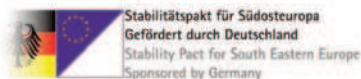




# **RULE OF LAW ENHANCEMENT IN THE WESTERN BALKANS: IDENTIFYING THE NEXT STEPS**

**September 8-11, 2014 | Alt Madlitz**

In cooperation with:



The Aspen Institute Germany wishes sincerely to thank the German Federal Foreign Office for its sponsorship of the Aspen Southeast Europe Program 2014 through the Stability Pact for South Eastern Europe.

The mission of The Aspen Institute is to improve the quality of leadership through dialog about the values and ideals essential to meeting the challenges facing organizations and governments at all levels. Over its sixty year history, the Aspen Institute has been devoted to advancing values-based leadership – to creating a safe, neutral space in which leaders can meet in order to discuss the complex challenges facing modern societies confidentially and in depth, with respect for differing points of view, in a search for common ground.

This book includes conference papers and proceedings of Aspen Germany's conference on "Rule of Law Enhancement in the Western Balkans: Identifying the Next Steps" on September 08-11, 2014, Alt Madlitz.

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# MISSION

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**THE MISSION OF THE ASPEN INSTITUTE IS TO IMPROVE THE QUALITY OF LEADERSHIP THROUGH DIALOG. OVER ITS FORTY YEAR HISTORY THE ASPEN INSTITUTE HAS BEEN DEVOTED TO ADVANCING VALUES-BASED LEADERSHIP TO MEETING THE CHALLENGES FACING ORGANIZATIONS AND GOVERNMENTS AT ALL LEVELS.**

**It all began on August 28, 1949, when 2,000 guests celebrated Johann Wolfgang von Goethe's birthday in Aspen Colorado. One year later, the German immigrant Walter Paepcke founded the original Aspen Institute**

A U.S. entrepreneur and German immigrant Walter Paepcke (1896-1960) founded The Aspen Institute in 1950 in Aspen, Colorado, after he had been inspired by Mortimer Adler's seminar on the classics of philosophy at the University of Chicago.

Paepcke had visited the collapsing mining town of Aspen in Colorado's Roaring Fork valley in 1945. Inspired by its natural beauty, Paepcke became convinced that Aspen could be converted into a place where leaders could meet in retreat from their daily toil.

To realize this vision, in 1949 Paepcke organized a celebration of Johann Wolfgang von Goethe's 200th birthday in Aspen, Colorado. Over two thousand guests took part. Amongst others, Albert Schweitzer, Jose Ortega y Gasset, Thornton Wilder and Arthur Rubinstein attended. Paepcke founded The Aspen Institute one year later.

Paepcke wanted to create a forum at which "the human spirit could blossom" amidst the storms of modernization. He hoped that the institute would help leaders reorient themselves towards eternal truths and ethical values in the daily management of their business.

Inspired by Mortimer Adler's seminar on the classic works of philosophy, Paepcke founded the Aspen Executive Seminar. In the 1960s and 1970s the institute broadened its program with many new programs.

**Twenty-four years later, German Federal Chancellor Willy Brandt, Die Zeit publisher Countess Marion Dönhoff, German Federal President Richard von Weizsäcker And Shepard Stone founded the Aspen Institute Germany.**

In 1974, German Federal Chancellor Willy Brandt, *Die Zeit* publisher Countess Marion Dönhoff, German Federal President Richard von Weizsäcker and Shepard Stone founded the Aspen Institute Germany—as the first Aspen Institute outside of the United States.

Under Stone's leadership (1974-1988), the institute made a significant contribution to achieving mutual understanding between the East and West blocs during the Cold War. Aspen was one of the few places where high-ranking East bloc and West bloc representatives were willing to meet in a neutral, respectful and confidential atmosphere in order to look for solutions to the East-West conflict together.

Under Stone's successors, the institute dedicated itself to the search for solutions to the Yugoslav conflict and other foreign and security policy issues. The Aspen Institute Germany organizes public events, and conferences and seminars with the goal of reconciliation, promoting peace, preventing conflict and advancing mutual understanding.

Today, Aspen Germany works closely together with the other eight independent Aspen Institute in order to advance universal values and values-based leadership.

Aspen offers three major program formats...

#### **Aspen Leadership Program**

For over sixty years, the Aspen institutes have been organizing multi-day retreats for top leaders in order to advance values-based leadership.

#### **The Aspen Seminar**

Established leaders from Germany, Europe and the U.S. meet for three consecutive days to deliberate together on the proper structure and role of leadership in the “good society.” In a Socratic dialogue, they intensively discuss philosophical texts from Occident and Orient. The goal is to develop and apply the principles necessary for the construction of a “good society” in a manner relevant for international partnership in mastering a number of critical future international challenges.

Participants prepare for the seminar via intensive reading of excerpts from relevant classic and modern texts and deal with the following topics in the process:

- Human Nature
- Natural Law
- Freedom
- Property and Productivity
- Equality and Social Welfare

### **Aspen Policy Program**

Aspen Policy Programs address current, complex, policy challenges faced by society. Conferences and seminars on complicated political and social developments to analyze common challenges together in confidence and develop viable solutions. The institute mediates between conflict parties with the aim of using a holistic approach to defuse or solve the most difficult challenges arising in international relations. Aspen Policy Programs comprise:

- Kickoff presentations by international experts
- Feedback and dialogue with policy makers
- Search for an international consensus
- Development and publication of constructive suggestions that can be implemented, are relevant and are of practical value to policy makers

### **Aspen European Strategy Forum**

The Aspen European Strategy Forum is a platform for top international and transatlantic leaders from business, science, politics, diplomacy and culture, convened to discuss strategic challenges openly and in depth behind closed doors.

The Topics:

- 2008 — International State Building and Reconstruction Efforts: Experience Gained and Lessons Learned
- 2009 — Russia and the West: How to Restart a Constructive Relationship
- 2010 — The Strategic Implications of the Iranian Nuclear Program
- 2011 — Sustainable Strategies for Afghanistan and the Region beyond 2014
- 2012 — The Greater Middle East and the Transatlantic Community
- 2013 — Maritime Security and Europe

### **Aspen Southeast Europe Program**

Aspen's Southeast Europe program convenes sub-cabinet level decision makers and experts from politics, diplomacy, military, civil society and academia from the USA, Germany, Southeast Europe, Russia, Turkey, and Euro-Atlantic organizations behind closed doors to discuss common challenges confidentially and in depth.

The Topics:

- A Future Security Architecture for Southeast Europe
- The Future Roles of NATO and the EU
- Euro-Atlantic Integration
- Bilateral Security Roles in Southeast Europe
- Organized Crime
- Energy Security
- Economic Development
- Rule of Law

**Southeast Europe Foreign Ministers' Conferences**

Aspen convenes an international meeting of foreign ministers once a year. In December 2008-2012 high-ranking U.S. representatives and top politicians and officials met with Foreign Ministers from Southeast Europe at closed-door conferences. In 2010, German Federal Foreign Minister Dr. Guido Westerwelle and his Austrian counterpart Dr. Michael Spindelegger opened the conference. In 2012, Dr. Westerwelle and his Hungarian counterpart Dr. János Martonyi assumed patronage of the conference.

The Topics:

- Reconciliation in Southeast Europe
- Regional cooperation
- NATO and EU integration
- Economic development and energy security
- A stable security architecture for Southeast Europe

**Aspen Public Program**

Aspen's Public Program is a series of public presentations by and discussions with high-profile speakers. It offers a platform at which differing opinions can be exchanged and debated and new ideas can be introduced.

A selection of speakers from 2009-2014:

- Dr. Josef Ackermann, Deutsche Bank AG
- Dr. Manfred Bischoff, Daimler AG
- Dr. Klaus-Peter Müller, Commerzbank AG
- Dr. Bernd Reutersberg, E.ON Ruhrgas AG
- Dr. Dr. Hans-Werner Sinn, ifl -Institut für Wirtschaftsforschung
- Dr. Guido Westerwelle, Bundesminister des Auswärtigen,
- Roland Koch, Ministerpräsident Hessen
- Dr. Wolfgang Schäuble, Bundesminister des Innern
- Thomas de Maizière, Bundesminister
- Brigitte Zypries, Bundesminister a.D.
- Prof. Dr. Volker Perthes, Stiftung Wissenschaft und Politik
- Dr. Thilo Sarrazin
- Paul S. Atkins, U.S. Securities & Exchange Commission
- C. Hayden Gray, U.S. Ambassador to the European Union
- Elliott Abrams, Deputy U.S. National Security Adviser
- Lt. Gen (ret.) Ricardo S. Sanchez, Chief of Joint Task Force 7
- Prof. Dr. John L. Esposito, Georgetown University
- Dr. Kevin Hassett, American Enterprise Institute
- Prof. Dr. Bruce Hoffman, Georgetown University
- Evans Revere, Former Principal Deputy Assistant Secretary, U.S. Department of State
- Giulio Tremonti, Former Economic and Finance Minister of the Republic of Italy
- Dr. Jürgen Stark, Former Chief Economist and Management Board Member of the European Central Bank
- Haifa Al Kaylani, Founder and Chairman of the Arab International Women's Forum
- General (ret.) Egon Ramms, Former Commander of the Allied Joint Force Command in Brunssum
- Henryk M. Broder, Journalist and author



**Aspen Publications 2009-2014**

Esch, Valeska, Kabus, Juliane (eds.), *A Future Security Architecture for Southeast Europe (Aspen Institute Germany: Berlin 2013)* Available at [www.aspeninstitute.de](http://www.aspeninstitute.de)

Krause, Joachim | Mallory, Charles, (eds.), *The Greater Middle East and the Transatlantic Community (Aspen Institute Germany: Berlin, 2012)* Available at [www.aspeninstitute.de](http://www.aspeninstitute.de)

Krause, Joachim | Mallory, Charles, (eds.), *Sustainable Strategies for Afghanistan and the Region After 2014, (Aspen Institute Germany: Berlin, 2011)* Available at [www.aspeninstitute.de](http://www.aspeninstitute.de)

Krause, Joachim | Mallory, Charles, (eds.), *The Strategic Implications of the Iranian Nuclear Program (Routledge: London, 2011)* Available at [www.amazon.com](http://www.amazon.com)

Krause, Joachim | Mallory, Charles, (eds.), *International State Building and Reconstruction Efforts: Experience Gained and Lessons Learned (Barbara Budrich: Farmington Hills MI, 2010)* Available at [www.amazon.com](http://www.amazon.com)

Böhnke, Olaf | Azimi, Amin | Spanta, Frangis Dadfar | Zillich, Helena | Morton, Allison | Reynolds, Justin | Gottwald, Ramona | Schreer, Benjamin | Mallory, Charles, *Iran: Supporting Democratic Reformers (Aspen Institute Germany: Berlin, 2010)* Available at [www.aspeninstitute.de](http://www.aspeninstitute.de)

Krause, Joachim | Kuchins, Andrew | Rahr, Alexander | Schreer, Benjamin | Mallory, Charles, *Russia and the West: How to Restart a Constructive Relationship (Aspen Institute Germany: Berlin, 2009)* Available at [www.aspeninstitute.de](http://www.aspeninstitute.de)

Over five hundred additional academic reports published by the Aspen Institute Germany can be obtained at [www.aspeninstitute.de](http://www.aspeninstitute.de)

**The Friends of the Aspen Institute exists  
so that the Aspen Institute Germany can  
continue to work independently in the future  
as well**

Representatives of German business, science, politics, diplomacy and culture founded the Friends of the Aspen Institute (Verein der Freunde des Aspen Institut e.V.) in 1989 in order to support the mission and goals of the institute.

The institute's work can be supported via a tax deductible membership contribution to the Friends of the Aspen Institute, as a Corporate, Private or Junior member. The revenues generated in this manner cover the core operating costs of the Aspen Institute Germany. This financial support permits the institute's staff the freedom to execute the institute's mission.

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Jürgen Schach von Wittenau  
Sigram Schindler  
Hans-Jörg Schmedes  
Kerstin von Schnakenburg  
Peter Schnitzler  
Christoph Schulte-Kaubrügger  
Leonardo Scimmi  
Jürgen B. Steinke  
Sergej Sumlenny  
Simon Vaut  
Sophie von Wedel  
Cornelius Wendel  
Sven Wingerter  
Christine Wolff  
Alexander Zumdieck

*Accommodation and conference venue: Gut Klostermühle, Mühlenstr. 11, 15518 Madlitz-Wilmersdorf (Alt Madlitz)*

## **Monday, September 08, 2014**

*Arrival of participants during the day*

**20:00**

Drinks reception and welcome dinner

Venue: Klostermühle Refektorium

Dinner Speech: Michael Roth, *Minister of State for Europe, German Federal Foreign Office*

## **Tuesday, September 09, 2014**

**09:00 – 09:15**

**Welcoming remarks and opening of the conference**

Venue: Conference room Theaterforum

Speakers: Rüdiger Lentz, *Executive Director, Aspen Institute Germany*  
Dr. Ernst Reichel, *Envoy for South Eastern Europe, Turkey and the EFTA-States, German Federal Foreign Office*

**09:15 – 10:45**

**Session I:  
EU enlargement and rule of law**

The first session will take a general look at the rule of law situations in the Western Balkan countries in their EU integration process. The EU in its 2013/2014 Enlargement Strategy considers rule of law a “fundamental value” that is “at the heart of the accession process”. What does the current situation look like? What are the main challenges ahead of the candidate and potential candidate countries? What should the key focus of these countries be? How should the new EU approach of opening chapters 23 and 24 in the beginning of accession negotiations be evaluated? What are the first experiences with this approach? How can a sustainable implementation and an irreversible, deeply rooted reform process in accession countries be supported? Is there anything else the EU should do in order to better support countries in the process?

Moderator: Rüdiger Lentz

Introductions: Zoran Ilievski, *Europeanization by Rule of Law Implementation in the Western Balkans*  
Bodo Weber, *Promoting Rule of Law through EU Integration in the Western Balkans – Previous Experiences and Current Challenges*

**10:45 – 11:15**

Coffee break

**11:15 – 12:45**

**Session II:**

**Capacity building: judicial and public administration reform**

An independent and efficient judiciary as well as strong administrative capacity, in particular within law enforcement agencies, is at the core of the EU integration process, as the establishment of rule of law is not limited to the legal framework but strongly depends on its implementation. The second session will therefore focus on the implementation of unbiased, efficient jurisdiction. What have the developments in this field been over the past years? What are the major challenges the countries in the region are still facing? Has a separation of power in the Western Balkan countries been established sufficiently to guarantee an independent judiciary? If not, what are the main impediments? How can the key rule of law principles of legal certainty and unity be ensured? What are the major shortcomings of the reform processes? What is the EU's role in the processes? Is there a need for stronger EU support or assistance?

Moderator: Sonja Licht

Introductions: Gordan Kalajdziev, *Judicial Reforms in the Republic of Macedonia – Concepts and Obstacles*  
Handes Özhabeş, *Judicial Reform in Turkey: Achievements and Shortcomings*

**12:45 – 14:00**

Lunch

Venue: Klostermühle Refektorium

**14:30**

Departure to Berlin in front of Fischerhaus

**16:30 – 17:30**

**Meeting with Dr. Joachim Bertele, Head of Division 212 Bilateral Relations to the Countries of Central, Southeastern and Eastern Europe, Southern Caucasus and Central Asia, German Federal Chancellery**

Venue: Federal Chancellery, Willy-Brandt-Straße 1, 10557 Berlin

**18:00 – 19:00**

**Meeting with Dr. Jörg Bentmann, Head of Division G: General Questions; EU and International Affairs, German Federal Ministry of the Interior**

Venue: Federal Ministry of the Interior, Alt-Moabit 101D, 10559 Berlin

**19:30 – 22:00**

**Reception and Dinner with Members of the German Bundestag**

Venue: Schmugglerscheune, Altes Zollhaus, Carl-Herz-Ufer 30, 10961 Berlin

MPs: Peter Beyer  
Thorsten Frei  
Ursula Groden-Kranich  
Metin Hakverdi  
Josip Juratovic  
Jürgen Klimke  
Manuel Sarrazin  
Johann Wadephul

**Wednesday, September 10, 2014**

**09:00 – 10:30**

**Session III:**

**Rule of law and the economy – improving the investment climate**

The countries of the Western Balkans all face the challenge of high unemployment, little economic growth, and a dire need for foreign direct investment. However, at the same time, the countries' investment climates all have room for improvement. What are the shortcomings of the countries' legal systems when it comes to attracting foreign direct investment? Do countries offer sufficient legal certainty when it comes to investment, property rights, or permits? Which reforms are needed in order to improve conditions for investors? Is there anything the EU can do to further support this process?

Moderator: Helge Tolksdorf  
Introductions: Silvana Mojsovska, *Measurement of the Investment Climate Versus Investment in the Western Balkans*  
Valbona Zeneli, *Economic Rule of Law for Development in the Western Balkans*

**10:30 – 11:00**

Coffee break

**11:00 – 12:30**

**Session IV:  
Organized crime and corruption**

Key challenges to the rule of law identified by the European Union are organized crime and corruption, in particular the “criminal infiltration of the political, legal and economic systems” (EU Enlargement Strategy and Key Challenges 2013/2014). It is therefore fundamental for progress in rule of law to tackle these issues effectively. Why do countries struggle so much in their fight against organized crime and corruption? How can OC and corruption be tackled more efficiently, in particular since they are becoming more sophisticated with modern business instrument as cover-ups? How can existing anti-corruption legislation be implemented more efficiently? How can individual political or interest group influence on anti-corruption measures be limited?

Moderator: Dr. Andrea Despot

Introductions: Daniela Irrera, *Formal and Informal Actors in the Western Balkans: Measuring the Impact of Anti-Corruption Policies*  
Ioannis Michaeltos, *The Fight Against Corruption and Organized Crime, The Case of the Western Balkans*

**12:30 – 13:30**

Lunch

**14:00 – 15:30**

**Session V:  
The protection of basic civil, political, social, and economic rights**

One of the cornerstones of rule of law is the guarantee of basic civil, political, social and economic rights, and the protection of these rights by and in particular against governmental or administrative activities without legitimate cause. Part of these fundamental rights is the right to freedom of expression, including freedom and independence of the media. What is the situation in Western Balkan countries? Which rights are already sufficiently guaranteed? What needs to be done in order to ensure the guarantee of all rights, and in particular improve the independence of media throughout the region?

Moderator: Rüdiger Lentz

Introductions: Nenad Koprivica, *Background Paper on the Protection of Basic Civil, Political, Social, and Economic Rights in the Western Balkans*  
Murat Önsöy, *The Protection of Basic Rights in the Western Balkans*

**15:30 – 16:00** Coffee break

**16:00 – 17:30** **Meeting with Peter Eigen, Founder of Transparency International**

**18:00** Barbecue on the shore of Madlitz lake

**Thursday, September 11, 2014**

*Departure of participants during the day*

Borchardt, Bernd

Pürner, Stefan

Despot, Andrea

Quiring, Anja

Djikić, Emir

Reichel, Ernst

Goranić, Ivana

Samofalov, Konstantin

Harxhi, Edith

Selimi, Petrit

Ilievski, Zoran

Tahiri, Edita

Irrera, Daniela

Tolksdorf, Helge

Kalajdziev, Gordan

Trišić-Babić, Ana

Kapetanović, Amer

Weber, Bodo

Kiprijanovska, Dragana

Zeneli, Valbona

Koprivica, Nenad

Korenica, Fisnik

Licht, Sonja

**The Aspen Institute Germany**

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Senior Program Officer

Majstorović, Srđan

Jackson, David  
Rapporteur

Michaletos, Ioannis

Kabus, Juliane  
Program Assistant

Mojsovska, Silvana

Nehm, Florian

Lentz, Rüdiger  
Executive Director

Niktin, Alexander

Önsoy, Murat

Wittmann, Klaus  
Senior Fellow

Özhabeş, Hande

Peçi, Ildir

Pejović, Aleksandar Andrija

Pfeuffer, Paul



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# PARTICIPANT BIOGRAPHIES

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## Bernd Borchardt



Bernd Borchardt is currently the Head of EULEX, the European Union Rule of Law Mission in Kosovo. Prior to this position he served inter alia as German Ambassador to Albania, Head of the “EU External Relations” Department at the German Federal Foreign Ministry, Head of the German Office in Kosovo and as Deputy Head of the Kosovo Verification Mission (KVM).

## Andrea Despot



Dr. Andrea Despot is deputy director of the European Academy Berlin (EAB). She is responsible for designing, planning and implementing seminars, conferences and other meetings; in addition, she is in charge of international research and education projects. Her main thematic points include EU external and foreign relations, trans-Atlantic relationships as well as transformation and Europeanization processes in eastern and South East Europe. In 2008 Andrea Despot was appointed as one of the directors of studies at the European Academy Berlin. Prior to this, since 2004 she had been a member of the academic staff at the Osteuropa-Institut of the Free University of Berlin, where she received her PhD. From 2001 to 2003 she was assistant lecturer in the Chair of Comparative Government at the University of Erfurt and was also on the faculty of the Erfurt School of Public Policy. She read politics, history of eastern and southeastern Europe and Slavic studies at Ludwig Maximilian University in Munich, being awarded an MA. She gained her area studies expertise at the Graduate School of Arts and Sciences, Harvard, where she also gained an MA in Regional Studies: Russia, Eastern Europe and Central Asia Program. In 2007, Dr. Despot was visiting lecturer at the University of Helsinki, Finland; since the summer semester of 2009 she has undertaken lecturing commitments at the John F. Kennedy Institute (Graduate Institute for North America Studies) of the Free University of Berlin, dealing with foreign and security policy topics as well as international modern history. She is regularly invited to give specialist lectures or presentations and additionally acts as chairperson or moderator in panel discussions and conferences.

