on developing an agreement with Greece regarding the conflict around Macedonia's name.

The rationale of the EU is to use the rule of law as a criterion and conditionality as an integration mechanism, however the efficiency of this approach is crafted to deal with the stability of the Western Balkan region, not with quick accession. Western Balkan countries are currently submerged in the most technical stage of EU relations, highlighting the rule of law as the most

urgent challenge on the route to accession. The Western Balkan countries welcome a speedy integration, based on infrastructure projects and economic development, as a tool of public policy and social perception in their respective countries. However, Western European member states, based on previous enlargement experiences, are applying the rule of law as an ambiguous dynamic in relations with Southeastern European countries. Therefore, it is worthwhile, and even necessary, to view the integration process from different angles.

**Dr. Taulant Hasa** is a ZEI Visiting Fellow.

*Endnotes:*

1. The EU Commission is currently using article 7 of TUE to preserve the effectiveness of the rule of law in the case of Poland..
2. "Mission for the consolidation of Justice in Albania", funded by the IPA, implemented by The German Foundation for International Legal Cooperation (IRZ), The Center for International Legal Cooperation (CILC), an initiative of the Dutch government and AED Austria.
3. The negotiation process of accession to the EU has 35 chapters, with chapters 23 and 24 regarding judiciary and fundamental rights and justice, freedom and security, respectively.
4. Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity.

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