## Emir Djikic



Emir Djikic was born in Mostar, BiH in 1972. He completed a degree Economics at the Moscow State University in 1995 and is fluent in English, French and Russian. During his professional career of 18 years, he was a member of the BiH negotiation teams for the Accession to the WTO, for the SAA/IA Agreement with the EU and CEFTA. He is currently voluntarily engaged in the BiH Working Group within the framework of the BiH negotiations with the EU. He also provided pro bono support to numerous NGO's in establishing themselves in BiH and in building their capacity to secure EU funding. His expertise is in the areas of public administration reform, electoral processes and foreign trade. He has been one of the founders of the Transparency International (TI) Chapter in BiH. During his 13 years with the TI, the TI BiH secured a substantial presence in public and became an unavoidable interlocutor for all actors in BiH dealing with anti-corruption issues. Emir has been serving as the Chair since 2008. In 2012 he was re-elected Chair of TI BiH for another term. Emir was also active in the formation of the broad coalitions of civil society organizations related to different issues in BiH, with the aim of promoting transparency and fight against corruption. He is married and father of one child.

## Valeska Esch



Valeska Esch works as Senior Program Officer with the Aspen Institute Germany and is responsible for Aspen's Policy Program on Southeast Europe. Valeska joined Aspen in February 2009. She holds an MA in Political Science, International and European Law, and English Language and Literature with a focus on security politics, the European Union, and Southeast Europe, for which she studied at the Rheinische Friedrich-Wilhelms-Universität Bonn and the University of Birmingham. Ms. Esch has published on the EU's engagement in Kosovo. Prior to joining Aspen, she worked for an event management firm in Bonn and interned at the United Nations University's Institute for Environment and Human Security (UNU-EHS).

**Ivana Goranić**


Ms. Ivana Goranić graduated from the Faculty of Law at Zagreb University in 1983, and after practice at the Municipal Court in criminal law and juvenile delinquency passed the Bar Exam in 1990 and spend the rest of her career working for the Croatian Government. From 1993-1996 as Head of the Department for the mutual assistance and international cooperation and from 2008-2010 as Head of the Directorate for education in judiciary at the Ministry of Justice of the Republic of Croatia. Her career at the Ministry of Foreign Affairs of the Republic of Croatia started 1996 and until 2000 she was the Deputy Head of Human Rights Department. From 2000-2006 she worked as Minister Counselor at the Croatian Embassy in Vienna and 2006-2008 at the Croatian Permanent mission to UN, OSCE, and other international organizations in Vienna. She worked as a Director of Judicial Academy (2010-2013) as a newly established independent institution in Croatia. It was a challenging period of negotiations with the EU and the Judicial Academy established intensive cooperation with training institutions in EU member states and region and the new system of education and nomination of judges, in accordance with European standards. Since mid-June 2014, Ms. Goranić has worked as an Expert on Governance for Growth (Area of Justice) at the Secretariat of the Regional Cooperation Council in Sarajevo. The main subjects of her interest are: system of human rights protection mechanisms in Europe and EU; Council of Europe and the Court for Human Rights; international cooperation; rule of law; organization and functioning of judiciary (comparing European standards and situation in the region); professionalism, independence, capacity and efficiency of judges/prosecutors; organization of continuous education for judiciary based on European standards; nomination of judges; institution building; reforms in judiciary and administration; international networking (esp. in the area of justice and education). During her carrier as a state official, she was a member of numerous governmental and international bodies, structures, and institutions. She published ca. 30 articles regarding the abovementioned issues and participated in numerous international seminars, EU projects, and conferences as a speaker or active participant. She was a project leader in three EU projects (one PHARE and two IPA) on the judicial reform in Croatia, as well as in few bilateral projects.

**Edith Harxhi**


Ms. Edith Harxhi is the Executive Director of the Albanian Policy Center, a new think tank that deals with policy advice, analysis and research in Albania and the Balkans. Prior to this, from December 2005 to September 2013 she served as the Principal Deputy Foreign Minister of the Republic of Albania. While serving on that post Ms. Harxhi was responsible for Albania's bilateral relations, multilateral diplomacy, NATO and EU integration processes and specifically dealt with Albania's relations with Southeast European countries, the Western Balkans and Albanians living in the region. Ms. Harxhi has served for many years as a Special Envoy of the Albanian Government for the recognition of Kosovo's Independence, where she has visited many world capitals and international organizations lobbying for Kosovo's independence. She led numerous Albanian delegations abroad and represented Albania in dozens of international events and high-level conferences. Ms. Harxhi has also worked extensively on energy issues and has been in charge of the political negotiating team for the Trans-Adriatic Pipeline from 2006 until the successful decision on TAP. Prior to her appointment as the Principal Deputy Foreign Minister of the Republic of Albania, Ms. Harxhi worked with the United Nations, and served as an advisor to the Deputy Special Representative of the United Nations Mission in Kosovo where she covered police and justice as well as minorities and gender affairs. During 2003-2005 she worked as UNDP international consultant on advising the Prime Minister of Kosovo on security affairs and establishing the Office of Public Safety. She also served in the UNMIK Office for Gender Affairs and drafted, in partnership with women's group from the Parliament and civil society, the first Gender Equality Law of Kosovo. Ms. Harxhi received a Master's Degree with Honors in Political Science and International Relations from the University of Edinburgh, United Kingdom. She has been actively involved in the academic and political debate on the question of Kosovo and is specialized in politics and society in the Balkans. She is currently working on the completion of her PhD thesis entitled: "The Ethnic Conflicts and the Albanian disorder in the Balkans". Ms. Harxhi is fluent in Albanian, English, Turkish, Italian and has an intermediate-level understanding of French.

**Zoran Ilievski**



Zoran Ilievski, PhD is an Associate Professor of Political Science and Head of the Political Science Department of the Faculty of Law at Ss. Cyril and Methodius University of Skopje. He is also engaged in an advisory role to the President of Republic of Macedonia and is the Program Director of the President's School of Young Leaders. Zoran Ilievski is an external collaborator to the Institute for Democracy Societas Civilis in Skopje. He has collaborated on a number of research projects with the University of Graz, LSE, European Academy of Bolzano and University of Zurich, as well as on a number of TEMPUS, FP6, FP7 and SCOPES collaborative and research projects. He is an Associate Fellow of the World Academy of Arts and Sciences and a Fellow of New Westminster University in Vancouver, Canada.

**Daniela Irrera**



Daniela Irrera is Assistant Professor of Political Science and IR at the University of Catania. She has been Visiting Scholar at the Stony Brook University; at the Clinton Institute for American Studies, University College Dublin; University of Delaware; Université Libre de Bruxelles, University of Oxford, Dogus University, Istanbul, New Bulgarian University, Sofia and National University Singapore. She has worked extensively and published on international NGOs issues, particularly in the field of humanitarian action. Her last book is 'NGOs, Crisis Management and Conflict Resolution: Measuring the Impact of NGOs on Intergovernmental Organisations', Edward Elgar, 2013.

**David Jackson**



David Jackson is a PhD candidate at the Berlin Graduate School for Transnational Studies and is based at the Social Science Research Center Berlin. His dissertation, for which he received a scholarship from the Fritz Thyssen Stiftung, deals with the emergence of clientelism in Kosovo under conditions of internationally-led state-building. David Jackson's further research interests include EU external relations, governance in areas of limited statehood, and ethnic and race relations. He has worked for a development NGO in Jordan, for the World Health Organization in Geneva as an external analyst, and at the Cabinet Office of the British Prime Minister in London. David Jackson holds a B.A. in Modern History and Politics from the University of Oxford and a Master of Public Policy from the Hertie School of Governance. He currently lives in Berlin.

**Juliane Kabus**



Juliane Kabus joined the Aspen Institute Germany in April 2012 as a Program Assistant in Aspen's Policy Program on Southeast Europe. She holds a BA in Politics, Public Administration and Sociology from the University of Potsdam and is currently pursuing her Master's degree in Political Science with a focus on International Politics, Political Theory and Military Studies. Previously she gained experience as an intern in the working group on Foreign Affairs of the CDU/CSU parliamentary group at the German *Bundestag*.

#### Gordan Kalajdziev



Born on 10 January 1962 in Skopje, Macedonia, Prof. Kalajdziev holds a PhD in Criminal Law from the Faculty of Law at the Ss. Cyril and Methodius University in Skopje, Republic of Macedonia. He is a full-time professor of Criminal Procedure, Juvenile Justice, Comparative Criminal Law, International Criminal Law, Philosophy of Law and International Human Rights Law at the Faculty of Law within the Ss. Cyril and Methodius University in Skopje and also teaches at the Police Academy in Skopje and the Academy for Judges and Prosecutors in Skopje. He was a project leader in the reform process of the criminal justice system in Macedonia and is a member of the Council for the Reform of the Judiciary at the Ministry of Justice. In addition to having taken part in the drafting of several statutes such as the Law on Courts, the Criminal Code, the Code of Criminal Procedure, the Law on Public Prosecution, the Law on Expert Witnesses, etc., he is the author of more than 200 published papers and articles on issues of criminal law and procedure, police powers and human rights. Prof. Kalajdziev is a distinguished member of the NGO community and currently the President of the Helsinki Committee for Human Rights in the Republic of Macedonia.

#### Amer Kapetanović



Amer Kapetanović is currently Assistant Minister for Bilateral Relations at the Ministry of Foreign Affairs of Bosnia and Herzegovina. Previously he served *inter alia* as Head of the European Department, Policy Planning Chief, and Minister-Counselor at the Embassy of Bosnia and Herzegovina to Germany. Prior to joining the Ministry of Foreign Affairs Mr. Kapetanović was a journalist working with domestic and international media. Mr. Kapetanović is the President of the Bosnian-Herzegovinian Film Fund and a founding member and member of the Steering Board of the foreign policy think-tank “Foreign Policy Initiative” in Bosnia and Herzegovina.

#### Dragana Kiprijanovska



Dragana Kiprijanovska was born on 10<sup>th</sup> September 1985 in Skopje, Macedonia. She graduated from the University “Ss.Cyril and Methodius”, Faculty of Law “Iustinianus Primus”, Skopje with a Bachelor of Law (2004-2008) and a Master of Science (MSc) in Criminal Law (2011). She then enrolled in PhD studies at the Faculty of Law “Iustinianus Primus”, where she is appointed as Junior Research and Teaching Assistant in the Department of Criminal Law. In 2012-2013, she spent five months as a PhD researcher at the Faculty of Law, University of Ljubljana. In 2011, she was the University Visiting Fellow at the Lomonosov Moscow State University, Faculty of Law. In 2009, she spent six months as a legal counselor in the Office of the Minister of education and science. In July 2014, she was appointed as Deputy Minister of Foreign Affairs. Her field of expertise covers comparative criminal law, international law on human rights, economic (criminal) law, and medical law with particular focus on patient rights, liability of health care professionals and mental disability rights, corporate crime, cyber crime, and corruption. Dragana Kiprijanovska is the author and coauthor of one book for university education (“Medical Criminal Law”), coeditor of one book (Civil and political rights and freedoms – Street Law, USAID), author of 3 publications, compilation of texts in Economic criminal law for university (master) studies (co-author) and over 30 scientific papers published in international and national journals.

#### Nenad Koprivica



Nenad Koprivica is the Executive Director at the Centre for Democracy and Human Rights - CEDEM, a think tank from Montenegro, and a teaching assistant at the Faculty of Political Science, University of Montenegro. He is currently a PhD candidate at the Faculty of Political Science, working on the thesis Political conditions of the Western Balkan integration into the European Union. He previously graduated from the Faculty of Law of the University of Montenegro and also holds a Masters degree in European Studies from the University of Bonn, Germany. His major interests are: diplomacy, international political relations and Euro-Atlantic integration. He was the member of the working group for drafting Montenegrin Law against Discrimination, Country Coordinator for the Swiss Peace Foundation from 2006-2008 and the President of YATA Association 2007-2008 and is currently a member of the working group for drafting Montenegrin Law on asylum. He is also a member of BiEPAG (The Balkans in Europe Policy Advisory Group).



#### **Fisnik Korenica**



Fisnik Korenica is a Lecturer on the Theory of State and Law at the University of Prishtina and a Senior Research Fellow at the Group for Legal and Political Studies. Fisnik holds an LLB degree from the University of Prishtina, an MA degree from the University of Sussex, and is currently reading the PhD in Law degree at the Vrije Universiteit Brussel. His main research interests lie in the field of constitutional design of post-conflict and internationally administered states and the role of international state-building. To date, he has published a number of internationally peer-reviewed research articles in international journals. He also regularly provides academic and policy-based counsel to a number of actors - international and domestic - involved in setting up the foundational institutions of Kosovo. He is the country-reporter for Kosovo for the globally renowned Oxford International Law Reports (ILDC section).

#### **Rüdiger Lentz**



Rüdiger Lentz is the Executive Director of the Aspen Institute Germany. Previously he served as the Executive Director of the German-American Heritage Foundation and Museum in Washington from 2009 until 2013. From November 1998 until December 2009, he was the Washington Bureau Chief and Senior Diplomatic Correspondent for Deutsche Welle. Prior to his assignment in Washington, he served as Deutsche Welle's Brussels Bureau Chief. Before joining Deutsche Welle, Lentz worked as a correspondent for the German news magazine Der Spiegel, after having served in the German Armed Forces for eight years and as a TV commentator and reporter at ARD/WDR, Germany's largest public TV and radio station. Lentz has also held various positions including that of Editor in Chief at RIAS-TV Berlin from 1990-1992. As the Executive Director of German TV from 2002-2005 he was responsible for the branding and market entrance plan of German TV in the US. He has been a Visiting Lecturer at Harvard University, the School of Foreign Service in Washington and a regular guest on CNN and C-Span. Lentz was born 1947 and studied international relations, history and economics at the University of Hamburg. He is a long time member of the Atlantik-Bruecke and a founding member of the German American Business Council (GABC) in Washington.

#### **Sonja Licht**



Sonja Licht graduated Sociology and received an MA in Socio-Cultural Anthropology from the Faculty of Philosophy, University of Belgrade. She authored numerous articles in local and international magazines, journals and books. She was part of the Yugoslav dissident movement from the late sixties, and from mid-eighties she was among the founders of numerous local and international civic organizations, including the Helsinki Citizens' Assembly in 1990. From 1991 to 2003 she led the Fund for an Open Society in Yugoslavia (later Serbia). In 2003 she established the Belgrade Fund for Political Excellence, member of Council of Europe's Network of Schools of Politics devoted to the democratic capacity building of decision and opinion makers in 19 countries. From 1990s has been board member of many reputable international institutions. For promoting democracy and civic activism in Serbia and South East Europe she received numerous honors, including the Council of Europe Pro Merit, Star of Italian Solidarity and the French Legion of Honor.

#### **Matthias Lüttenberg**



Matthias Lüttenberg joined the German Federal Foreign Office in 2003. His first assignment was Pristina (Kosovo) where he initially worked at the German Liaison Office (2004-2006), continued as Political Advisor to the KFOR Commander Lt. Gen. Kather (2006/2007) and later served as personal assistant to Ambassador Wolfgang Ischinger who represented the EU in the EU-US-Russia Troika negotiations on the future status of Kosovo (2007). From 2008 on he was personal assistant to the Coordinator for German Russian relations and from 2010 to 2013 he served in the Political Department of the German Embassy in Tel Aviv. After another year in Berlin on the Middle East he returned to South Eastern and Eastern Europe as Deputy Head of the division 212 at the Federal Chancellery in July 2014.

#### **Srdan Majstorović**



Srdan Majstorović graduated from the University of Belgrade, Faculty of Political Sciences, Department of International Relations, in 2000. He received the degree of a Master of Arts from the University of Graz, Karl-Franzens Faculty of Law, Department of European Integration and Regionalism. Srdan Majstorović has been appointed as Deputy Director of the Office for European Integration of the Government of Republic of Serbia in 2005. Since September 2013 he is the acting director of the European Integration Office. Prior to this nomination, Mr. Majstorović worked in the Department for European Integration of the Ministry of International Economic Relations of Republic of Serbia (2003-2005) as well as in the Department for European Integration and Multilateral Cooperation in the Region in the former Federal Ministry of International Economic Relations of FR Yugoslavia (2001-2003) where he was in charge of the regional cooperation initiatives and organizations. Srdan Majstorović was a member of the Negotiating Team of the Government of Republic of Serbia and he participated in the negotiations of Stabilization and Association Agreement between Republic of Serbia and the EU. Currently he is participating in the accession negotiations between Republic of Serbia and EU. Srdan Majstorović actively participated in preparation of the mechanism for inter-ministerial coordination of the EU accession process of the Republic of Serbia.

#### **Ioannis Michaletos**



Ioannis Michaletos is a Political and Security Analyst & Consultant. He is an associate of the Institute for Defense & Security Analysis (ISDA) in Athens, Greece. He consults on political and security regional affairs for the IHS Jane's Information Group and is a Southeast European correspondent for the European Oil & Gas Monitor and the European Energy Review. He is a research coordinator for the Balkanalysis regional media service and leads the Southeast European office of the World Security Network Foundation, contributes to the BRIGHT magazine in issues of Balkan organized crime, and is a member of the FLARE network (European network of civil society against transnational organized crime). He has appeared live and as a commentator in CNN, Fox Business, Al Jazeera, Reuters, Die Welt, Deutsche Welle, Der Standard, National Public Radio, Washington Post, Greek state TV, Serbian state TV, Bulgarian state TV, Sweden Public radio, Sunday Telegraph, AFCEA, SETimes, Lebanon Now, ANSA, O Globo and others, along with numerous appearances for regional Balkan media and conference forums. His main interests are the research and analysis of asymmetrical security threats in Southeastern Europe (organized crime networks, terrorism and extremism, regional political developments), as well as, energy-related developments (energy infrastructure and networks, investments, energy security, and regional energy policies). His experience includes consultancy projects for security research organizations and corporations, focused mainly on the Balkans, Greece and the transnational illicit markets.

#### **Silvana Mojsovska**



Dr. Silvana Mojsovska is a full-time professor at the Institute of Economics – Skopje, University “St. Cyril and Methodius”, Macedonia, Department of International Economics. She holds a PhD in Economics and has an extensive experience in research and lecturing. Since 2006, she is Head of the Master course in International Economics at the Institute of Economic – Skopje. Her key areas of interest include Globalization, FDI and International Trade, EU Integration, as well as Regional Cooperation. Dr. Mojsovska was awarded with research fellowships at prominent academic institutions, such as the London School of Economics and Political Science (LSE), United Kingdom and Universite Paris I – Pantheon Sorbonne, France. She is author of numerous publications and participated in many projects, forums, conferences, workshops and seminars.

**Alexander I. Nikitin**

Prof. Dr. Alexander I. Nikitin is currently a Professor at the Political Sciences Department at the Moscow State Institute of International Relations (MGIMO-University) as well as Director of the MGIMO Center for Euro-Atlantic Security and Director of the Center for Political and International Studies. Prof. Nikitin is a distinguished academic. He is the author of four monographs, chief editor and principal author of eleven collective monographs and author of more than one hundred articles and chapters in academic periodicals, journals and books published in Russian, English, French, Korean, Punjabi, Spanish and German. Prof. Nikitin received an international research fellowship at the NATO Defense College and gave guest lecture courses at the University of Iowa (USA), the NATO Defense College (Rome) and the Geneva Center for Security Policy (GCSP). He is a member of several scientific associations including the Russian Academy of Military Sciences and the Russian Political Science Association, whose elected President he was from 2004 to 2008. He is Vice-Chairman of the Russian Pugwash Committee of Scientists for International Security and Disarmament, and an elected member of the International Pugwash Council. Prof. Nikitin is a member of the Scientific-Expert Council of the Collective Security Treaty Organization. Since 2005, he has been an official external expert for the United Nations, nominated by the UN High Commissioner on Human Rights. Prof. Nikitin has organized more than fifty international scientific and academic conferences and workshops, in Russia as well as abroad. He served as coordinator of several multi-national research projects. Prof. Nikitin holds a PhD in History of International Relations and a Doctor of Sciences in International Relations.

**Murat Önsoy**

Murat Önsoy is an assistant professor of International Relations at Hacettepe University/Ankara and a part time instructor at the Turkish Military Academy. He earned his PhD from the Institute for Contemporary Middle Eastern Studies, University of Erlangen-Nurnberg (2009). During his PhD studies, he spent one year as a visiting scholar at Georgetown University. He holds a B.A. in Political Science and an M.A. in International Relations from Bilkent University. His primary research interests are history of international relations and contemporary politics of Balkans and Balkan security. His secondary research interests are theories of democratization and nationalism. He participated in several Balkan security related forums and projects and organized a series of seminars on the Balkans. He has also organized a high-level international congress in İstanbul (October 2012) entitled 'From War to Eternal Peace on the 100. Anniversary of the Balkan Wars: Good Neighbourhood Relations in the Balkans'. He has written several articles in Turkish, German, and English. Mr. Önsoy is on the advisory board of Hacettepe University Center for Energy Market Applications and Research (HUEPUAM). He is a member of 'International Studies Association' and serves as a referee for several international journals and also serves on the editorial board of the Journal of Balkan Research Center. He is currently lecturing Balkan politics and history classes on B.A. and M.A. level. Mr. Önsoy is fluent in English and German.

**Hande Özhabes**

Hande Özhabes completed her Bachelor's degree in 2005 in the Department of International Relations and Political Science at Marmara University, her first master's degree in 2006 at Boğaziçi University's European Studies Program, and her second master's degree in 2009 at the London School of Economics' Development Studies Program. She is currently completing her doctoral studies in the Department of Public Administration at Marmara University. Hande Özhabes works in the Turkish Economic and Social Studies Foundation (TESEV) Democratization Program as the coordinator for the working area on Judiciary, Law, and Justice.

**Idlir Peçi**


Dr. Idlir Peçi has a law degree from the School of Law of Aristotle University, Thessaloniki Greece in 1998. After his studies he worked for a short period as a legal assistant at the law firm ‘Tsourkas & Associates’ in Thessaloniki, Greece. In 2000 he obtained an LL.M degree on European Law from the Faculty of Law, Rijksuniversiteit Groningen, The Netherlands. After his LL.M studies he was offered a PhD position at the same faculty at the Department of Criminal Law and Criminology. Dr. Peçi successfully completed his PhD thesis in 2005. Until June 2006 he worked at the same Faculty as a Post-Doc researcher. In June 2006 he was appointed as Assistant Professor at the Willem Pompe Instituut for Criminal Law and Criminology, Utrecht University, The Netherlands. He worked there until November 2013. During his work at the Willem Pompe Instituut, Dr. Peçi has actively participated as a researcher, academic coordinator and expert in various international research and training projects. He has also published in various international legal journals in the field of European Criminal Law, Criminal Law and Human Rights and Criminal Procedure. In November 2013 Dr. Peçi was appointed as Deputy Minister of Justice of the Republic of Albania. In this capacity he is responsible a.o. for the European Integration process in the Justice Sector, Codification, Mutual Legal Assistance and Property Rights.

**Aleksandar Andrija Pejović**


Ambassador Pejović is the State Secretary for European Integration, Chief Negotiator for Negotiations on the Accession of Montenegro to the European Union (since December 2011), as well as the National Coordinator for the Instrument for Pre-Accession Assistance. In the last two years (since March 2010) he has been Ambassador - Head of the Mission of Montenegro to the EU and (since October 2010) the permanent representative - Ambassador of Montenegro to the Organization for the Prohibition of Chemical Weapons in Hague. Prior to his appointment as the Ambassador to the EU, he was Director of the Directorate for the European Union in the Ministry of Foreign Affairs of Montenegro for three years. Furthermore, he was a member of various government-working bodies in the process of European integration, and coordinated the preparation of answers to the EC Questionnaire - Political Criteria and the Chapter 31 – Foreign, Security and Defense Policy. He has been working in the Ministry of Foreign Affairs since 2000. He performed duties in several departments within the Ministry – multilateral affairs (UN and regional cooperation), bilateral affairs (neighboring countries and Western Europe) and the EU. He worked in the Office for Cooperation between Montenegro and Slovenia in Ljubljana, as well as in the Embassy of Serbia and Montenegro in Skopje, where he also performed the duty of national representative to the Regional Centre for Migrations, Asylum and Refugees. He was national coordinator for Montenegrin chairmanship of the Adriatic Ionian Initiative, coordinator for chairmanship of the Migration, Asylum, Refugees Regional Initiative and deputy national coordinator for the fight against human trafficking. Before his employment in the Ministry of Foreign Affairs of Montenegro, he had worked as professor in the Grammar School in Herceg Novi for three years and a half. He speaks several languages, among which English, Italian, French, Slovenian and Macedonian. In his free time, he is engaged in writing and sculpting. He is the author of several specialist papers on international relations and geopolitics, as well as of one novel *Amabor*.

**Paul Pfeuffer**


Paul Pfeuffer is currently Senior Advisor in the Office of South Central European Affairs, Bureau of European and Eurasian Affairs at the U.S. Department of State in Washington. He joined the State Department in 1997, serving in several positions relating to the former Yugoslavia. In 1997, he received a Master’s Degree in Public Affairs, specializing in International Relations, from Princeton University’s Woodrow Wilson School. From 1991-1995, Mr. Pfeuffer was Chief of Staff to the Majority Leader of the State Parliament of Saxony, Germany. From 1989-1991, he was a legislative aid in the German Bundestag. He earned a Bachelor’s Degree with a focus on Government and German Studies from Oberlin College in 1989.



**Stefan Pürner**

Dr. Stefan Pürner is currently Head of Section for Bosnia and Herzegovina, Macedonia, Montenegro and Serbia at the German Foundation for International Legal Cooperation (IRZ). Dr. Pürner studied Law and Slavonic languages. He has received his Doctorate in 1992 for a study on the Limited Liability Company according to the 1988 Yugoslav Company Act. The same year he started to work as an attorney at law mainly concentrating on cases related to the former Yugoslav countries. Since 2000 he has served as a long and short-term expert in various projects in Southeast Europe. He is also a co-editor of numerous publications on the law of former socialist countries, e. g. co-editor of Handbuch “Wirtschaft und Recht in Osteuropa” (Handbook on Law and Economy in Eastern Europe), and an Editor in Chief of “Nova pravna revija – časopis za domaće, njemačko i evropsko pravo”. Dr. Pürner also regularly gives lectures at faculties in various countries of the region.

**Anja Quiring**

Since September 2007 Ms. Quiring has been working as Regional Director South Eastern Europe at the Committee on Eastern European Economic Relations. After finishing her Political Science Studies at the Freie Universität Berlin in December 2003, she started her professional career at the Consultant Flemming & Partner in January 2004 and joined Axel Springer Russia in July 2006, where she worked in Moscow as New Business Development Manager.

**Ernst Reichel**

Dr. Ernst Reichel is currently Envoy for Southeast Europe, Turkey and the EFTA-States at the Federal Foreign Office in Berlin. Prior to this position he served as Head of Division 209/Western Balkans. A career diplomat, Dr. Reichel joined the German Foreign Service in 1988, serving *inter alia* in New York at the German mission to the United Nations, as Deputy Head of the Division for EU-Policy and as Deputy Chief of Cabinet for the NATO Secretary General. Most recently, Dr. Reichel served as Head of Division for Russia, Ukraine, Belarus, Moldova and Eastern Partnership. Before entering the Foreign Service, Ambassador Reichel studied law and received a doctoral degree from the University of Bonn. He was born in Lagos, Nigeria.

**Konstantin Samofalov**

Konstantin Samofalov was elected to the Serbian parliament in 2007, 2008, and 2012. In the parliament he was a member of the Defense and Internal Affairs Committee and deputy member of the Foreign Affairs Committee. He was also a Member of the Serbian delegation to the NATO Parliamentary Assembly (PA) (Head of Serbian delegation at 2010 Riga and 2012 Tallin NATO PA sessions), and of the Serbian delegation to the EU CSDP Parliamentary Conference. Mr. Samofalov joined the Democratic Party (DS) in 2000 and was the president of DS youth Belgrade from 2000 to 2007. From 2004 to 2008 he was member of the city assembly of Belgrade. Now he is one of the founders of the New Democratic Party (NDS) of former Serbian President Boris Tadić and its spokesperson. The NDS is one of four parties currently represented in the Serbian Parliament. Mr. Samofalov graduated from the Faculty of Law of the University of Belgrade in 2007 in International Law. He completed the senior executive seminar “Countering Narcotics Trafficking” at the George C. Marshall Center for European Security Studies in Garmisch-Partenkirchen, Germany. He also took part in the past two sessions of the Halifax International Security Forum in Halifax, Canada. After serving in the Serbian armed forces as a member of the first generation of volunteers following the decision on professionalization, he graduated in the first cohort of students in Advanced Defense and Security Studies at the Military Academy (University of Defense) in July 2012. He was a board member of the Parliamentary Forum on small arms and light weapons, and also a member of European leadership network, a London-based think-tank. Mr. Samofalov is fluent in English and uses French.

#### Petrit Selimi



Petrit Selimi was appointed Deputy Minister of Foreign Affairs of the Republic of Kosovo in June 2011. Before joining the MFA, Mr. Selimi was a candidate for an MP seat for the PDK at the 2010 National Elections. Prior to this, he worked from 2006 to 2010 as a private Public Relations and political risk consultant, providing advice for companies and institutions such as IPKO, Telenor ASA, the Norwegian Ministry of Foreign Affairs, the RWE AG, Raiffeisen Investment, Lazard, etc. From 2005-2006 Mr. Selimi was one of the founders and the first Executive Director of the Express, an independent daily published in Prishtina. He joined the Express after working as communications and media advisor initially for IPKO.org (2000-2003) and then for the OSCE Mission in Kosovo (2003-2004). Mr. Selimi was active as children's and youth rights activist, being one of the founders of Postpessimists, the first network of youth NGO's in former Yugoslavia (1992-1998). They won a UN Peace and Tolerance Award. He has in recent years served on the Board of Directors of Soros Foundation in Kosovo, and Martti Ahtisaari's Balkan Children and Youth Foundation. He is fluent in Albanian, English, Norwegian and Serbian. Mr. Selimi has a BA in Social Anthropology from University of Oslo, and is graduating as MSc in Media and Communications from the London School of Economics, as a recipient of Chevening Scholarship. (Source: Ministry of Foreign Affairs of Kosovo)

#### Edita Tahiri



Dr. Edita Tahiri is the Deputy Prime Minister of the Government of the Republic of Kosovo, responsible for foreign policy and national security. She is also the Chief Negotiator for Implementation of the Brussels agreement and Technical Dialogue between the Republic of Kosovo and Serbia from 2011 with the European Union facilitation and the Head of Republic of Kosova Delegation at the Brussels Implementation Dialogue. Before taking on this role, she was the Minister of Public Administration. She is the leader of the Regional Women's Lobby (RWLSEE) which she and other women leaders in the region formed in 2006. She was one of the founders and key leaders of the movement for Kosova's independence, the Democratic League of Kosovo, in the years 1991-1999. She was the Minister of Foreign Affairs of Kosova (1991-2000) and is particularly well known in foreign policy and for her significant contribution to internationalizing the Kosovo and Albanian question. She was a member of the Kosovo delegation at the Rambouillet Conference (1999) where she gave an important contribution to achieving the peace agreement, which led to the NATO intervention in Kosova in 1999 and opened up the path to Kosova's independence. She also participated in the pre-Rambouillet negotiations in 1999 and the London Conference in 1992. Currently, she is the President of the political party, Democratic Alternative of Kosova, which is part of government in coalition with PDK. Edita Tahiri completed her post-graduate studies at Harvard University, at the John F. Kennedy School for Government in 2002 and holds a Master's Degree in Public Administration. She also graduated from the Edward S. Mason program for Public Policy and Management in 2002. She holds a PhD in Political Sciences from the University of Prishtina in cooperation with SAIS Johns Hopkins University. Her thesis title is "International State-building and Uncertain Sovereignty" with a special focus on Kosovo, under the supervision of I. William Zartman and Alan Kuperman. In the years 2006/2007 she studied on a Fulbright Scholarship at the Johns Hopkins - SAIS University where she did doctoral studies in the Program for Conflict Resolution.

#### Helge Tolksdorf



Helge Tolksdorf is currently Head of the Division for EU Enlargement, Southeast Europe and Turkey in the Directorate-General for European Policy of the German Federal Ministry of Economics. Before assuming this position in 2003, he served as *inter alia* as Deputy Head of the Division for the Asia-Pacific Region and Deputy Head of the Division for General issues relating to Eastern Europe, both in the directorate-general for external economic policy of the Federal Ministry of Economics. Mr. Tolksdorf studied international economic relations at the Higher Institute of Economics in Sofia, Bulgaria. He is married and has three children.

**Ana Trišić-Babić**



Ana Trišić-Babić is currently Deputy Minister of Foreign Affairs of Bosnia and Herzegovina. Prior to being appointed to her current position, Ms. Trišić-Babić served *inter alia* as Assistant Minister for Bilateral Affairs at the Ministry of Foreign Affairs of Bosnia and Herzegovina, as Chairperson of the Commission for the NATO Integration Process of Bosnia and Herzegovina, and as Head of Working Group I of the Stabilization and Association Agreement. Ms. Trišić-Babić holds a degree in international public law from the Faculty of Law of Schiller International University in London and took part in the Senior Executives in National and International Security Program at Harvard University. Ms. Trišić-Babić is fluent in English and German, and has a good understanding of Russian and French.

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# EUROPEANIZATION BY RULE OF LAW IMPLEMENTATION IN THE WESTERN BALKANS

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## Executive Summary

This paper aims to provide policy recommendations for the assessment of rule of law implementation in Western Balkan (WB) countries aspiring European Union (EU) membership. The main question out of which the policy recommendations emerges is whether and what kind of influence the EU institutions have on the implementation of the rule of law with a particular focus on the reforms of judiciary in five Western Balkan Countries: Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, and Serbia. The research preceding this policy paper assessed the current use of conditionality criteria in the field of rule of law in Western Balkan countries and the institutional reforms carried out in the development of the judicial sector. Special focus was given to newly established institutions such as the High Judicial Council, and Judicial Academies with the goal to assess whether they provide adequate normative framework for the political independence of the judiciary. The method used for this research largely leaned on content analysis of legal rules and administrative regulations adopted for this purpose and their implementation.

## Introduction

Amidst the new uncertainties caused by the differences between North and South or East and West, between Islamic and Christian countries, between liberal and non-liberal communities and other global conflicts, there is widespread agreement on “one point alone: that the rule of law is good for everyone”<sup>2</sup>. The European Union is taking this as one of the criteria for countries’ EU accession while using principles of conditionality. The enlargement policy of the European Union is widely recognized as one of the most powerful instruments of the EU’s foreign policy. It is said to have considerably contributed to political transformation process by promoting democratic consolidation, the rule of law, respect for human rights and the protection of minority rights<sup>3</sup> (Freyburg and Richter 2010). But what exactly does the rule of law stand for?

Kochenov argues that in the pre-accession of Eastern countries, the EU Commission opted for fusing the assessment of the rule of law and democracy (2008, p, 46). In that way the EU gained political maneuvering space for more specific policy prescriptions in the process. However, the “rule of law” and judicial sector reform remain vaguely defined concepts due to “the lack of a coherent theory of judicial independence, and the

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<sup>1</sup> This policy paper was written in the framework of the project Europeanization by Rule of Law Implementation in the Western Balkans, within the Regional Research Promotion Programme supported by the Swiss Agency for Development and Cooperation, Federal Department of Foreign Affairs.

<sup>2</sup> Tamanaha, B. Z. 2004. *On the Rule of Law: History, Politics and Theory* (Cambridge: Cambridge University Press), p.1

<sup>3</sup> Freyburg, T. and S. Richter.2010. “National Identity Matters: The Limited Impact of EU Political Conditionality in the Western Balkans,” *Journal of European Public Policy* 17(2): p.262-80



difficulty to measure the performance of the judicial system<sup>4</sup> as has been observed with regard to the monitoring activities in the Eastern enlargement process. A problem also springs from the discrepancy between the theoretical concept of rule of law, and the practical requirements of the EU for judicial reforms. A recurrent problem also lies in the vagueness of the very essence of the negotiating chapters where most of the benchmarks are of highly political or constitutional importance and related to Copenhagen political criteria rather than to the hard *acquis*.<sup>5</sup>

A policy paper like this is timely since the EU is using conditionality in the realm of the rule of law with the aspiring Western Balkan countries. If the EU strives to see these reforms conveyed, it has to tackle the main issue, namely how does it assess progress and success of implementation of rule of law in a particular aspiring member country? Therefore, we propose a twofold approach for improving the EU's assessment of the implementation of the rule of law in the WB, with a particular focus on reforms of the judiciary. This approach runs along two crucial dimensions of any policy, namely, what in essence does a policy aim to achieve, and how will policymakers go about it:

- A clear conceptualization of rule of law benchmarks, paired with tangible credibility of the enlargement process towards the WB countries will simplify assessment and increase the awareness in aspiring countries of their progress, while at the same time help the EU Commission have a way of comparison and fine-grained insight into the rule of law progress of its aspiring countries. The EU has to create a comprehensive implementation strategy with a measurable interim system of goals and rewards so that the domestic actors have clear and immediate rationalist based motivation to adhere to the rule of law conditionality.<sup>6</sup> The new approach of the EU Commission towards the candidate countries, which put rule of law conditionality in the center of the negotiations, opening chapter 23 and 24 first, is a step in the right direction.<sup>7</sup>
- Support of EU institutions for societal norm socialization through a “bottom-up” approach and support of “rights holder” role vis-à-vis public authority.

Therefore we find it essential that the EU sets clear criteria for judiciary reforms as part of the rule of law,

<sup>4</sup> Mungiu-Pippidi, in Kmezić. M. 2014 (ed) Europeanization by Rule of Law Implementation in the Western Balkans”, *Institute for Democracy Societas Civilis-Skopje*, p.61

<sup>5</sup> Kmezić. M. 2014 (ed) Europeanization by Rule of Law Implementation in the Western Balkans”, *Institute for Democracy Societas Civilis-Skopje*, p.33

<sup>6</sup> Kmezić. M. 2014 (ed) Europeanization by Rule of Law Implementation in the Western Balkans”, *Institute for Democracy Societas Civilis-Skopje*, p.260

<sup>7</sup> Ibid. p. 179

along the benchmarks of *independence, accountability, efficiency and effectiveness*. We strongly maintain that firm standards in this area in the phases of Stabilization and Association Agreement (SAA), then in the phase of screening, and finally in the negotiation phase would ensure absence of political impact to the judiciary reform process.

In the following section we first assess current policies of the EU Commission towards the assessment of implementation of the rule of law and their drawbacks.

### 1. Current Policies towards Western Balkan EU aspiring countries

As academics have already identified, “[o]ne of the persistent fears in the European Union [...] is that the accession countries will be unable to catch up with the prevailing practices of constitutionalism and the rule of law that supposedly ground the common tradition of Europe”<sup>8</sup>. This fear generally springs from the prior experience of the Central and Eastern Countries (CEEC) countries.

Broadly speaking, the mechanisms that the international institutions use for achieving domestic compliance are: coercion, external incentives, and socialization.<sup>9</sup> Among the external incentives mechanisms for compliance, conditionality and socialization are currently the most widespread in Europe.<sup>10</sup>

*Conditionality* focuses on reinforcement by rewards. Those usually include achieving candidate status and starting negotiations, and finally, membership as a highest reward. *Socialization* on the other hand means that the EU demands are more likely to be perceived as legitimate if they are part of the *acquis communautaire*, and that they are not more burdensome for the existing member states.<sup>11</sup> Hence, rule adoption will be facilitated when there is resonance between traditional domestic rules and EU norms.

Checkel had identified three aspects of European conditionality: a) pre-conditions as policy actions agreed upon during the negotiations between an international in-

<sup>8</sup> Sajo, A. 2006. “Becoming Europeans: The Impact of EU Constitutionalism on Post-Communist Pre-Modernity,” in W. Sadurski, A. Czarnota, M. Krygier (eds), *Spreading Democracy and the Rule of Law? The Impact of EU Enlargement on the Rule of Law, Democracy and Constitutionalism in Post-Communist Legal Orders* (Netherlands: Springer): 175-192. p. 175

<sup>9</sup> Kmezić. M. 2014 (ed) Europeanization by Rule of Law Implementation in the Western Balkans”, *Institute for Democracy Societas Civilis-Skopje*, p.41

<sup>10</sup> J. T. Checkel. 2005. “International Institutions and Socialization in Europe: Introduction and Framework,” *International Organization* 59(4), p. 801-826

<sup>11</sup> T. Freyburg and S. Richter. 2008. National Identity Matters: The Limited Impact of EU Political Conditionality in the Western Balkans. National Centre of Competence in Research (NCCR). Challenges to Democracy in the 21st Century. Working Paper 19.

stitution and a national government that must be undertaken before the former approves credits or formally grants membership, b) actions like performance criteria or legal requirements and c) policy provisions that specify additional commitments contained in the overall agreement.<sup>12</sup> Furthermore, Linden concludes that non-compliance is punished by reduction or withdrawal of support and rejection of association and membership”.<sup>13</sup>

Socialization on the other hand leans on the pursuit of candidate countries to adjust to the official requirements of a club of countries that already maintains a particular set of norms. Repercussions in this regard come if a country experiences new norms as entirely different from its previous experience, hence struggles to acquire them both in principle and in practice. Yet, are these policies sufficient for the assessment of implementation of the rule of law? We argue that it is not, illustrating it with the example of judiciary reforms.

### 1.1 Criticism on current mechanisms

Two main problems stem from the current policy of conditionality and socialization that the EU uses in the field of rule of law in the Western Balkans. First is the vagueness of the concept of the rule of law. Second is the vagueness of the conditionality criteria within the realm of rule of law. These mechanisms are inconsistent, and bring disappointment to the candidate countries, while at the same time do not provide specific rules of the game. Lessons already learned from other countries point to the same direction. Namely, the EU was inconsistent in conveying reforms and was sluggish with the creation of new institutions and implementation of EU policies in the CEEU.<sup>14</sup> WB countries can certainly learn from the CEEU, but moreover the EU and its approach towards the newly to-be integrated region.

Rationalist institutionalism, based on “cost-benefit calculations”<sup>15</sup> claim that the lack of “normative clarity” of EU demands poses a special problem in the field of rule of law, and the credibility of conditionality in general.<sup>16</sup> Having in mind these drawbacks, we maintain that it is

important to propose a more robust framework for measuring success of implementation of the rule of law.

### 1.2 Why change now?

In addition to the 1993 Copenhagen criteria, Western Balkans countries are expected to meet additional country-specific criteria mainly linked to different peace agreements. Furthermore, promoting regional cooperation and reconciliation is expected as well. The Union uses both regional and country-by-country strategy for the countries of the Western Balkans. The main aim of the regional strategy is to improve the regional cooperation, established through the contractual relationship of these countries in the field of border management, visa policy, migration issues, and organized crime.<sup>17</sup> On the other hand, the specific priorities for each country are outlined in the justice, freedom and security chapter of the Accession Partnership. Yet, despite more than a decade of the Stabilization and Association Process in the WB, one of the most problematic issues is the functioning of the judiciary.

The differences between national jurisdictions and legal systems make it impossible to construct a universal formula for the requirements, which have to be met for an independent judiciary to exist. Yet, we argue that a strengthened comparative framework of assessing judicial reforms is not far-fetched and can be utilized since all five countries face similar challenges. Certainly, this framework has to be sensitive to country specific requirements, yet will give a more succinct systematization of what indicators are to be pursued in order for a country to improve its judiciary reforms.

## 2. Western Balkans judicial reforms

Traditionally the judicial systems of Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, and Serbia were influenced mostly by the legal traditions of Austria, Germany, and France. All faced perpetual flux between tendencies to create independent and moderate judicial systems concomitantly with a counter pressure from authoritarian rulers attempting to impose political hegemony over state institutions. All five countries have legacy of forty-year communist party rule in the Socialist Federal Republic of Yugoslavia (SFRY). During this period, the judiciary did not achieve political non-conformism in performing the judicial service. Separation of power and independence of judiciary principles were hindered by “higher state interests”, which led to instrumentalization of law by politics.

Later on, with the political transformation of Yugoslavia in the 1990s, the judiciary was characterized by judges under heavy political pressure who worked on

<sup>12</sup> J. T. Checkel. 2005. “International Institutions and Socialization in Europe: Introduction and Framework,” *International Organization* 59(4), p. 801-826.

<sup>13</sup> R. H. Linden, P. Cernoch, R. W. Clark and A. Freyberg-Inan (eds). 2002. *Norms and Nannies. The Impact of International Organizations on the Central and East European States* (Lanham: Rowman and Littlefield Publishers) p. 19

<sup>14</sup> Gregorescu in Linten et.al. R. H. Linden, P. Cernoch, R. W. Clark and A. Freyberg-Inan (eds). 2002. *Norms and Nannies. The Impact of International Organizations on the Central and East European States* (Lanham: Rowman and Littlefield Publishers)

<sup>15</sup> Schimmelfennig, F. and U. Sedelmeier (eds). 2005. *The politics of European union enlargement: theoretical approaches* Routledge advances in European politics (UK; New York: Routledge).

<sup>16</sup> March, J. G. and J. P. Olsen. 2004. “The Logic of Appropriateness,” *Arena Working Papers* 04/09 (Oslo).

<sup>17</sup> Kmezcic. M. 2014 (ed) *Europeanization by Rule of Law Implementation in the Western Balkans*, *Institute for Democracy Societas Civilis-Skopje*, p.224

sensitive political cases, hence were abided to stay close to the regime interests. Only in the 2000s, when countries overcame violent ethnic conflicts, the EU launched its policy based on the Stabilization and Association Process, offering WB countries a perspective of EU membership. Improvements in the rule of law arena became a necessary prerequisite for WB countries accession to the EU. During the course of the research, we derived the following common challenges that WB countries face regarding the rule of law:

- 1) an inadequate constitutional and legal framework resulting in excessive delays in court proceedings, difficult enforcement of court judgments, lack of accountability of the judicial bodies and corruption;
- 2) an overly complex and extended system of courts, resulting in higher than necessary operating costs and less efficient access to justice;
- 3) unclear selection, dismissal, performance, and promotion standards for judges, resulting in inconsistent judicial effectiveness and reducing public trust in the judicial profession;
- 4) a lack of integrated planning, budgeting, and performance measurement capacities, reducing the judiciary's ability to effectively monitor and improve system performance;
- 5) weak use of modern information technology (IT) software solutions for the judicial administration operational practices, hampering effective justice administration and case processing;
- 6) onerous administrative burdens on judges reducing judicial efficiency and lowering morale in the judiciary's ranks;
- 7) lack of continuous training for judges and other judicial officials, hindering the development of a modern and professional staff specializing in judiciary management and administration;
- 8) inadequate curriculum of law faculties, contributing to a lack of preparation for the future leaders in the legal community and the judiciary;
- 9) poorly equipped and maintained facilities, restricting access to justice and straining the judiciary's resources;
- 10) an overcrowded and outdated penal system, which does not effectively encourage rehabilitation or satisfy international standards of humane treatment; and
- 11) underutilization of information technology and automated systems, resulting in the continued use of inefficient and labor-intensive administrative practices. In an effort to eliminate the aforementioned weaknesses,

governments of the WB countries adopted the Judicial Reform Strategies.<sup>18</sup>

### 2.1 Major judiciary reforms undertaken

All countries except Kosovo adopted their respective *National Judicial Reforms Strategy* by 2008. These reforms contained the pursuit of independence, transparency, accountability, efficiency, accessibility to judicial bodies, and building public trust in judicial institutions. They worked on restructuring the court's structure into three tiers, except for Bosnia and Herzegovina because of the administrative division of the country, and Kosovo due to the factual division of ethnic Serbs and ethnic Albanians.

Following from these strategies, to achieve judicial independence, efficiency and accountability, the terms of appointment are crucial. Hence, all countries already have *High Judicial Councils* that are included into the procedures, playing a role in the appointment, promotion, disciplinary sanctions, and dismissal of judges. These judicial councils have to adapt control functions in order to achieve greater independence and effectiveness of judiciaries. So far, the WB countries largely comply with European standards regarding the composition of the Judicial Council. The appointment of Judicial Council members in the WB countries follows international standards, where there are both ex officio as well as elected members by peer commissions or by executive and legislative bodies. Pre-selection of judges became an obligatory phase, in order to ensure professionalism and decrease political influence of the judiciary. In Kosovo and Bosnia and Herzegovina, the Council even oversees initial and continuous training of judges, and administers the work of the courts.

Along with independence, efficiency, and accountability, a crucial feature of judicial reforms is effectiveness. This means that the policies undertaken should comply with the normative values of rule of law, and improve its quality. For this aim, effectiveness becomes essential, in the sense that those devoted to judicial reforms are competent, and follow the best practices of rule of law. Nevertheless, all WB countries face high level of formalism in their reading of the law, delays, and inconsistent decisions of the judiciary. Hence, the countries started tackling the problem of effectiveness by setting up *Judicial Academies*, in order to improve the quality of judicial education. A problem arises from the fact that these trainings are not sufficiently linked to advancement in the career or promotion of judges. Hence, it happens often that those who have gone through the training and those who have not are on equal footing.

<sup>18</sup> Kmezić. M. 2014 (ed) *Europeanization by Rule of Law Implementation in the Western Balkans*, *Institute for Democracy Societas Civilis-Skopje*, p.224

Given the EU approach towards WB countries and their implementation of the rule of law, and the de facto reform processes in the judiciary reforms while aspiring towards EU membership, we now shift to the following recommendations.

### 3. Recommendations

It is important to reiterate that we do not criticize conditionality per se. Yet, if candidate countries are held to particular standards, the EU itself should not be exempt of its own standards. Those should be consistency of assessing reform's success, external as well as internal validity of principles, and finally relevance of the policy reforms it requires. Namely, for a smoother process of the pre-accession reforms, candidate countries should know when and how are they considered to be progressing. Therefore, the EU has to distil particular criteria and indicators on which basis countries will be graded.

#### 3.1 Clear conceptualization and measurement of rule of law progress

First, regarding the vagueness of the rule of law we maintain that the following rekindling of EU Commission's policies is essential:

1. Clarity and credibility of the EU demands as an important factor increasing the likelihood of effectiveness.<sup>19</sup> By clarity it is understood that the candidate countries need to know precisely what are they expected to do if they decide to comply with the EU conditions? Particular traps for uncertainty may be found in the ever-growing body of EU law, or absence of single EU model in many policy areas. Thus, “credibility depends on a consistent, merit-based application of conditionality by the EU.”<sup>20</sup>
2. The credibility of conditionality is also linked to the ability of the EU to monitor the rule adoption process, which is why the EU has in the recent years made serious investments into its monitoring capacity. Levitsky and Way suggest that the asymmetrical bargaining power and sizeable incentives need to have strong linkage with another strong international power (Western Europe and the United States), and the civil society (non-governmental organizations,

media) in the candidate country in order for the conditionality to be effective.<sup>21</sup>

3. Low number of veto players. Schimmelfennig and Sedelmeier have constructed the adoption cost hypothesis so that “the likelihood of rule adoption decreases with the number of veto players incurring net adoption costs (opportunity costs, welfare, and power losses) from compliance.” This means that the low number of veto players is a key-facilitating factor.<sup>22</sup>

These can serve as criteria for composing a more meticulous, systematized concept of what the rule of law reforms mean for aspiring WB countries.

#### 3.2 Comparative approach for the assessment of implementation and progress of rule of law

As already presented, the EU currently leans on general conditionality and socialization in order to assess compliance of countries with its norms. The following four benchmarks of the European Union can be the basis for a comparative assessment of WB countries in implementation of rule of law. This approach can be adjoined with finding functional equivalence between the countries in terms of institutions, processes, policies, having in mind their specific context and slight modification of assessment where necessary. Even though rule of law is still part of the “soft principles” of reforms, we still argue that there should be a more succinct framework for accessing implementation of rule of law reforms, since they are taken as criteria for EU membership.

The four dimensions on which countries should be accessed are judicial independence, efficiency, judicial accountability and effectiveness. In the five EU country progress reports, we also find a criterion called “impartiality”, as well as “professionalism” which are not used consistently. We discover that this is often related to the quality of judge's exercise of their profession and the quality of their decisions. Therefore, we find it useful to use the term “effectiveness” that gives a broader notion of the degree of success to which something fulfills its purpose. For instance, if we are to evaluate whether judges are competent, we talk about their professionalism, and therefore we assess the quality of their training. Furthermore, if we are to assess how well the deci-

<sup>19</sup> Hughes, J., G. Sasse and C. Gordon. 2004. “Conditionality and compliance in the EU's Eastward enlargement: regional policy and the reform of sub-national governance,” *Journal of common market studies* 42(3), p. 523-551 in Kmezcic. M. 2014 (ed) *Europeanization by Rule of Law Implementation in the Western Balkans*, *Institute for Democracy Societas Civilis-Skopje*, p.52

<sup>20</sup> Kmezcic. M. 2014 (ed) *Europeanization by Rule of Law Implementation in the Western Balkans*, *Institute for Democracy Societas Civilis-Skopje*, p.52

<sup>21</sup> Levitsky, S. and L. A. Way. 2006. “Linkage versus Leverage: Rethinking the International Dimension of Regime Change” in Kmezcic. M. 2014 (ed) *Europeanization by Rule of Law Implementation in the Western Balkans*, *Institute for Democracy Societas Civilis-Skopje*, p. 53;

<sup>22</sup> Schimmelfennig, F. and U. Sedelmeier, *The politics of European union enlargement: theoretical approaches* Routledge advances in European politics, cit: 17; U. Sedelmeier. 2011. “Europeanization in new member and candidate states,” *Living Reviews in European Governance* 6(1). Ireg-2011-1 in Kmezcic. M. 2014 (ed) *Europeanization by Rule of Law Implementation in the Western Balkans*, *Institute for Democracy Societas Civilis-Skopje*, p. 53



sions by the judges serve their purpose, we assess the quality of decision making.

- a) *Judicial independence* can be guaranteed only if the framework in which judges exercise their functions provides for sufficient safeguards against attempts to improperly influence the administration of justice. Hence judges should be protected from the interference of the executive. Furthermore, besides the fact that the law guarantees judges' independence of political pressures, an important feature of this aspect is financial independence based on the principle of separation of powers. The principle of separation of powers between the legislative, executive and judiciary is the core of this principle. In this way, justices can direct the budget they receive on a yearly basis. Finally, the law should clearly protect judges, but abide them by law as well.
- b) It is considered that *efficiency* is better achieved than independence. Even though the overall backlog of cases has been reduced, a more comprehensive analysis reveals that the basic courts and the courts of appeal have seriously managed to reduce that backlog, while this is not the case with the Supreme Administrative Court have increased the number of pending cases since their establishment.<sup>23</sup> Hence, the number of cases indicates how efficient courts are, but the number of cases cannot be directly connected to the quality of the judgments. Indicators of quality need to be developed. An indicator of accessing countries on how they deal with this principle of rule of law is also the approximate duration of the court processes. The access to these legal institutions should be easy, and the duration of judicial processes should be as short as possible.
- c) *Accountability* mainly deals with responsibility, sanctioning, and promotions of judges. Accountability here refers to being accountable in front of the "constituency" or those who legitimize one's conduct. Therefore, the judges are accountable in front of the Judicial Councils, and only indirectly to the citizens. Also transparency and media presence in the courtroom play a crucial role in justices' accountability.
- d) Studies focused on questions of *effectiveness* of the EU conditionality identify a few important elements that if applied consistently maximize the effectiveness of the desired reforms.<sup>24</sup> Regarding judicial reforms in aspiring WB countries, within these dimensions, we should assess the frequency of professional trainings for legal staff and the quality of trainings. Students in undergraduate studies and graduate

schools should also receive adequate education that will prepare them for practical legal work. Finally trainings should keep judges updated with the new practices.

Along with this more general criteria and comparative approach, since each country faces within each dimension with slightly different challenges, in the Appendix, Table 1, we present country specific recommendation.

#### 4. Implementation and conclusion

Having in mind that European Commission gives Annual Progress Report for each country, it can monitor the progress of the implementation of the rule of law in the judiciary sphere in the Western Balkan countries. Based on the four criteria we recommended, we here give specific guidelines how these could possibly be monitored on annual basis.

Parameter for monitoring of the *independence* of judicial system:

- number of politically dependent processes
- appeals submitted to the Judicial Council
- number of political appointments
- has there been change/increase or decrease of the protection of judges during their conduct

The *efficiency* of the judicial system should be monitored in relation to:

- number of resolved backlog
- duration of the judicial processes on annual base

*Accountability* in the judiciary:

- number of promotions,
- number of sanctions of judges in front of the Judicial Council
- transparency of work of judges – published court decisions,
- media presence on public open processes

*Effectiveness*:

- number of trainings provided for strengthening the judicial human capacities.
- professional qualifications
- competence improvement – judges' participation in trainings per year

To conclude, the described comprehensive and far reaching scope of normative transformation of judicial institutions in Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, and Serbia has indeed caused changes in the WB judiciary over the past twelve years. The results of this comparative legal study play into the hands of the willingness of the WB countries to adopt

<sup>23</sup> Kmezić. M. 2014 (ed) Europeanization by Rule of Law Implementation in the Western Balkans", *Institute for Democracy Societas Civilis-Skopje*, p. 157

<sup>24</sup> Ibid, p. 131

European standards in the rule of law sphere and thus advance their EU integrations.

## Appendix

### Recommendations Macedonia

Independence	Efficiency	Accountability	Effectiveness
<ol style="list-style-type: none"> <li>1. Strengthen judicial independence in order to eliminate the “soft pressure” from other branches of government.</li> <li>2. Provide budgetary independence of courts.</li> </ol>	<ol style="list-style-type: none"> <li>1. Improve courts infrastructure.</li> <li>2. Improve procedural rules in order to affect lengthy court proceedings and case backlog.</li> <li>3. Improve administrative capacity of courts.</li> <li>4. Further improvement of the software system in order to provide precise statistical data on the resolved cases and the average overall duration of cases process.</li> <li>5. Old unresolved cases should get particular attention and be resolved, without hindering the quality of decisions.</li> </ol>	<ol style="list-style-type: none"> <li>1. Fight the perceived corruption of judiciary.</li> <li>2. Increase the role of NGO “watchdogs” and society in control of accountability of judges.</li> <li>3. Set clear criteria for qualitative evaluation of the work of judges.</li> <li>4. Clear definition and predication in the legislation outlining less extensive and more precise grounds for dismissal and a better balance between disciplinary and dismissal proceedings.</li> </ol>	<ol style="list-style-type: none"> <li>1. Recruitment of judges and prosecutors graduating primarily from the Academy for Judges and Prosecutors (AJP).</li> <li>2. Further monitoring on the impact on the judicial profession concerning the Law on Courts regarding the detailed educational requirements for judges.</li> <li>3. Improve curricula at law faculties.</li> </ol>

### Recommendations Montenegro

Independence	Efficiency	Accountability	Effectiveness
<ol style="list-style-type: none"> <li>1. Implement Constitutional amendments on independence of the judiciary.</li> <li>2. Specify the criteria for the appointment of judicial office holders.</li> <li>3. Establish voluntary based, horizontal permanent transfer system</li> <li>4. Establish periodical professional assessment of judges and prosecutors.</li> </ol>	<ol style="list-style-type: none"> <li>1. Decrease the case backlog.</li> <li>2. Improvement of Court network.</li> <li>3. Enforcement of civil and administrative cases’ decisions.</li> <li>4. Increase staffing in the Judicial and Prosecutorial Councils</li> <li>5. Publishing court’s decisions in timely manner</li> <li>6. Establishment of a statistical system to measure recovery rate, costs, and duration of enforcement procedures</li> <li>7. Shortening the length of trials</li> <li>8. Allocate sufficient portion of the budget to the prosecutor to cover costs of criminal proceedings</li> <li>9. Allocate sufficient portion of the budget for infrastructure and equipment</li> </ol>	<ol style="list-style-type: none"> <li>1. Fight the perceived corruption of judiciary.</li> <li>2. Increase the public trust in judiciary.</li> <li>3. Increase the role of NGO “watchdogs” and society in control of accountability of judges.</li> </ol>	<ol style="list-style-type: none"> <li>1. New enforcement system has been introduced to improve efficiency.</li> <li>2. Country-wide single recruitment system for first-time judicial appointments should be established.</li> <li>3. Strengthening and better streamlining of the judicial training.</li> <li>4. Developing medium and long term human resources strategy</li> <li>5. Adaptation of the planned 2012-2018 judicial reforms</li> <li>6. Improve curricula at law faculties.</li> </ol>

**Recommendations Bosnia and Herzegovina**

Independence	Efficiency	Accountability	Effectiveness
<ol style="list-style-type: none"> <li>1. Consider establishment of functionally separate High Judicial Council and High Prosecutorial Council.</li> <li>2. Set clear criteria for promotion of judges.</li> <li>3. Reforms should be made in the budgetary process in order to support the institutional independence of the judiciary.</li> </ol>	<ol style="list-style-type: none"> <li>1. Reduce the backlog of cases.</li> <li>2. Opening additional courts in the country</li> <li>3. The Office of Disciplinary Council should prosecute cases timely.</li> <li>4. Timely processing of war crime cases.</li> <li>5. Modernize case management software.</li> <li>6. Link the Case Management System with the Police database.</li> <li>7. Provide the court staff with set of practical skills such decision writing, administrative management, etc.</li> </ol>	<ol style="list-style-type: none"> <li>1. Increase the role of NGO “watchdogs” and society in control of accountability of judges.</li> <li>2. Fight the perceived corruption of judiciary.</li> <li>3. Efforts should be made for diligent following of the Law on HJPC that defines when a mandate for a judge or a prosecutor can be terminated.</li> <li>4. Further harmonization of the Court practice between various judicial instances in accord with the Structured Dialogue recommendations and Venice Commission findings</li> <li>5. Improvement of witness protection in war crime court proceedings</li> </ol>	<ol style="list-style-type: none"> <li>1. Implement professional qualifications as the standard for appointment of judges in addition to “equal rights and representation of constituent people and others.”</li> <li>2. Introduce courses on harmonization of the legislation with the <i>acquis</i> at the Judicial and Prosecutorial Training Centre.</li> <li>3. Improve curricula at law faculties.</li> </ol>

**Recommendations Kosovo**

Independence	Efficiency	Accountability	Effectiveness
<ol style="list-style-type: none"> <li>1. Include the Kosovo Judicial Council in the drafting of judiciary related legislation.</li> <li>2. Establish transparent process for the adoption of the judicial budget.</li> <li>3. Reduce the Government control over non-judicial court staff members.</li> <li>4. Respect the principle of equal ethnic representation in judiciary.</li> <li>5. A substantial majority of judicial council members should be elected by their peers.</li> <li>6. Ensure that professional eligibility criteria for judges are met.</li> <li>7. Limit the right of the President of Kosovo to refuse appointment of the proposed candidate for a judge.</li> <li>8. Increase financial independence of the judicial branch.</li> </ol>	<ol style="list-style-type: none"> <li>1. Establish the Case Management System</li> <li>2. Improve courts infrastructure and modernize equipment.</li> <li>3. Reduce the case backlog.</li> <li>4. Establishment of infrastructure and modern equipment.</li> <li>5. Keeping accurate records of court proceedings.</li> <li>6. Increase staff in the Judicial council.</li> <li>7. Choose sufficient number of judges for the constitutional court to function with full quorum.</li> <li>8. Fill underrepresented minority quota job positions.</li> <li>9. Prevent repletion of court cases recording.</li> <li>10. Foster alternative ways of dispute settlement.</li> <li>11. Implement the Brussels Agreement on Normalization of Relations between Serbia and Kosovo in relation to court structure.</li> </ol>	<ol style="list-style-type: none"> <li>1. Increase the role of NGO “watchdogs” and society in control of accountability of judges.</li> <li>2. Fight the perceived corruption of judiciary.</li> <li>3. Increase the public trust in judiciary. Strengthen the code of conduct for judges. Disciplinary procedures should lead to concrete results.</li> </ol>	<ol style="list-style-type: none"> <li>1. Modernize the curriculum at the law faculties</li> <li>2. Improve the quality of writing of judicial decisions.</li> <li>3. Establish Judicial Academy.</li> <li>4. Introduce mandatory continuous training for sitting judges.</li> <li>5. Secure the access to justice particularly for minorities.</li> </ol>

**Recommendations Serbia**

<ol style="list-style-type: none"> <li>1. Introduction of transparency in the work of the High Judicial Council.</li> <li>2. Set clear criteria for appointing the courts' presidents.</li> <li>3. Protection from interference by the executive.</li> <li>4. Removing political influence on the appointment and dismissal of judges.</li> <li>5. Improvement of constitutional legislation that leaves gaps of interpretation of the appointment of judges.</li> <li>6. Budgetary independence should be ensured and the allocation of the budget should be vested primarily within the courts.</li> </ol>	<ol style="list-style-type: none"> <li>1. Reintroduce new court network.</li> <li>2. Foster alternative ways of dispute settlement.</li> <li>3. Secure enforcement of court judgments.</li> <li>4. Enforcement of existing legal framework in an effort to reduce excessive delays in court proceedings.</li> <li>5. Increase the budget intended to improve courts' infrastructure.</li> <li>6. Setting up an electronic case management system where missing</li> <li>7. Reduce backlog of cases</li> <li>8. Increase the number of bailiffs</li> <li>9. Balance the workload of judges</li> <li>10. Integrated planning</li> </ol>	<ol style="list-style-type: none"> <li>1. Set clear criteria for qualitative evaluation of the work of judges.</li> <li>2. Increase the role of NGO "watchdogs" and society in control of accountability of judges.</li> <li>3. Combat the perceived corruption of judiciary. Control mechanisms should become more prominent.</li> <li>4. Functional proceedings for the protection of immunity of judges, prosecutors and members of councils should be actively used.</li> </ol>	<ol style="list-style-type: none"> <li>1. Modernize judicial administration operational practices.</li> <li>2. Set clear criteria for promotion of judges.</li> <li>3. Improving law faculty curricula.</li> <li>4. Improving the quality of AJP by providing relevant staff and equipment.</li> <li>5. HJC and SPC should adopt rules on regular appraisal on the work and performance of judges, court presidents and prosecutors.</li> <li>6. The Judicial academy should be the entry point for the judicial profession.</li> <li>7. Quality of statistical data needs to be improved.</li> <li>8. Development of efficient legal aid system.</li> <li>9. Utilize information technology.</li> </ol>
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**References:**

Jano, D. 2010. *The Europeanization of Western Balkans: A Fuzzy Set of Qualitative Comparative Analysis of the New Potential EU Member States* (Saarbrücken: VDM Verlag).

Tamanaha, B. Z. 2004. *On the Rule of Law: History, Politics and Theory* (Cambridge: Cambridge University Press).

Freyburg, T. and S. Richter. 2010. "National Identity Matters: The Limited Impact of EU Political Conditionality in the Western Balkans," *Journal of European Public Policy* 17(2): 262-80

Kochenov, D. 2008. *EU Enlargement and the Failure of Conditionality: Pre-accession Conditionality in the Fields of Democracy and the Rule of Law* (The Hague: Kluwer Law International).

Mungiu-Pippidi, A. 2008. "The EU as a Transformation Agent. Lessons Learned from governance reforms in East Central Europe," *Hertie School of Governance – Working Papers* 33.

Sajo, A. 2006. "Becoming Europeans: The Impact of EU Constitutionalism on Post-Communist Pre-Modernity," in W. Sadurski, A. Czarnota, M. Krygier

(eds), *Spreading Democracy and the Rule of Law? The Impact of EU Enlargement on the Rule of Law, Democracy and Constitutionalism in Post-Communist Legal Orders* (Netherlands: Springer): 175-192

Trauner, F. 2011. *The Europeanisation of the Western Balkans: EU Justice and home affairs in Croatia and Macedonia* (Manchester: Manchester University Press).

Schimmelfennig, F. 2012. "Europeanization beyond Europe," *Living Reviews European Governance* 7 (2012), 1

Freyburg, T. and S. Richter. 2008. *National Identity Matters: The Limited Impact of EU Political Conditionality in the Western Balkans*. National Centre of Competence in Research (NCCR). *Challenges to Democracy in the 21st Century*. Working Paper 19.

Checkel, J. T. 2005. "International Institutions and Socialization in Europe: Introduction and Framework," *International Organization* 59(4): 801-826.

Linden, R. H., P. Cernoch, R. W. Clark and A. Freyberg-Inan (eds). 2002. *Norms and Nannies. The Impact of International Organizations on the Central and East European States* (Lanham: Rowman and Littlefield Publishers)

Schimmelfennig, F. and U. Sedelmeier (eds). 2005. *The politics of European union enlargement: theoretical approaches* Routledge advances in European politics (UK; New York: Routledge).

March, J. G. and J. P. Olsen. 2004. "The Logic of Appropriateness," *Arena Working Papers* 04/09 (Oslo).

Hughes, J., G. Sasse and C. Gordon. 2004. "Conditionality and compliance in the EU's Eastward enlargement: regional policy and the reform of sub-national governance," *Journal of common market studies* 42(3): 523-551

Schimmelfennig, F. and U. Sedelmeier (eds). 2005. *The politics of European union enlargement: theoretical approaches* Routledge advances in European politics (UK; New York: Routledge).

Grabbe, H. 2006. *The EU's Transformative Power: Europeanization through Conditionality in Central and Eastern Europe* (London: Palgrave Macmillan).

Sedelmeier, U. 2011. "Europeanization in new member and candidate countries," *Living Reviews in European Governance* 6(1).

Levitsky, S. and L. Way. 2004. "International Linkage and Democratization," *Journal of Democracy* 16(3): 20-34.

## Bibliography

### *Books and Monographs*

- Anderson, Richard D., M. Steven Fish, Stephen E. Hanson, and Philip G. Roeder, eds. 2001. *Postcommunism and the Theory of Democracy*. Princeton: Princeton University Press.
- Bunce, Valerie, *Subversive Institutions: The Design and Destruction of Socialism and the State*, Cambridge: Cambridge University Press, 1999.
- Ekiert, Grzegorz and Hanson, Stephen E., eds. 2003. *Capitalism and Democracy in Central and Eastern Europe: Assessing the Legacy of Communist Rule*. Cambridge: Cambridge University Press.
- Hobsbawm, Eric and Ranger, Terence (eds.), *The Invention of Tradition*. Cambridge University Press, 1983.
- Fleiner, Thomas/Basta Fleiner, Lidija R., *Constitutional Democracy in a Multicultural and Globalized World*, Springer, Berlin, Heidelberg, 2009.
- Fukuyama, Fancis, *The End of History and the Last Man*, Avon Books, New York, 1992.
- Tsebelis, George, "Nested Games: Rational Choice in Comparative Politics", Berkley University Press, Berkley, 1990.
- Grabbe, Heather, *The EU's Transformative Power: Europeanization through Conditionality in Central and Eastern Europe*, Palgrave Macmillan, London, 2006.
- Jacoby, Wade, *The Enlargement of the European Union and NATO: Ordering from the Menu in Central Europe*. Cambridge: Cambridge University Press, 2004.
- Jano, Dorian, *The Europeanization of Western Balkans: A Fuzzy Set of Qualitative Comparative Analysis of the New Potential EU Member States*, VDM Verlag, Saarbrücken, 2010.
- KMEZIC, Marko (ed) *Europeanization by Rule of Law Implementation in the Western Balkans*, *Institute for Democracy Societas Civilis-Skopje*, 2014
- Kochenov, Dimitry, *The Failure of Conditionality: Pre-accession Conditionality in the Fields of Democracy and the Rule of Law: A Legal Appraisal of EU Enlargement*, Rijksuniversiteit Groningen, 2007.
- Linden, Ronald H.; Cernoch, Pavel; Clark, William R. and Freyberg-Inan, Annette (eds.), *Norms and Nannies. The Impact of International Organizations on the Central and East European States*, Rowman and Littlefield Publishers, Lanham, 2002.
- Fish, M. Steven, *Democracy Derailed in Russia: The Failure of Open Politics*, Cambridge University Press, 2005.
- Vachudova, Milada Anna, *Europe Undivided: Democracy, Leverage, and Integration after Communism*, Oxford University Press, Oxford, 2005.
- Risse, Thomas; Ropp, Stephen and Sikkink, Kathryn, *The Power of Human Rights*, Cambridge University Press, Cambridge, 1999.
- Putnam, Robert, et al. "Making Democracy Work: Civic Traditions in Modern Italy", Princeton University Press, New Jersey, 1993.
- Putnam, Robert, "Diplomacy and Domestic Politics: the Logic of Two Level Games", International Organization, 1988.
- Schimmelfennig, Frank and Sedelmeier, Ulrich, (eds.), *The Europeanisation of Central and Eastern Europe*, Cornell University Press, 2005.
- Tamanaha, Brian Z., *On the Rule of Law: History, Politics and Theory*, Cambridge University Press, Cambridge, 2004.
- Trauner, Florian, *The Europeanisation of the Western Balkans: EU Justice and home affairs in Croatia and Macedonia*, Manchester University Press, Manchester, 2011.
- Zielonka, Jan, *Europe as Empire. The Nature of the Enlarged European Union*, Oxford University Press Oxford, 2006

### *Working Papers and Book Chapters*

- Cortell, Andrew P., Davis Jr., James W., *Understanding the Domestic Impact of International Norms: A Research Agenda*, *International Studies Review*, Volume 2, Issue 1, 2000, pages 65-87.
- Cirtautas, Arista Maria and Schimmelfennig, Frank(2010) 'Europeanisation Before and After Ac-



- cession: Conditionality, Legacies and Compliance', *Europe-Asia Studies*, 62: 3, 421- 441.
3. Czarnota, Adam, Barbarians ante portas or the Post-Communist Rule of Law in Post-Democratic European Union, in WojciechSadurski, Adam Czarnota, Martin Krygier (eds.), *Spreading Democracy and the Rule of Law?*, Springer Netherlands, 2006, pp. 283-297.
  4. Dimitrova, Antoaneta L., 'The New Member States of the EU in the Aftermath of Enlargement: Do new European Rules Remain Empty Shells?', *Journal of European Public Policy*, 17:1 (2010), pp. 137-148
  5. Dzihic, Vedran and Segert, Dieter, 'Das jugoslawische Rätsel: Enklavendemokratie, Staatsschwäche und Probleme externer Demokratieförderung', *SüdosteuropaMitteilungen*, 03-04/2009 (2009), pp. 51-63.
  6. Freyburg, Tina and Richter, Solveig, National Identity Matters: The Limited Impact of EU Political Conditionality in the Western Balkans, National Centre of Competence in Research (NCCR): Challenges to Democracy in the 21st Century, Working Paper No. 19, 2008.
  7. Ganev, Venelin I., 'Explaining Democratic Success as an Analytical Challenge: Why are Romania and Bulgaria in the EU?', *NewsNet*, Vol. 48, No. 4 (2008).
  8. Goetz, Klaus H. and Meyer-Sahling, Jan-Hinrik, 2008, "The Europeanisation of national political systems: Parliaments and executives", *Living Reviews in European Governance*, 3(2).
  9. Gordon, Claire, 'The Stabilisation and Association Process in the Western Balkans: An Effective Instrument of Post-conflict Management?', *Ethnopolitics*, Vol. 8, No. 3. (2009), pp. 325-340.
  10. Grabbe, Heather; Knaus, Gerald and Korski, Daniel, 'Beyond Wait- and- see: The Way Forward for EU Balkan Policy', *European Council on Foreign Relations* (2010).
  11. Pop-Eleches, Grigore, "Between Historical Legacies and the Promise of Western Integration: Democratic Conditionality after Communism." *East European Politics and Societies* 21(4):142-161.
  12. Kitschelt, Herbert P., "Accounting for Postcommunist Regime Diversity: What Counts as a Good Cause?", in *Legacies of Communism*, edited by GrzegorzEkiert and Stephen Hanson (2003), pp. 49-86, Cambridge: Cambridge University Press.
  13. Hughes, James; Sasse, Gwendolyn and Gordon, Claire E (2004) Conditionality and compliance in the EU's eastward enlargement: regional policy and the reform of sub-national governance. *Journal of common market studies*, 42 (3). pp. 523-551.
  14. Checkel, Jeffrey T., 2005. "International Institutions and Socialization in Europe: Introduction and Framework." *International Organization* 59,4: 801-826.
  15. Checkel, Jeffrey T., Why Comply? Social Learning and European Identity Change, *International Organization*, Volume 55, Issue 03, Cambridge University Press, 2001, pp 553-588.
  16. Kochenov, Dimitry, 'Behind the Copenhagen Facade. The Meaning and Structure of the Copenhagen Political Criterion of Democracy and the Rule of Law', *European Integration online Papers*, Vol. 8, No. 10 (2004).
  17. Kochenov, Dimitry, 'EU Enlargement: Flexible Compliance with the Commission's Pre-Accession Demands and Schnittke's Ideas on Music', *CSEP Working Paper* (Centre for the Study of European Politics and Society, Ben-Gurion University of the Negev), 2005, pp. 1-16.
  18. Krygier, Martin, Introduction, in WojciechSadurski, Adam Czarnota, Martin Krygier (eds.), *Spreading Democracy and the Rule of Law?*, Springer Netherlands, 2006, pp. 1-24.
  19. Ladrech, R. (1994), 'Europeanization of Domestic Politics and Institutions: The Case of France', *Journal of Common Market Studies*, 32:1, 69-88;
  20. Ladrech, Robert, 2009, "Europeanization and political parties", *Living Reviews in European Governance*, 4(1).
  21. Lavanex, Sandra and Lehmkuhl, Dirk (eds.), *Awitzerland's Flexible Integration in the EU: A Conceptual Framework*, *Swiss Political Science Review (Special Issue)* vol. 15(4), Eley, Weinheim, 2009.
  22. Lavenex, Sandra, 2004, "EU External Governance in 'Wider Europe'", *Journal of European Public Policy*, 11(4): 680-700.
  23. Levitsky, Steven and Way, Lucan A., "Linkage versus Leverage: Rethinking the International Dimension of Regime Change." *Comparative Politics* 38,4, 2006.
  24. Levitsky, Steven and Way, Lucan A., 2002. "The Rise of Competitive Authoritarianism.", *Journal of Democracy* 13,2: pp. 51-65.
  25. Magen, Amichai, 'Transformative Engagement Through Law', *European Journal of Law Reform*, Vol. 9, No.3, (2007), pp. 361-393.
  26. Mansfield, Edward D. and Jack Snyder. 1995. "Democratization and the Danger of War.", *International Security* 20,1: 5-38.
  27. March, James G. And Olsen, Johan P., 'The Logic of Appropriateness', *Arena Working Papers*, 04/09, Oslo (2004).
  28. Marko, Joseph et al., 'Re-enforcement of the Rule of Law. Division of Competences and Interrelations between Courts, Prosecutors, the Police, Executive and the Legislative Powers in the Western Balkans Countries', *European Commission, Strategic Studies in CARDS 2003, Final Report*, July 2004.
  29. McFaul, Michael. 2002, "Transitions from Postcommunism." *Journal of Democracy* 16,3: 5-19.
  30. Barnett, Michael N. and Finnemore, Martha. *The Politics, Power, and Pathologies of International Organizations*, *International Organization* Vol. 53, No. 4 (Autumn, 1999), pp. 699-732.

31. Vachudova, Milada Anna, "Democratization in Post-Communist Europe: Illiberal Regimes and the Leverage of the European Union," in Valerie Bunce, Michael McFaul and Kathryn Stoner-Weiss, eds., "Democracy and Authoritarianism in the Post-Communist World," Cambridge University Press, 2009: 82-106.
32. Mungiu-Pippidi, Alina, 'The EU as a Transformation Agent. Lessons Learned from governance reforms in East Central Europe', Hertie School of Governance – working papers, No. 33 (2008).
33. Noutcheva, Gergana, 'Fake, partial and imposed compliance: the limits of the EU's normative power in the Western Balkans', *Journal of European Public Policy*, (2009), pp. 1065-1084.
34. Pech, Laurent, 'The Rule of Law as a Constitutional Principle of the European Union', Jean Monnet Working Paper, No. 04/09 (2009).
35. Piana, Daniela, In Search of A New Judicial Professionalism: Intertwining Legal and Extra-Legal Values in Post-Authoritarian Training Programs, *Web Journal of Current Legal Issues*, 2011.
36. Radaelli, C. (2003), 'The Europeanization of Public Policy', in Featherstone, K. and Radaelli, C. (2003) (eds.), *The Politics of Europeanization* (Oxford: Oxford University Press), 27-56.
37. Rupnik, Jacques. 1999. "The Postcommunist Divide." *Journal of Democracy* 10,1: 57-62.
38. Sadurski, Wojciech, EU Enlargement and Democracy in New Member States, in Wojciech Sadurski, Adam Czarnota, Martin Krygier (eds.), *Spreading Democracy and the Rule of Law?*, Springer Netherlands, 2006, pp. 27-49.
39. Sajo, Andras, 'Becoming Europeans: The Impact of EU Constitutionalism on Post-Communist Pre-Modernity', in *Spreading Democracy and the Rule of Law? The Impact of EU Enlargement on the Rule of Law, Democracy and Constitutionalism in Post-Communist Legal Orders*, (eds.) Sadurski, Wojciech/Czarnota, Adam/Krygier, Martin, Springer Netherlands (2006), pp. 175-192.
40. Schimmelfennig, Frank and Scholtz, Hanno (2010): 'Legacies and Leverage: EU Political Conditionality and Democracy Promotion in Historical Perspective', *Europe-Asia Studies* 62(3): 443-60.
41. Schimmelfennig, Frank and Sedelmeier, Ulrich, 2004, "Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe", *Journal of European Public Policy*, 11(4): 661-679.
42. Schimmelfennig, Frank, 'EU political accession conditionality after the 2004 enlargement: consistency and effectiveness', *Journal of European Public Policy* (2008), pp. 918-937.
43. Schimmelfennig, Frank, "Europeanization beyond Europe", *Living Reviews in European Governance*, Vol 7., No. 1, 2012.
44. Schimmelfennig, Frank, 'International Socialization in the New Europe: Action in an Rational Institutional Environment', *European Journal of International Relations*, 6:1 (2000), pp. 109-139.
45. Schimmelfennig, Frank, 'International Socialization in the New Europe: Action in an Rational Institutional Environment', *European Journal of International Relations*, 6:1 (2000), pp. 109-139.
46. Sciarini, Pascal; Fischer, Alex and Nicolet, Sarah, 2004, "How Europe Hits Home: Evidence From the Swiss Case", *Journal of European Public Policy*, 11(3): 353-378,
47. Sedelmeier, Ulrich, 'Europeanization in New Member and Candidate States', *Living Reviews in European Governance*, 1(3), (2006).
48. Sedelmeier, Ulrich, 'The EU and democratization in Central and Southeastern Europe since 1989' in Central and Southeastern European Politics since 1989, (ed.) Ramet, Sabrina P., Cambridge: Cambridge University Press (2010), pp. 519-536.
49. Sedelmeier, Ulrich, 'The EU's role as a promoter of human rights and democracy: enlargement policy practice and role formation' in *The European Union's role in international politics: concepts and analysis*, (eds.) Elgstrom, Ole/Smith, Michael, London, Routledge (2006), pp. 118-135.
50. Sedelmeier, Ulrich, 2011, "Europeanisation in new member and candidate states", *Living Reviews in European Governance*, 6(1), Ireg-2011-1.
51. Tamvaki, Dionysia, The Copenhagen Criteria and the Evolution of Popular Consent to EU Norms: From Legality to Normative Justifiability in Poland and the Czech Republic, in Wojciech Sadurski, Adam Czarnota, Martin Krygier (eds.), *Spreading Democracy and the Rule of Law?*, Springer Netherlands, 2006, pp. 149-171.
52. Tolstrup, Jakob, 'When can External Actors Influence Democratization? Leverage, Linkages, and Gatekeeper Elites', *CDDRL Working Papers*, No. 118 (2010), pp. 1-31.
53. Toshkov, Dimitar, Embracing European law: Compliance with EU directives in Central and Eastern Europe. *European Union Politics*, 9 (3), 2008, pp. 379-402.
54. Treib, Oliver, 2008, "Implementing and complying with EU governance outputs", *Living Reviews in European Governance*, 3(5).
55. Treib, Oliver; Bähr, Holger and Falkner, Gerda, 'Modes of governance: towards a conceptual clarification', *Journal of European Policy*, 14:1, (2007), pp. 1-20.
56. Turkalj, Kristian 'Negotiations for the Accession of the Republic of Croatia to the European Union in the Area of Justice ("State of Play for Chapters 23 and 24")', paper presented at the Conference 'Croatia on the Eve of EU Accession: The Path of Reform', 29-30 April 2010, Zagreb, Croatia.
57. Wade Jacoby, „Priest and Patient: The European Union as a Force in the Domestic Politics of Eastern Europe“, *East European Constitutional Review* 8, No.1-2, 1999, pp. 62-67.

58. Wood, Steve ‘The European Union: A Normative or Normal Power?’, *European Foreign Affairs Review*, (2009) 14, pp. 113-128.
59. Zirk-Sadowski, Marek, Transformation and Integration of Legal Cultures and Discourses—Poland, in WojciechSadurski, Adam Czarnota, Martin Krygier (eds.), *Spreading Democracy and the Rule of Law?*, Springer Netherlands, 2006, pp. 299-311.
60. Zubek, Radoslaw; Goetz, Klaus H., Performing to Type? How State Institutions Matter in East Central Europe, *Journal of Public Policy*, 30(1), 2010, pp. 1-20.

*European Commission progress reports:*

61. Bosnia and Herzegovina 2013 Progress Report, Communication from the Commission to the European Parliament and the Council. Enlargement Strategy and Main Challenges 2013-2014. Brussels 16.10.2013 SWD (2013) 415 final [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/ba\\_rapport\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/ba_rapport_2013.pdf)
62. Kosovo 2013 Progress Report, Communication from the Commission to the European Parliament and the Council. Enlargement Strategy and Main Challenges 2013-2014. Brussels 16.10.2013 SWD (2013) 416 final [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/ks\\_rapport\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/ks_rapport_2013.pdf)
63. Montenegro 2013 Progress Report, Communication from the Commission to the European Parliament and the Council. Enlargement Strategy and Main Challenges 2013-2014. Brussels 16.10.2013 SWD (2013) 411 final [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/mn\\_rapport\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/mn_rapport_2013.pdf)
64. The Former Yugoslav Republic of Macedonia 2013 Progress Report, Communication from the Commission to the European Parliament and the Council. Enlargement Strategy and Main Challenges 2013-2014. Brussels 16.10.2013 SWD (2013) 413 final [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/mk\\_rapport\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/mk_rapport_2013.pdf)
65. Serbia 2013 Progress Report, Communication from the Commission to the European Parliament and the Council. Enlargement Strategy and Main Challenges 2013-2014. Brussels 16.10.2013 SWD (2013) 412 final



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# PROMOTING RULE OF LAW THROUGH EU INTEGRATION IN THE WESTERN BALKANS – PREVIOUS EXPERIENCES AND CURRENT CHALLENGES

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## Introduction

Over the last two and a half decades rule-of-law promotion has experienced a remarkable career among Western aid agencies. Starting in the post-socialist countries of Eastern Europe after 1989, the rule of law has become a key target of Western democratization policy and aid strategies in South America, Asia, sub-Saharan Africa, and most recently the Middle East.<sup>i</sup> This relatively new importance given to the rule of law is no less relevant when it comes to the West's efforts to promote democratization and market economic reform in the post-war Western Balkans region, especially in the framework of the countries' European Union (EU) integration processes. Consequently, in the EU's current 2013-14 enlargement strategy the European Commission (EC) stresses the rule of law as a "fundamental value" that remains a "priority for the EU and is now at the heart of the accession process."<sup>ii</sup>

Unlike with previous enlargement countries of Central Eastern Europe, the rule-of-law promotion in the Western Balkans faces the challenge of a double inheritance – a socialist and a post socialist one. In the countries that resulted from the breakup of Yugoslavia the socialist system generally secured the rule of law. The judiciary to a large part functioned based on civil-law traditions that mostly went back to the Austro-Hungarian legal heritage. It did so despite a one-party system and a constitutional framework that functioned beyond the civil-law context. From mid-1980s on, the crisis of the economy and the socialist system as a whole led to a dramatic erosion of the rule of law and legal culture. Just as in Soviet socialist countries this resulted in the expansion of semi-formal and informal networks linking state institutions, party apparatus, and the economy, and of informal acting from within institutions and between institutions, elites and citizens – a phenomenon termed as "systemic corruption" in the post socialist era. On top of this socialist heritage the post-Yugoslav countries were and are still burdened by the negative, authoritarian transformation that took place during the war-decade of the 1990s. During the war years rule of law was de facto suspended. Political leaderships perverted the judiciary and the rule of law in general. Large-scale war crimes, ethnic cleansing, and mass looting were turned into policy instruments that created a culture of impunity. The separation line between the rule of law and lawlessness was intentionally blurred. Judiciaries lived through times of dramatic degradation and decline; many judges and prosecutors left or were "ethnically cleansed", replaced by inexperienced, under- or unqualified personnel, often chosen based on the principle of negative selection. Interference by political

elites, economic elites and organized crime reached previously unseen dimensions.

As a consequence, reforms of the countries’ judicial systems and efforts to more broadly consolidate the rule of law have taken an even less linear path of transformation than they had in other post-socialist countries of Eastern Europe. Naturally, the rule-of-law promotion gained ever-greater importance in the West’s and especially the EU’s democracy and economic reform assistance. The EU’s enlargement policy history in the Western Balkans in that respect reveals both a learning curve and remaining challenges.

#### **Rule of law promotion in the EU integration context – lessons learned**

The European Union’s integration toolbox in the field of rule of law has undergone substantial transformation in recent years, moving towards ever-stricter conditionality and from form to substance. The Western Balkan countries have both been the object and recipient of those adjustments of the Union’s instruments. These changes are both the result of an evolving understanding of importance of rule of law reforms and the challenges the EU faces in this field. At the same time, changes have also to a large extent resulted from the negative experience the Union has had in the accession of Bulgaria and Romania to the EU countries that gained membership without structural problems like systemic corruption having been solved. The case of the two countries had done much damage to the EU’s enlargement policy as such and the support of enlargement among EU member state constituencies.

As a consequence, the EU substantially altered its toolbox, especially that of the accession negotiations phase of the EU-integration process. The new tools were first applied in the case of Croatia and are currently further fine tuned in the accession processes of Montenegro and Serbia.

Croatia was the first country to face two negotiation chapters dealing with the rule of law. Following Bulgaria’s and Romania’s accession, the EU divided up the previous chapter on Justice and Home affairs into two chapters, chapter 23 – Judiciary and Basic Right – and chapter 24 – Justice, Freedom and Security. While chapter 24 concentrates on legal harmonization with the *acquis* the new chapter 23 contains political criteria aiming at reform of two crucial areas for the Western Balkan countries – judiciary and anti-corruption policy. This separation of legal and political criteria marked a general shift in approach – one that moved reform conditionality and its monitoring by the European Commission through the mere adoption of laws to assessing the implementation of formal-legal reforms as well as its sustainability. In order to achieve this, besides the new chapter, opening benchmarks and closing benchmarks were introduced for each chapter.<sup>iii</sup>

Croatia needed about a year from opening to closing chapters 23 and 24. Following this first experience with the two chapters, the EU Council in its December 2011 conclusions<sup>v</sup> paved the way for further evolution of the EU’s tools. Starting with the opening of accession negotiations with Montenegro, chapters 23 and 24 were now opened at the very beginning to be closed only at the end of negotiations. In addition, the EU for the first time introduced interim benchmarks as an extra instrument to secure the smooth implementation of reforms.

The EU also strengthened its pre-accession instruments targeting the rule of law. Besides the handling of justice and judicial issues in the formal framework of Stabilization and Association Agreements with the Western Balkan countries, the EU in 2011 introduced a semi-formal format, the pre-accession Structured Dialogue on Judicial Reform. Introduced first in the case of Bosnia-Herzegovina (BiH), it was later also applied to Kosovo. The visa liberalization process introduced additional instruments and conditionality for rule of law reform, especially in the field of anti-corruption policy.

#### **Policy constraints and lessons not learned**

Despite these impressive developments in the EU’s rule of law promotion policy and policy instruments, the EU also still demonstrates certain weaknesses when it comes to aiding the strengthening of the rule of law in the Western Balkans.

When the EU struggled with competing policy objectives or the general political crisis in one of the (potential) candidate countries in recent years, Brussels regularly undermined its own rule of law promotions policy. In 2011 the EU was struggling with Serbia’s “EU and Kosovo” policy defined by then President Boris Tadić. At the same time it was struggling with Serbia’s fraud judicial reform. In 2009 the country’s High Judicial Council (HJP) and State Prosecutorial Council (SPC) organized a re-appointment process of all judges and prosecutors that left several hundred of them without their prior jobs. Following a successful Constitutional Court appeal HJP and the SPC were forced to conduct a re-examination procedure in 2011. In August that year an internal European Commission report warned that the re-examination was legally flawed and exerted to political pressure. In its progress report published in October the Commission willfully ignored these information and painted a bright picture of the judicial reform. It was only after the report was leaked to the European Parliament that the Commission admitted the situation as it was and put more pressure on Serbian authorities. Following another Constitutional Court decision in 2012 the whole re-appointment process was stopped; the EU-supported judicial reform ended up in failure.<sup>v</sup>

In December 2012 a conflict between the government of the Republika Srpska (RS), the Bosnian-Herzegovinian entity, and the EU over an entity Law on

Courts reached its climax. The draft law had been rejected by the entity, state judges' and prosecutors' associations, and the state-level High Judicial and Prosecutorial Council (HJPC) for undermining the independence of the judiciary and numerous breaches of the state-level HJPC law. Despite EU insistence on the RS amending the law in full compliance with HJPC objections, the RS parliament passed the law largely unchanged. In the background of the longtime lack of political will of the EU (and the U.S.) to counter the RS leadership's constant attacks on the Bosnian-Herzegovinian state, the then director at the Commission's Directorate General (DG) Enlargement Pierre Mirel in a non-public meeting organized in the framework of the Structured Dialogue pressured HJPC officials to accept a "compromise deal" with the RS ministry of justice. The compromise left a substantial part of problematic and illegal regulations in place, made a mockery out of the principles of the rule of law and undermined the judicial institutions' fight for independence. The damage became even bigger as the RS government, encouraged by its success, subsequently refused to implement the deal. The RS Law on Courts remains in force till today.<sup>vi</sup>

The EU – and the wider international community – has also demonstrated substantial travails in strategically harmonizing its EU integration tools with the phasing out of executive mandate institutions in the judiciary that are rooted in the external state building policy of the post-war era in the region. In 2009 the Peace Implementation Council (PIC) in BiH, based on the positions of EU and U.S. decided to end the mandate of international judges and prosecutors in the organized crime and corruption chamber of the State Court and the Prosecutors Office of BiH. The decision was taken under pressure of then Prime Minister of the RS Milorad Dodik who threatened with a referendum. The decision was taken against the passionate appeal by the Court's president and the chief prosecutor to extend the mandates of their international colleagues for another three years in order to complete the transition strategy. The decision was declared by the Western members of the PIC as a contribution to "ownership". It presented an invitation for domestic political elites to enhance their pressure on the judiciary and resulted in a drastic decline in the prosecution of high level corruption cases.<sup>vii</sup>

In April 2014 the EU decided on the new mandate for its rule of law mission in Kosovo, EULEX, that paved the way for a phase out of the executive mandate of European judges and prosecutors. The assessment of progress made by the domestic judiciary in Kosovo that legitimized the phase out was questioned both internally and externally. The bad handling of the decision-making process on the new mandate by the EEAS caused a serious timing problem in spring 2014. The resulting rush ended up in a decision by the Kosovo Assembly that laid the legal foundations for the new EULEX mandate for 2014-2016. These law amendments,

as well as subsequent agreement between EULEX and Kosovo judicial institutions, contained multiple legally problematic provisions that ultimately damage the EU's own rule of law promotion efforts in the already complicated Kosovo environment.<sup>viii</sup>

#### **The role of civil society**

Thomas Carothers, a leading expert on democratization policy has warned that Western rule of law promotion policy often comes with a clear idea of necessary legal changes and the transformation of judicial institutions, but that those normative-institutional changes in themselves do not guarantee a sustainable transformation process that leads to an independent, efficient judiciary, the successful fight of systemic corruption, and the establishment of an adequate legal culture.<sup>ix</sup> In order to bring sustainable change, the role of civil society has to gradually move into the focus of the EU's rule of law promotion efforts.

In Croatia in 2011 over 60 non-governmental organizations (NGO) joined forces to become an active player in the country's EU-accession process by way of monitoring and advocating reforms. They assembled as the Platform 112, based on 112 policy reform requests put to the Croatian government. A substantial part of the coalition's activities focused on the rule of law. The coalition remains active even after Croatia's EU entry and thus plays an important role in guaranteeing sustainability of reforms.<sup>x</sup> While the European Commission accepted the Platform 112 as an important partner, the EC paid growing respect to the bottom-up aspect of rule of law reforms in the region in recent years. In Kosovo, the DG Enlargement established a consultation body with civil society organizations on Stabilisation and Association Agreement related reforms that meets parallel to official negotiations between the Commission and Kosovo government representatives. In Serbia the EU Delegation in Belgrade just established a civil society convent that is designed to be a forum that assigns a role to NGOs in the country's accession process. Following social unrest in Bosnia-Herzegovina in February 2014 that centered on citizens' protests against corruption and the weakness of the judiciary in tackling politically sensitive cases, the EU decided to extend the Structured Dialogue and to bring in civil society representatives as participants.

#### **Conclusions**

Promoting efficient and sustainable rule of law reforms in the countries of the Western Balkans remains one of the major challenges for the transformation towards stable democracies and market economies. The EU with its integration toolbox represents the key external actor in this endeavor. Practically all countries in the region still face specific, unsolved challenges. In Bosnia-Herzegovina and Macedonia the unresolved status con-

flicts are instrumentalized by the political and economic elites to undermine the independence of the judiciary. Montenegro is faced with the heritage of systemic, top-down corruption. Serbia is facing the task to profoundly reform its judiciary in the light of the inherited failed judicial reform of 2008-2012. Kosovo is tasked with battling a culture of impunity and a weak judiciary as well as the integration of the about 300 Serb institutions currently remaining on its soil that function under Serbian laws, and which will, even in an ideal scenario, only gradually be integrated into Kosovo’s legal and state system.

The European Union, the Commission and its institutions in charge of enlargement policy have demonstrated more awareness in recent years of the relevance of the rule of law promotions and the existing challenges. With the evolution of its integration toolbox the EU now has much better instruments at hand to meet these challenges than it had half a decade ago when it let Bulgaria and Romania enter its club. In order to make use of them the Union should in the future refrain from trading its rule of law promotion objectives for higher, more urgent policy aims. At the same time it should build on its recently established partnership with civil societies in the region.

<sup>i</sup> Thomas Carothers, “The Rule-of-Law Revival”, in: Carothers (ed.), *Promoting the rule of law abroad*, Washington D.C 2006, p.3-13.

<sup>ii</sup> European Commission, *Enlargement Strategy and Main Challenges 2013-2014. Communication from the Commission to the European Parliament and Council*, Brussel, 16 October 2014, p.6. Available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/strategy\\_paper\\_2013\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/strategy_paper_2013_en.pdf)

<sup>iii</sup> *Pregovaračka poglavlja 23 i 24 – O čemu pregovaramo*, GIZ Serbia, Belgrade September 2013. Available at: [http://www.seio.gov.rs/upload/documents/publikacije/vodic\\_za\\_no\\_vinare.pdf](http://www.seio.gov.rs/upload/documents/publikacije/vodic_za_no_vinare.pdf)

<sup>iv</sup> Council of the European Union, *Council conclusions on enlargement and stabilisation and association process*, Brussels 5 December 2011. Available at: [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/genaff/126577.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/126577.pdf)

<sup>v</sup> Conversation with EU parliamentarians, Brussels 2012.

<sup>vi</sup> Various interviews with BH judicial officials, international judicial experts, EC and EU member state officials, Sarajevo-Brussels 2011-2014.

<sup>vii</sup> Kurt Bassuener/Bodo Weber, House of Cards: the EU’s “reinforced presence” in Bosnia and Herzegovina, Democratization Policy Council (DPC) Policy Paper, Sarajevo-Berlin May 2013, p.11-12. Available at: <http://democratizationpolicy.org/pdf/briefs/may.pdf>

<sup>viii</sup> Bodo Weber/ Lowell West, *EULEX – Towards an Integrated Exit Strategy*, joint Group for Legal and Political Studies-DPC study, Prishtina-Berlin April 2014. Available at: [http://democratizationpolicy.org/uimages/EULEX%20Exit%20Strategy\\_DPC-GGPS%20Policy%20Report%20%2804-14%29\\_ENG.pdf](http://democratizationpolicy.org/uimages/EULEX%20Exit%20Strategy_DPC-GGPS%20Policy%20Report%20%2804-14%29_ENG.pdf)

<sup>ix</sup> Carothers, “The Problem of Knowledge”, in: Carothers (ed.), *Promoting the rule of law abroad*, p.21-22.

<sup>x</sup> Information on the coalition available at: <http://www.kucaljudskih.prava.hr/tekstovi/112-zahjteva-za-drugaciju-hrvatsku>

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# JUDICIAL REFORMS IN THE REPUBLIC OF MACEDONIA – CONCEPTS AND OBSTACLES

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## 1. Introduction – rule of law and human rights as an ideal of the new democracy

Just like any new democracy developed after the fall of communism, the Republic of Macedonia showed great enthusiasm in establishing a parliamentary democracy governed by the rule of law, where human rights and liberties would be respected. Adopted after its independence in 1991, the Constitution of the Republic of Macedonia aimed to present the country as a modern European democracy. Some observers go even further to say that the Constitution was overly exaggerated, or that it was too liberal a constitution having too little trust in the police and the executive in general, requiring a court decision for any deprivation of liberty and detention, search, wiretapping, etc. The truth is, the constitutional layout is due more to the enthusiasm of its creators (four university professors, none the less!) and to the previously stated ambition than to the actual system of values reigning in Macedonian society.

Such legal reforms continued in the following two decades with reforms to legislation and in the institutions inspired firstly by the membership in the Council of Europe and then governed by the Euro-Atlantic aspirations of the country.

However, practice has shown that the country governed by the rule of law is a mere shadow and the institutions serve the governing political elites, instead of serving the law. It has been demonstrated that the system of norms does not suffice in itself – unless a relevant system of values is developed and the legal culture of the authorities, institutions, and the population in general fully reach a certain level to adopt these values as their own and be prepared to defend them.

## 2. Underperformance of the judiciary as a warrant to human rights

### 2.1. Political (in)dependence of the judiciary.

The idea behind the rule of law is for the citizens to be able to have their rights and liberties protected before the courts of law, in a fair procedure before an independent and impartial court. Independence and impartiality have at least two aspects – institutional, i.e. systemic, and procedural, i.e. functional.

Much effort was done to ensure the independence of the judiciary in the Republic of Macedonia, however the judiciary still seriously struggles with its independence.<sup>1</sup> Having in mind its function to restrict and control the

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<sup>1</sup> See: Organization for Security and Co-operation in Europe, *Legal analysis: Independence of the Judiciary*, Skopje, 2009, available at <http://www.osce.org/skopje/67584>.



executive, the judiciary has continuously been the target of the relevant political power holders. The will to make it politically instrumental has continuously marked governments in the Republic of Macedonia.<sup>2</sup> Hence the introduction of all most modern formal safeguards to the judicial independence, such as a separate judicial budget, the life-long mandate of judges, the establishment of the Judicial Council as a body comprising mainly judges in charge of all major issues referring to the judges, etc. These safeguards have remained without any major impact due to the lack of political will to strengthen them and the misuse of the gaps in the mechanisms. The rather well developed legal norms still leave plenty of room for external influences. Perhaps a little perversely, but the main safeguard to the judicial independence, the Judicial Council, is used as a major tool for influences from the executive over the judicial branch! The process of appointment, dismissal and disciplining of judges is a modern one in legal terms, however it still is “flexible” enough to allow for interventions bringing about the sanctioning of “unfit” judges and promoting the politically loyal ones.<sup>3</sup>

## 2.2. Systemic problem with the impartiality of the inquisitorial criminal procedure

The procedural independence of the judges has been paid less attention, mainly in terms of ensuring a fair trial and changing the procedural model from a mainly inquisitorial into a rather adversarial procedure. Therefore, but also due to the nature of the reforms in the criminal procedure in the region, the text hereinafter deals with this issue.

Namely, the courts do not meet their constitutional role of protectors of the citizens against unfounded prosecutions and arbitrary use of police authorities, and the secret investigative methods which are seriously intruding the liberty, privacy or property of citizens in the criminal investigations and against police misuse of power in general. Statistics show that the court is failing to serve its protective function with which it was entrusted by the Constitution.<sup>4</sup> The fact that this “mixed” model has demonstrated to be dysfunctional and that the court is failing to meet its protective function is clearly seen in the court statistics, showing that more than half of the criminals remain undetected and more than 90% of the

defendants are convicted.<sup>5</sup> These indicators attest to the thesis that the courts see themselves more as an authority to fight crime and convict suspects, than as a safeguard to a lawful and fair trial in which the defendants will have a fair chance to defend themselves against any charges brought against them. This is indicative to a serious problem not only with the failure of the court in performing its function as a protector of the rights in the criminal procedure on a micro level, but it also points to the serious flaws in the role of the court on a macro level, namely in the context of its role in the system of division of powers, as a protector of the citizens against the executive branch.

## 3. Reform in the criminal procedure

### 3.1. Partial reforms – revolution and counterrevolution in the criminal procedure

We already mentioned that the constitutionalism and human rights international law were a strong impetus to a small *due process* revolution in the criminal procedure. The largest impact in Macedonia, as in the whole of Europe, was exercised by the ever-increasing jurisprudence of the European Court of Human Rights in Strasbourg, which is the subject matter of numerous texts.<sup>6</sup> During the nineties, this was reflected in a series of partial reforms prompted by a line of safeguards to the fair trial of suspects.

The new ideas and solutions to the protection of the citizens’ rights and freedoms in the criminal procedure failed to be actually established and brought to life, especially when the global priorities changed and a completely opposing trend emerged that tended to reinforce the instruments of the state in an efficient fight against terrorism and corruption. This caused confusion in relation to the priorities and core values of the criminal justice system and principles on which it should stand. The new institutions served by Europe with regards to witness protection, use of special investigative techniques and likewise was considered as a brand new trend that has contributed to a notable erosion of the human rights protection in the criminal procedure, which was adversely reflected on the possibilities for efficient defense of the suspects, i.e. defendants for the purpose of promoting efficiency.

Organized crime, corruption and terrorism prove to be a serious threat to society, nonetheless fighting them is misused as a justification for the state to implement aggressive methods at the expense of the right to privacy

<sup>2</sup> See: М. Цаца-Николовска и др., *Анализа на независноста на судството во Република Македонија*, Институт за човекови права, Скопје, 2013.

<sup>3</sup> See: М. Ристова, *Одговорност на судиите во Република Македонија*, Скопје, 2012.

<sup>4</sup> The courts, as a rule, authorize investigations, search, wiretapping, etc., without establishing if there truly is a reasonable suspicion for a criminal offence and whether the police truly has the basis to believe that the object of the person wanted is truly located in the premises of the person being searched, whether there truly is a risk for the detainee to flee, commit a new crime, affect the investigation, etc.

<sup>5</sup> See: State Statistics Office of the Republic of Macedonia, *Criminal Offenders in 2013*, Skopje, 2014 ([www.stat.gov.mk](http://www.stat.gov.mk)).

<sup>6</sup> See: S. Summers, *Fair Trials - The European Criminal Procedural Tradition and the European Court of Human Rights*, Hart Publishing, 2007.

of a large (practically undefined) number of citizens and the right to a fair trial for the defendants. This is certainly not only a feature of Macedonia, since the same deviations are also encountered in Russia, and also in some other “new democracies”.<sup>7</sup>

The adverse effect from these new trends—referred to by some as a *counterrevolution* in the criminal procedure—on the human rights and principles of a country governed by the rule of law in the Western Balkan countries, similarly as in other young democracies from Central and Eastern Europe, are rooted in the fact that these countries simply lacked the time and conditions to set up the safeguard mechanisms and instruments applicable by the law enforcement authorities in a way that would guarantee minimum misuse. Hence, the human rights and due process model was replaced over night by a crime control model.<sup>8</sup>

### 3.2. *New model of adversarial procedure*

The Macedonian legislator therefore decided to fully abandon the paternalism of the court and opt for the introduction of an adversarial procedure. The primary aim of the reform was to speed up the procedure and ensure greater fairness, by meeting all standards for a fair trial and human rights protection. The reduction of the court to a controller of the lawfulness and guarantor of the rights and freedoms instead of it being an active investigator enables it to decide impartially on the questions of detention, special investigative techniques, search, etc. Not being obliged to actively investigate the case on its own, the pre-trial judge will better perform their protective function than what is the case at present with the investigative judges who has the burden of clearing up the case themselves. Hence, the abandonment of the mixed model of a largely inquisitorial procedure, on the account of it being out-dated, should contribute to the promotion of the impartiality of the court, thus creating conditions for a fairer trial in which, instead of confronting the defendant, the court shall act as a safeguard to the lawfulness of the procedure and the defendant's rights and liberties. Secondly, it is believed that the lifting of the court's burden will in itself lead to an acceleration of the procedures and will increase the efficiency of the judiciary.

### 3.3. *Selective (mala fide) implementation of the reforms*

However, as the matters stand, the executive is once again being partial in their reform implementation. The

police are thus choosing which innovations to introduce, mainly opting for the ones that go in favor of its power and efficiency. The Police Act has taken over (and modified) only the matters and authorizations to their liking. There is not even a mention of the Judicial Police, which is to be governed by the Public Prosecution Office. Namely, the constitution of a judicial police was to overcome the problems of the so-called *hierarchical dualism* within the criminal police and to “break down” the monopoly of the Ministry of the Interior with regards to the investigation capacities in favor of the public prosecution office.<sup>9</sup>

The situation with the international standards is similar. Namely, the latest EU directives on the rights of the suspects, which are obviously aimed to bringing back the balance between the authorizations of the state law enforcement authorities and the rights of the suspects, are not even mentioned in Macedonia!

## 4. In lieu of a conclusion

It can be concluded that the Republic of Macedonia, as most other transition countries, is witnessing a discrepancy between the modern legal order, *bona fide* established on the models of the western democracies, and its *mala fide* implementation in practice. It appears that little attention is paid to the development of the democratic capacities of the institutions and the state in general, whereas there is somewhat a naïve belief in the power of the legal norms and concepts. This also goes for the international community and international organizations that are pressuring for larger systemic reforms without there first being conditions for their consistent implementation. As we have already seen, the aforementioned new investigative methods insisted upon by the USA and Europe, have turned into a serious threat to the democratic values and institutions instead of defending them. While the national law and practice are mainly harmonized with the European standards for independent judiciaries and fair trials, ensuring full respect for the human rights, it is still necessary to promote the mechanisms and the overall political climate which will guarantee their implementation in practice in order to make them real and efficient, and not merely theoretical and illusory.

<sup>7</sup> See: A. V. Orlova, Organized Crime and the Rule of Law in the Russian Federation, *Essex Human Rights Review*, Vol. 2 No. 1, p. 23, available at <http://projects.essex.ac.uk/ehrr/V2N1/Orlova.pdf>.

<sup>8</sup> See: G. Kalajdziev, *On Fight against Organized Crime and the Rule of Law*, Skopje, 2012, available at: <http://soros.org.mk/dokumenti/za-borbata-so-organiziraniot-ang.pdf>

<sup>9</sup> The establishment of the *judicial police* aims, *inter alia*, to break away the criminal police from political influences on top of the Ministry of the Interior and to subdue it to the Public Prosecution Office. See more in: G. Kalajdziev, *New Relationships between the Police and the Public Prosecutors Office in the Republic of Macedonia*, *Iustinianus Primus Law Review* Vol. 2, 2011, available at: <http://www.law-review.mk/pdf/02/Gordan%20Kalajdziev.pdf>.

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# PROMOTING RULE OF LAW THROUGH EU INTEGRATION IN THE WESTERN BALKANS – PREVIOUS EXPERIENCES AND CURRENT CHALLENGES

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The need for a permanent reform in the justice system began to be accepted as a fact in particular in conjunction with Turkey's process of membership in the EU, and a number of steps have since been taken in this regard.

## An Overview of Judicial Reform in Turkey

Ever since its establishment, the judiciary in Turkey has functioned as a means of disciplining society of which it has always been suspicious. The aim of the judiciary, therefore, was not to secure the rights of individuals and the community vis-à-vis the state, but to ensure that individuals would not become a threat to the state. As a result, although the nature of the perceived threat has changed over time, the essence of the judiciary has stayed the same.

As such, the judicial system has been unable to adequately satisfy citizens' need for justice; on the contrary, rights and freedoms have often been ground up in the cogwheels of this justice system, particularly during periods in which the state's reflex toward self-preservation is high. The need for a fundamental reform in the administration of justice in Turkey, therefore, has long made itself felt.

Important indicators of the extent to which the justice system actually harms individuals are the statistics of the decisions taken by the European Court of Human Rights (ECHR). Between 1995 and 2010, the ECHR ruled against Turkey a total of 2,573 times, the highest number among all other member countries of the Council of Europe. Among these decisions, 699 related to the right to a fair trial, 516 related to the right to liberty and security, and 440 dealt with the extreme length of trials.<sup>1</sup> These data demonstrate the existence of a systematic and functional defect within the judicial system. Moreover, a close look to the ECHR decisions reveals that it was certain segments of Turkish society, particularly Kurdish citizens, Alevi community, leftists and Islamists, who suffered most from this system as the state's perception of threat changed over time.

The steps taken to correct the defects of the justice system in Turkey, meanwhile, had generally been taken haphazardly in order to correct only the most urgent problems. As such, they stemmed the flow of blood but did not create permanent solutions for the illness. After Turkey officially won the status of candidate for membership in the European Union (EU) in 1999, the first

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<sup>1</sup> ECtHR Annual Report 2010, p. 157, [http://www.echr.coe.int/Documents/Annual\\_report\\_2010\\_ENG.pdf](http://www.echr.coe.int/Documents/Annual_report_2010_ENG.pdf)



motions could be heard in the direction of a strategic reform of the judiciary. Having determined that Turkey met the Copenhagen criteria, the EU decided to officially begin accession negotiations with Turkey in 2004. During this process, EU officials asked the Turkish Ministry of Justice to prepare a strategy to enhance the independence, neutrality, and effectiveness of the Turkish judicial system (Chapter 23, Judiciary and Fundamental Rights) and to present this strategy to the European Commission. In 2008, the ministry established a commission for this purpose and prepared a “Strategy for Judicial Reform and Action Plan.” This document outlined the strategic goals for judicial reform which included strengthening the independence, neutrality, efficiency and effectiveness of the judiciary and facilitating ease of access to justice.

In addition to reforms aimed at improving judicial institutions in general, 2010 saw a wave of reforms that effected a change in the structure of the highest judicial bodies in particular. The government of the Justice and Development Party (AK Parti), pursuing the mission with which it has charged itself, raised the issue of constitutional amendments in 2010 with a discourse directed at transforming the high courts into institutions that are “more modern, pluralist, and tied to the principle of the rule of law.” On 12 September 2010, Turkey decided in a referendum to amend the constitution to, among other things, radically change the makeup of the High Constitutional Court and the High Council of Judges and Prosecutors (HSYK) and to restrict the competence of military courts to military crimes only. Following the referendum results, significant changes were made to the membership and electoral procedure of the Constitutional Court and the HSYK. While this process did render the structure of the HSYK more pluralist than before, it also initiated a debate about the institution’s independence, given the increasing role of the Justice Ministry in the institution, the HSYK elections, and practices like removing prosecutors from certain critical cases. Aside from these changes, the 2010 constitutional amendments also made it possible for individuals to appeal directly to the Constitutional Court and appointed a government ombudsman.

The Judicial Reform Strategy was updated by the ministry in 2012 and is due to be completed. One of the important goals of the strategy report was “to prevent the violation of human rights arising from judicial practices and regulations and to strengthen human rights standards.” It was in this framework that, since 2011, a series of judicial reform packages were enshrined into law. The judicial reform packages ensured that significant progress was made toward fulfilling the long-felt need for a reform of various problematic aspects of legal provisions that violated basic rights and freedoms.<sup>2</sup>

Among these, the amendments to the Turkish Penal Code (TCK) and Anti-Terror Act (TMK) were particularly important.

Though Turkey won the status of official EU candidate in 1999 and laws in all fields were integrated quickly into EU norms, the slowest and most troublesome change has most likely been in the regulations that seek “to protect the state and the constitutional order” – criminal law, sentencing, and law enforcement. Due to a number of articles in these laws, Turkey’s stance on freedom of expression, freedom of assembly, respect to right to freedom and respect to right to a fair trial has been causing harsh human rights abuses. The government has taken important steps to change these laws according to the principles of European Court of Human Rights. However, their implementation lags behind.

The latest amendment to the law system was introduced on March 2014 which abolished the Specially Empowered Courts. State Security Courts which entered the Turkish judiciary with the March 12, 1971 “coup by memorandum” have been operational as Specially Empowered Courts since 2004. These special courts, different from general judiciary, had the authority to carry out special investigation procedures which led to a double standard in criminal law proceedings, and thereby an open violation of the fair trial principle. Additionally, due to the past legal practices in cases such as the Kurdistan Communities Union (KCK), Sledgehammer (Balyoz) and Ergenekon trials, these courts came to be seen by the public as legal bodies utilizing the law as a political instrument rather than a means to ensuring justice for all.

Due to the latest amendments, the defendants of Ergenekon and Sledgehammer cases have been released one by one. On the other hand, there are approximately 4,000 people today still imprisoned because of KCK cases. This clearly shows that the legal assurances given on paper are no guarantee for fair legal practices. Furthermore, these decisions have strengthened the perception that there exists no legal guarantee in terms of equal application of the same rules to everyone.

#### **A closer look the Judicial Independence**

In Turkey, judges and prosecutors are governed by a constitutionally independent body, the High Council of Judges and Prosecutors (HSYK). It is the authority responsible for their appointment, promotion and removal. The lack of independence of HSYK from the executive branch is problematic. The president of HSYK is the Minister of Justice and the Undersecretary of the Ministry of Justice is the *ex officio* member of the Council. The Minister has powers such as determining

<sup>2</sup> For a detailed examination of the content of judicial reform packages, please see “Judicial Reform Packages: “Evaluating Their Ef-

fect on Rights and Freedoms”, TESEV Publications, November 2013.

the agenda, the appointment of the Secretary General among three candidates selected by the General Assembly, and he/she gives the ultimate decision whether or not an investigation proposed by the Council shall be opened or not. The executive’s interference in the judiciary harms the independence of the tenure of judges and prosecutors, which puts them under political pressure.

With the amendment to the law on High Council of February 2014, the Minister of Justice has acquired additional powers in the Council. According to this change, the minister was able to appoint the head and the deputy head of the Inspection Board. This amendment was installed right after the December 17 corruption scandal, which the government perceived as an attempted coup by an ideological group – *cemaat* – within the judiciary. Correspondingly, more than 2,500 judges and prosecutors were replaced.<sup>3</sup> Although the Constitutional Court cancelled this amendment, it was a clear sign of the power struggle over the HSYK between the government and another ideological group.

#### Main Impediments And Conclusions

The need for a permanent reform in the justice system began to be accepted as a fact in particular in conjunction with Turkey’s process of membership in the EU, and a number of steps have since been taken in this regard. Since she was given an official candidate status, Turkey has taken important steps to align its laws to *acquis communautaire*. However, when it comes to the implementation of these laws, there are still important deficiencies.

As important as the way in which the activities of the judiciary are carried out, the institutional structure of the judicial bodies, and the related legal regulations, is the perspective with which they have been approached. This perspective, a reflex to protect the state before the individual, originates in the system of organization in the judiciary and in the goal of judicial activity itself. This perspective is manifested in the spirit of the 1982 constitution. This mindset is clearly the reason that the progress in the legal environment could not fully effect the expected changes in practice.

What is highly problematic in Turkey is how and with what aim the judiciary is organized. Legal amendments instituted without changing this judicial structure will only have a very limited impact in practice. In order for the judicial system in Turkey to ensure justice for all regardless of subject, the judiciary needs to attain a plu-

ralistic character; it should be open to outside monitoring, answering, and prioritizing the needs of the society. A pluralistic character within the judiciary necessitates an institutional reform to make the selection and appointment of judges based on solely transparent and objective criteria.

This structural change can only be realized if, through a new constitution, the judiciary attains a democratic, pluralistic character and turns into a mechanism that interacts with and operates for the public.

<sup>3</sup> Hurriyet Daily News, “Gov’t replaces more than 2,500 judges and prosecutors in latest mass purge”, 12 June, 2014. Accessible at: <http://www.hurriyetdailynews.com/govt-replaces-more-than-2500-judges-and-prosecutors-in-latest-mass-purge.aspx?pageID=238&nID=67702&NewsCatID=338>

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# MEASUREMENT OF THE INVESTMENT CLIMATE VERSUS INVESTMENT IN THE WESTERN BALKANS

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## Introduction

This discussion paper considers the relationship between the assessments of the business investment climate in the Western Balkans and the actual levels of investment in the region. The paper provides a brief overview of the Doing Business Report's ranking of the countries in the region, as well as selected scores according to the Bertelsmann Transformation Index (BTI), along with investment data for each country, including data on Foreign Direct Investment (FDI). Based on an analysis of the presented data, a discussion about the relevance of the investment climate measurement for the foreign investors is offered, as well as notes about the reform focus of the policy-makers concerned with investment in the region.

## Outlook of the investment climate in the Western Balkan countries

According to the 2014 World Bank Doing Business Report, on average around the world, starting a business takes seven procedures, 25 days and costs 32% of income per capita in fees.<sup>1</sup> These data for the Western Balkan countries (Croatia is included in the region for comparison purposes, although European Union (EU) member from 2013) ranged from two procedures, two days and costs of 1.9% of income per capita (Macedonia) up to eleven procedures, 37 days and costs of 14.9% to start up business (Bosnia). The Doing Business Report provides indicators about the business regulations for domestic companies, but it could also serve as guidelines for foreign investors, given that foreign companies must respect the domestic regulations. Additional incentives for foreign investors do apply, as well as further regulations with regards to some issues, but the investment climate is primarily determined by the overall economic conditions in the country. In this respect, the Western Balkans' performances in the Doing Business Report could be considered relevant to the general investment climate.

The data referring to the Western Balkan countries ranking in the Doing Business Report 2014 are presented in Table 1 (please see appendix). As evident from the indicators, Macedonia has the highest overall rank compared to the countries from the region, as well as relatively high rank (25<sup>th</sup> position) in the total ranking of 189 economies. Montenegro is second ranked in the region and holds 44<sup>th</sup> on the global list, while other countries have much lower ranking. With regards to the specific (sub) indicators, the results also vary, showing discrepancy in the reform focus of different countries. As evident from the data, Macedonia has outstanding

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<sup>1</sup> Doing Business Report 2014, World Bank, Washington, p.1.

results related to reforms for starting a business and getting credit (rankings 7 and 3), while it is seriously lagging behind with regards to enforcing the contracts (rank 95), trading across the borders (rank 89), and registering property (rank 84). However, troubles in reforms related to the latter (three) areas seem to be common for all Western Balkans countries, as other countries do not have encouraging indicators either. Another serious issue for the Western Balkan countries is related to construction permits, which includes rather complicated and long-lasting procedures.

Further on, an additional area of concern for most of the Western Balkan countries is related to the protection of investors. Apart from Albania, Macedonia, and Montenegro, other countries are performing quite poorly with regards to this index, measuring the strength of minority shareholders protections against directors’ misuse of corporate assets for personal gain.<sup>2</sup> On the other hand, Croatia, an EU member since 2013, has a considerably low rank on the latter (sub) index, as well as in other (sub) indexes, too, which provokes doubts about the determining relevance of these indicators with regards to the EU integration process, as well as for foreign investors.

Another index that could be analyzed with regards to the investment climate of the Western Balkan countries is the Bertelsmann Transformation Index, which measures progress in a number of fields such as democratization, economic performance, and governance reforms. The index ranks from 1 (lowest) to 10 (highest). As evident in Table 2 (please see appendix), presenting data for 2014, Croatia scored better in all (sub) indices (apart from the macro-stability) compared to other countries in the region, showing overall progress compared to its neighbors. Nevertheless, other countries also scored relatively well in most (sub) indices, indicating that the process of transformation of the countries has reached a certain level of democratization and market economy. Most of the countries (primarily Albania, Bosnia and Herzegovina, and Kosovo) lack efficient administrative capacity and other assets for transformation, along with the need for more efficient anti-corruption policy, which has been also recognized by the European Commission as a problematic field for all the countries in the region. In this respect, it could be concluded that all Western Balkan countries made certain progress with regards to transformation towards a stable political and economic environment, which is a precondition for the successful running of domestic businesses and attraction of foreign investors. There are issues to be solved, but apparently, the countries are not doing considerably worse compared to other economies, including some of the EU member states.

<sup>2</sup> Ibid, p. 142

The indicators above provide an overview over some matters relevant for investors, either domestic or foreign. As suggested in the Doing Business Report, countries get indication in which areas further reforms are needed. In addition, many other “measurements” of the investment climate, as well as progress in other areas have been done for the Western Balkan countries, including the European Commission’s Progress Country Reports, the Organization for Economic Co-operation and Development (OECD) Investment Compact for South Europe, etc. In this respect, there is plenty of information for investors, as well as for policy-makers to push reforms. On the other hand, the upbeat ranking and favorable scores need to be confirmed with genuine results in investment, which is an ultimate goal of the reform processes in all these countries.

### Investment in the Western Balkans

Investment in the Western Balkans could be analyzed through gross fixed capital formation (which excludes financial investment) and FDI. The gross fixed capital formation in the Western Balkans as a percentage of the Gross Domestic Product (GDP) varies across the countries, ranging from 17% in Albania to up to 30% in Macedonia in 2012 (latest year with available data for all countries), as presented in Table 3.

**Table 3: Gross fixed capital formation in the Western Balkans, 2009-2012 (as % of GDP)**

	2009	2010	2011	2012	2013
Albania	18	18	17	17	17
B&H	18	17	21	22	n.a
Croatia	24	21	20	19	18
Macedonia	20	19	21	30	29
Montenegro	27	21	18	19	18
Serbia	19	18	18	21	n.a
Kosovo	25	28	29	27	n.a

Source: World Bank Data base (<http://data.worldbank.org/indicator/NE.GDI.FTOT.ZS>).

Most of the countries in the region have a higher share of gross fixed capital formation compared to 18% in the EU (2011), which is not unusual as developing countries’ governments tend to spend more in public investment (roads, public buildings, etc.) in order to spur economic growth. As notable from Table 3, Macedonia has increased its gross fixed capital formation from 20% to 29% of GDP over the period 2009-2013, while Montenegro has experienced a reverse trend of decrease from 27% down to 18% of GDP during the same period, along with Croatia, where this indicator dropped from 24% to 18%. Most of the increase in the gross fixed capital formation in Macedonia has been attributable to the government’s spending, while the decrease in other countries could be related to their prudent fiscal policy, as well as to the decrease in FDI.

Although finances are excluded from the gross fixed capital formation, a recent study by Estrin and Uvalic<sup>3</sup> suggests that FDI has contributed quite substantially to gross fixed capital formation in the Western Balkan countries from 2003 onwards. During the 2003-11 period, the ratio of FDI to gross fixed capital formation has been, on average, 32 percent for the whole region (Kosovo is excluded as no data were available, while Bulgaria and Romania are included), but it has been particularly high in Montenegro (over 70 percent) and Serbia (over 30 percent).<sup>4</sup> This indicates that FDI contributed a lot to the increase of capital assets in the countries, by transfer of technology and equipment. This is certainly important for the Western Balkan countries striving to increase their industrial/economic base.

Despite the important role of FDI in the Western Balkans as suggested above, it could not be argued that these countries received substantial amounts of FDI so far. Apart from Croatia, Serbia and Montenegro (FDI measured relative to the size of its economy), the other countries, in particular Macedonia and Bosnia, have not managed to attract many investors. Crises of 2008 onwards are mostly stated as a reason for the overall fall of the investment on the global level, which certainly affects the region, too.

**Table 4: FDI Inflows in the Western Balkans, 2008-2013 (millions of US\$)**

	2008	2009	2010	2011	2012	2013
Albania	974	996	1051	876	855	1225
B&H	1002	250	406	493	366	332
Croatia	5938	3346	490	1517	1356	580
Macedonia	586	201	212	468	93	334
Montenegro	960	1527	760	558	620	447
Serbia	2955	1959	1329	2709	365	1034
Kosovo	n.a	n.a	n.a	n.a	n.a	n.a

Source: World Investment Report 2014, UNCTAD, p. 208.

If the data presented in the Tables 3 and 4 would be analyzed from the perspective of the Doing Business Report rankings, as well as BTI index, there is visible discrepancy in the case of Macedonia, promoted as a front-runner in the regulatory reforms in the region over the past decade. It also has solid BTI results, indicating stable political and economic environment for the investors. Apart of the extensive reforms which brought the country high rankings for doing business, Macedonia has been also pursuing intense campaign for attraction of FDI, including immense FDI incentives, media advertisement, road shows, etc. However, the results were not as expected, indicating that the foreign investors base their decisions on numerous factors, with good regulation and favorable business climate being only

part of them. On the other hand, Montenegro, which has a relatively good overall ranking, but needs to undertake substantial reforms with regards to construction permits and enforcement of the contracts, has attracted a decent amount of FDI in the past years. The majority of them were related to tourist properties, including the element of construction permits, too. Serbia has also attracted substantial investment, despite its relatively low rankings in some areas, suggesting that the focus of the policy-makers should be primarily on the drivers for foreign investment, as it could be said that investment climate measurements do not have a determining impact in the final stages of FDI decision-making.

The classical literature distinguishes three main drivers of FDI: a) the size of the host economy; b) the size of the source economy; and c) the distance between the two economies, while the contemporary literature also considers the costs of production, especially unit labor costs, natural resources, institutional framework facilitating or inhibiting the operations of foreign investors, membership of international trade and economic associations, including EU, etc.<sup>5</sup> The primary factors are particularly important for the region, given the small size of the region in general, and particularly of some countries (Montenegro, Macedonia, Albania). In this respect, no regulation could help this factor prevail (apart from case when a country has natural resources, such as Montenegro), implying the need for strategic alliances and regional integration, so the countries would be part of a broader market.

Regional integration has been on the agenda of the Western Balkans' path towards the EU, but the overall impression is that countries engage in the activities related to regional integration mostly when pressured by EU, while there is no genuine intra-regional and intra-industry connection. The integration of the industries from the Western Balkans in the global supply chains have been low, which could be also considered as a factor in FDI decision-making. In this respect, a switch in the investment policy-making in the Western Balkans towards the region could be useful, primarily consisting of shaping an individual country's investment policy according to the region's specifics. The idea of the development of the regional investment concept has been already put on the agenda of the Central European Free Trade Agreement (CEFTA) for 2014,<sup>6</sup> although no activities have been undertaken yet. This could be a good step forward toward an increase in the awareness of the Western Balkans countries of the economic/industrial characteristics of the their neighbors, which is crucial for making less isolated investment policies in the region. In this respect, regulation and investment climate

<sup>3</sup> Estrin and Uvalic, Foreign Direct Investment in the Transition Economies: Are the Balkans different?, LSE, LEQS Paper No.64/2013, July 2013

<sup>4</sup> Ibid.

<sup>5</sup> See more in Estrin and Uvalic, op. cit, 26

<sup>6</sup> <http://192.232.255.119/~cefta/sites/default/files/Priorities%20Macedonia%20Chairmanship%202014.pdf>



measurements are certainly important, but only as tools to well-designed and targeted investment policy.

### Conclusion

There are various measurements of the investment climate covering different indicators, which provide an overview about the state of affairs in a particular country with regards to running a business, but they do not seem to have a determining impact on the final decision of the foreign investors. The short analysis related to the Western Balkans countries has shown that other factors matter for the investors. In this respect, regulation is an area where countries should further improve, in particular with regards to some issues, and there is a need for design of a sound and targeted investment policy that will bring genuine results.

### References:

1. Botric, Valerija, Foreign Direct Investment in the Western Balkans: Privatization, Institutional Change and Banking Sector Dominance, *Economic Annals*, Volume LV, No. 187 / October - December 2010
2. CEFTA Chairmanship 2014 Work Programme (<http://192.232.255.119/~cefta/sites/default/files/CEFTA%20Chairmanship%20Programme%20%202014.pdf>)
3. Cviic, Christopher and Peter Sanfey, In Search of the Balkan Recovery. The Political and Economic Reemergence of South-Eastern Europe, New York: Columbia University Press, 2010
4. Doing Business Report 2014, World Bank, Washington
5. Estrin, Saul and Uvalic, Milica Foreign Direct Investment in the Transition Economies: Are the Balkans different?, LSE, LEQS PaperNo.64/2013, July 2013
6. Investment Horizons: Western Balkans, MIGA, World Bank, Washington 2006
7. Transformation Index BTI 2014, Bertelsmann Stiftung, 2014
8. WIIW Handbook of Statistics 2012, Vienna Institute for International Economic Studies, WIIW
9. World Bank Statistics (<http://data.worldbank.org/indicator/NE.GDI.TOTL.ZS>)
10. World Investment Report 2014, UNCTAD

## Appendix

Table 1. Western Balkan countries' performances in Doing Business Report 2014

	Overall rank	Starting business	Dealing with construction permits	Getting electricity	Registering property	Getting credit	Protecting investors	Paying taxes	Trading across the borders	Enforcing contracts	Resolving insolvency
Albania	90	76	189	158	119	13	14	146	85	124	62
B&H	131	174	175	164	96	73	115	135	107	115	77
Croatia	89	80	152	60	106	42	157	34	99	49	98
Macedonia	25	7	63	76	84	3	16	26	89	95	52
Montenegro	44	69	106	69	98	3	34	86	53	136	45
Serbia	93	45	182	85	44	42	80	161	98	116	103
Kosovo	86	100	136	121	58	28	98	43	121	138	83

Source: Doing Business Report 2014, World Bank, Washington

Table 2. Transformation index BTI 2014

	Democracy status	Market economy status	Socio-economic barriers	Market based competition	Macroeconomic stability	Property rights	Efficient use of assets	Anti-corruption policy	Effective use of support
Albania	6,7	6,4	5,0	6,0	7,0	7,0	4,0	4,0	6,0
B&H	6,4	6,4	6,0	6,0	7,0	8,0	4,0	4,0	5,0
Croatia	8,5	7,9	8,0	8,0	7,0	9,0	7,0	8,0	8,0
Macedonia	7,2	7,1	6,0	7,0	8,0	8,0	6,0	6,0	8,0
Montenegro	7,9	7,1	7,0	6,0	7,0	8,0	6,0	6,0	9,0
Serbia	8,0	7,1	6,0	7,0	7,0	7,0	7,0	6,0	8,0
Kosovo	6,6	5,9	5,0	5,0	5,0	7,0	4,0	4,0	7,0

Source: Transformation Index BTI 2014, Bertelsmann Stiftung

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# ECONOMIC RULE OF LAW FOR DEVELOPMENT IN THE WESTERN BALKANS

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## Economic challenges in the Western Balkans

After more than two decades of transition and a double dip economic recession, a sluggish recovery seems at last to be under way in the western Balkans. Suffering from a lack of competitiveness and dangerously high public debts, the recent crises have worsened the socio-economic conditions of people in the small region next door to Western Europe, threatening the hopes of convergence with advanced economies. Unemployment is skyrocketing, especially for the young generation, reaching up to 70% in some countries. Levels of poverty are alarming, while high levels of inequality further divide society into the haves and have-nots.

In the “prosperous” decade of the 2000s, inflows of foreign capital and worker remittances had significantly helped economic growth in the region – but, unfortunately these sources declined sharply over the last five years. Development, mainly driven by the accumulation of physical and financial capital rather than human capital, has swollen the current account deficits, while competitiveness remains poor.

The required economic structural reforms are too slow, weakening the chances of a speedy economic recovery and slowing Euro-Atlantic integration progress. Therefore, the region is in a critical juncture: in a desperate need for modernization and reforms under the tough austerity measures. To escape this vicious cycle, good economic drivers and comprehensive policies are needed to implement the necessary reforms and improve competitiveness. These vehicles could be Foreign Direct Investment (FDI)<sup>1</sup>, carefully targeted and focused on specific industries, for creating clusters and introducing new skills and technologies. For achieving attractiveness to foreign investors, first countries need to diagnose their potential and build up their positioning strategies before it is too late, not to remain “stuck in the middle”, with low cost and differentiated economies. However, little can be done without creating a friendly investment climate and an efficient “economic rule of law”.

## Foreign direct investments – a driver for development

Foreign Direct Investment has been vital for the smooth transition process in Eastern Europe, driving the economic development of the region, creating better employment opportunities, followed by higher wages and better living conditions. The contribution of FDI to the host economy is widely discussed in literature. FDI’s direct impact affects the rate of growth, employment, export propensity, productivity and competitiveness. By the same token, the indirect effects influence the per-

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<sup>1</sup> Henceforth FDI



formance of domestic companies, by spilling over positive externalities at intra and inter-industry levels. The main positive spillover channels are: transfer of technology and know-how, contribution to the international trade integration, enterprise development, business sector competition, and human capital formation.

Location-specific attractiveness in the form of political and economic stability, property and profit tax system, market size, labor-force composition, geographic proximity, competition, freedom of entry and exit from markets, domestic financial markets, are all factors influencing the volume and type of FDI. In addition, energy and water resources, and infrastructure are some other critical elements. The openness of an economy and the stage of economic-social development are very important because they affect the quality of the supportive institutional infrastructure. The human capital stock, too, has an increasingly significant value, becoming a prerequisite for attracting FDI and absorbing advanced technologies to achieve economic growth.

Southeast Europe (SEE) started gaining the attention of foreign investors at the beginning of the 1990s, as a result of the transition of these countries from state-controlled systems to free market economies. First in the process, the availability of natural resources did play an important role in the attraction of FDI, as well as the incentives offered by governments to stimulate more FDI, alongside a large-scale privatization process. The Euro-Atlantic integration process of the region increased the chances of these small economies in the international market and improved the confidence of serious investors in the business environment. The European Union (EU) integration process introduced in steps the free trade zone, as an intermediary phase towards complete accession to the EU and supported the harmonization of the countries' legislative regulations with the common market's regulations, thus, positively influencing the region's attractiveness for FDI. For countries that joined the EU, such as Romania and Bulgaria, the flows of FDI significantly increased because of the perceived improvement of the business climate. Importantly, agreements for EU accession allow free market access for foreign investors to new and bigger European markets.

However, foreign investors were not scrambling to get into Western Balkans markets, although the countries embraced open investment and free trade regimes. Inbound international marketers have shown little interest in the small region to date. Investors were spooked by lack of stability and development in the region. Southeast Europe is burdened by an image characterized by a history of conflicts, wars, regional disputes, and mistrust among neighbors, as well as high levels of organized crime and corruption. All of these factors increase the risk of exposure (both real and perceived) for businesses considering investing in the region. Though Southeast Europe offers unique opportunities in terms

of strategic position, natural resources, relatively cheap labor, and a youthful population, it has still attracted less than 1% of global FDI<sup>2</sup> in 2013. As statistics show, FDI are unevenly distributed in the region, with some countries faring well in this regard and others lagging behind. Montenegro had the highest level of FDI stock in the region in 2013 with 8,665 \$ per capita, and Kosovo the lowest, with only 1,214 \$ per capita<sup>3</sup>.

#### Determinants for FDI attraction in the western Balkans

To understand the patterns and the main determinants for the attraction of FDI and its impact on the host country's economy, econometric research focused on the eight Southeast European countries during the 1992-2010 timeframe<sup>4</sup>. This research was based on the New Paradigm of Development, where the concept of institutional assets, meaning the quality of the institutions, was determined to be a significant component of the competitive advantages for companies along with the attractiveness of a particular country's location.<sup>5</sup> New insights have shown that determinants such as resources, capabilities and markets are *necessary* for the competitiveness of a company or a country, but not *sufficient* anymore. Hence, an additional attention needs to be given to the quality and content of institutions<sup>6</sup>.

The special focus of the research was concentrated in understanding the role of good institutions and structural reforms in attracting FDI. To measure the quality of institutions, the European Bank of Reconstruction and Development (EBRD) reform indicators were considered, which measure seven main areas of structural re-

<sup>2</sup> Author's calculations based on UNCTAD data. 8 countries of Southeast Europe were considered, Bulgaria and Romania included.

<sup>3</sup> Data on FDI from „ UNCTAD (*United Nations Conference on Trade and Development*) *Statistics*, p. 5, [http://unctadstat.unctad.org/ReportFolders/reportFolders.aspx?sRF\\_ActivePath=p,5&sRF\\_Expanded=](http://unctadstat.unctad.org/ReportFolders/reportFolders.aspx?sRF_ActivePath=p,5&sRF_Expanded=); For Kosovo, author's calculations based on World Bank data, <http://data.worldbank.org/indicator/BX.KLT.DINV.CD.WD>

<sup>4</sup> The countries taken in consideration are according the EBRD definition of South East Europe: Albania, Bulgaria, Romania, Croatia, FR of Macedonia, Bosnia & Herzegovina, Serbia, Montenegro over the period 1992-2010. The study aimed to explore the relationship between foreign direct investment and economic growth in Southeast Europe. GMM (Generalized Method of Moments) panel data system techniques were used for the analysis. Major growth factors are taken in consideration in this analysis as initial income per capita in the host country, human capital, trade, inflation, governments spending, domestic investments, and credit to the private sector, remittances, quality of institutions and privatization process.

<sup>5</sup> Dunning J. H. (2006) *Towards a New Paradigm of Development: Implications for the Determinants of International Business Activity*, *Transnational Corporations* 15 (1) pp. 173–228.

<sup>6</sup> According to this new theory, institutions are seen as 'sets of common habits, routines, established practices, rules and laws that regulate the interaction between individuals and groups'. They create the milieu within which innovation is undertaken; establish the ground rules for interaction between economic actors and represent the economic culture of the country.

forms<sup>7</sup>. This study furnished us with empirical evidence that the FDI geographic distribution in Southeast Europe is strongly influenced by the host country’s political and institutional quality, reflecting the foreign investors’ confidence in the local investment environment. The findings showed that the quality of institutions is strongly positively correlated with the attraction of FDI throughout the region. Strong institutions are considered even more significant than the traditional variables in the foreign investors’ decision-making process on where to locate their investments. Among the main reforms considered most important in Southeast Europe are those related to markets trade, the large-scale privatization, and the financial sector. On the other side, it has been statistically proven that, there is a negative relationship between the level of corruption and the attraction of FDI, once again reiterating the negative role of corruption for fostering development through domestic and foreign investments.

#### **The importance of “Absorptive capacities”**

The same research provided statistical proof confirming the positive impact of FDI in the economic growth development in the Western Balkans. Nevertheless, this positive relationship is more complex than we think. Not all FDI leads automatically to growth; whether it does depends on the “absorptive capacities” of the host country; important both for attracting and reaping the full benefits of FDI. Benefits of FDI do not accrue automatically and evenly across countries, sectors, and local communities. Instead, they largely depend on the conditions of the host country, where national policies and the investment architecture are very important. Host countries should have a threshold of trade openness, human capital, technological capability, domestic credit, and efficient domestic institutions for FDI to have a positive impact in the host country.

First in our research, trade openness proved to be one of the most significant factors influencing growth through FDI. With a mostly liberalized international trade regime, World Trade Organization (WTO) members, the Western Balkan economies remain mainly import oriented. Even the slight growth of exports usually is driven by existing products toward existing markets, showing the narrow range of destinations as a limit to trade, with most of the exports based on natural resources and unskilled labor.

Second, the quality of the human capital has a twofold importance: for attracting high quality FDI and maximizing its benefits. Countries with a non-highly qualified workforce tend to attract smaller foreign companies, looking for exploitation of cheap labor and investing in

mature industries. In such cases, the short-term impact could be positive, through increased employment, with the long-term impact less clear. The development of cognitive skills remains a key factor for growth and innovation in transition countries. The Western Balkans lag behind the rest of Europe, although there are huge differences within the region itself, with Croatia leading throughout all the indicators. Some of the main issues concern: inadequate public expenditures for education, low rate and quality of graduates in science and engineering, underdeveloped vocational education, and training among other factors.

Third, the technological capability of the Western Balkans economies is limited, and the innovation capacity is very low compared to Western European countries. This is supported by evidence of the Western Balkan’s very low ranking in Global Competitiveness Report of 2013. The only way for the region to be better exposed to technological “catch up” is through participation in international trade, FDI, and brain circulation.

Fourth, domestic credit has a significant impact on the degree to which FDI lead to positive developments in the western Balkans. It is repeatedly mentioned by international development institutions as one the most problematic factors for doing business, together with the rampant corruption. Despite the indisputable growth of the past two decades, domestic credit to the private sector in the region remains very limited and costly compared to European standards, hindering the domestic entrepreneurship development.

Lastly, an extremely important insight of the research demonstrated the importance of the quality of the institutions as the most significant determinant for the attraction and the benefits of FDI. Good institutions create the standards for a level playing field for business development, competition, and trickledown economics throughout all the sectors of the economy.

#### **The need for economic rule of law**

Weak “rule of law” is singled out as one of the main characteristics dominating the Western Balkans. Important steps have been taken for upgrading the regulatory framework for a functioning market economy, mainly due to the EU pull effect. But they remain mainly “on paper”. The region is a laggard in ensuring their effective enforcement. Corruption is the other “elephant”, representing an additional cost to the economy, distorting market competition, leading to poor allocation of resources and keeping away serious foreign investors. According to the Transparency International’s perception index 2013, Albania ranks worse, positioned at the 116<sup>th</sup> place out of 177 countries researched, followed by Kosovo in the 110<sup>th</sup> position. The best per-

<sup>7</sup> Zeneli V. (2014), The role of institutions and good governance for attracting Foreign Direct Investments: Evidence from Southeast Europe”, *Business and Economics Journal*, Volume 5, Issue 2

former in controlling corruption in the region is Croatia ranking in the 57<sup>th</sup> place<sup>8</sup>. Red tape, overregulation, corruption, lack of transparency, inability to create a business-friendly economic environment, weak institutions; all of them hurt development in the region.

What is the purpose of the laws and regulations that are central to the functioning of the economy? Why do we need a rule of law? Why do we need an economic rule of law? A functioning rule of law is supposed to ensure fair treatment for all and protect the weak against the strong. The wrong kind of rule of law – which we unfortunately find too often in the Western Balkans – only hinders the overall economic development; extending inequalities in the society, and supporting a small percentage of the population who can use their political and economic power to shape the rule of law to provide a framework within which they can exploit the market place. This systemic process creates a rent-seeking environment, which favors monopolies and hinders the inclusive sustainable development of the country.

Many international observers raise concerns about the quality of democracy, market economy and political management in the new democracies of Western Balkans<sup>9</sup>. Firstly, doubts are raised that democracy in the Western Balkans has turned more into power struggles, creating a gap between elites and average citizens. Second, the institutions of market economy are undermined by the informal economy and the widening social disparities. The fragile institutions that developed over the last two decades were associated with a highly unequal distribution of social resources and opportunities. Institutions of free market economy – free trade and competitive markets, private ownership and property rights – are further undermined by the informal economy, sending a clear message of serious deficits of rules in the market economy. With the economic system viewed not to be fair by its own taxpayers, compliance is not forthcoming which promotes parallel shadow economies. By the same token, inequality is devastating in some areas of the region, reaching extremely high incidences of poverty, with more than 50% of the population living with less than \$5 a day, such as in Albania and Macedonia<sup>10</sup>. Economic growth is important for poverty reduction, but growth should benefit more than just few segments of the population to be sustainable and foster the long-term development of a country.

Various indicators, such as the Bertelsmann Stiftung transformation index (BTI)<sup>11</sup>, indicate that the Western Balkan democracies suffer from significant deficiencies with respect to the rule of law, the functioning of democratic institutions and stateness, with Croatia scoring significantly higher than the other Western Balkan countries, being indeed closer to Central European countries rather than to the rest of the Balkans.

For all the above mentioned reasons, competitiveness in the Western Balkans is very unsatisfactory, ranking very poorly in the Global Competitiveness report 2013-2014, with an average rank of 99, whereas the EU 27's average score would rank it 35<sup>th</sup> out of 148 countries taken in consideration<sup>12</sup>.

Small markets, such as the ones found in the Western Balkans, require that both companies and governments work in stride beyond their traditional confines, gaining new perspectives and developing new ways of doing business. Being engaged in international marketing – through FDI attraction – is important to businesses, governments, and individuals. When foreign investors consider entering new markets, what they worry most is the quality of the institutions. Hence, governments should focus their efforts in creating a friendly business environment and increasing their attention on curbing rampant corruption in all sectors of their society. Individually, the countries of the Western Balkans are too small and weak to attract desirable high technology investment all on their own, because they lack skilled workers, local financial capacity, and the ability to attract and sustain economic clusters. Hence, the region should strive together for a pooled competition for FDI, which would give a better recognition in the international economy. Institutions, such as EBRD or World Bank, are already engaged in bringing the various stakeholders together in joint platforms where they discuss regional opportunities and challenges, and promote FDI in the Western Balkans<sup>13</sup>.

True growth and development is not possible without good governance and rule of law. From this perspective, governments have a huge responsibility to ensure that institutions and societal entities are able to organize and utilize resources, capacities, and markets available to them and at the same time create a friendly business environment for domestic and foreign investors.

Investing in the country's future, through enforcing a fair rule of law, strengthening the economic institutions, ensuring quality education for people, improving judici-

<sup>8</sup> Ranking of the Western Balkan countries in the Corruption perception index 2013: Croatia 57<sup>th</sup>, Montenegro 67<sup>th</sup>, FYROM 67<sup>th</sup>, Serbia 72<sup>nd</sup>, Kosovo 111<sup>th</sup> and Albania 116<sup>th</sup>. <http://cpi.transparency.org/cpi2013/results/>

<sup>9</sup> Brusis M., and Thiery P., (2006) “Comparing Political Governance: Southeastern Europe in a global perspective”, Applied Policy Research paper, No 1

<sup>10</sup> World Development Indicators, <http://povertydata.worldbank.org/poverty/region/ECA>

<sup>11</sup> Transformation index BTI 2014, Bertelmann Stiftung, <http://www.bti-project.org/index/>

<sup>12</sup> “The global competitiveness report 2013-2014”, World Economic Forum, [http://www3.weforum.org/docs/WEF\\_GlobalCompetitivenessReport\\_2013-14.pdf](http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf)

<sup>13</sup> <http://www.worldbank.org/en/events/2014/03/04/ebrd-conference-investing-in-western-balkans>

ary capacities and fighting corruption, would create a climate that supports a high return investment, which in the medium to long run would improve competitiveness and foster development. However, reforms are always painful in the short run; thus, a strong political will is needed to undertake them. The biggest challenges remain for the politicians, whose actions will propel or delay sustainable development in the region. History from the Western Balkans has shown that positive change and reforms are possible and they always pay off.

**Table 1: The determinants for the FDI attraction in South-east Europe**

Variables taken in consideration	1 Flows of FDI per capita	2 Stock of FDI per capita
GDP per capita	2.507 (0.778)***	1.512 (0.411)***
GDP growth	-0.379 (0.195)**	-0.009 (0.105)
Inflation	-0.144 (0.139)	-0.091 (0.078)
Trade openness	1.234 (0.855)	0.818 (0.461)*
Human development index	-0.644 (4.265)	-3.540 (2.392)
Telephone lines	-1.021 (0.466)**	-0.783 (0.237)***
Private credit	-0.478 (0.342)	-0.331 (0.193)*
Foreign banks	0.395 (0.227)*	0.220 (0.121)*
Natural resources	-0.097 (0.186)	0.123 (0.104)
Tariffs	0.061 (0.175)	0.027 (0.100)
Domestic investment	0.429 (0.753)	-0.053 (0.454)
Remittances	-0.133 (0.121)	-0.104 (0.068)
Privatization	0.147 (0.057)***	0.058 (0.032)*
Quality of institutions (EBRD indicators) INSTU <sub>t-1</sub>	1.523 (0.657)**	0.570 (0.124)***
FDI <sub>t-1</sub>	0.031 (0.212)	0.163 (0.093)*

<b>Constant</b>	0.042 (0.753)	0.107 (0.061)*
<b>Sargan Test</b>	1	1
<b>SOC Test</b>	0.949	0.208

1. All regression are estimated by GMM Arrellano Bond (one-step) estimator.

2. All the variables are expressed in natural log (ln). Robust Standard errors are reported in parentheses. (\*\*\*) , ( \*\*), and( \*) indicate coefficient significant at 1, 5 and 10 % respectively.

3. Sargan Test (p-value, Prob >chi2 ): null hypothesis is no misspecification with the instrument sets, so that the instruments are not correlated with the residuals.

4. SOC test (p-value): Arrellano and Bond Test with null hypothesis of no second-order correlation in differenced term errors, so that the errors in the first difference regression exhibit no second order serial correlation.

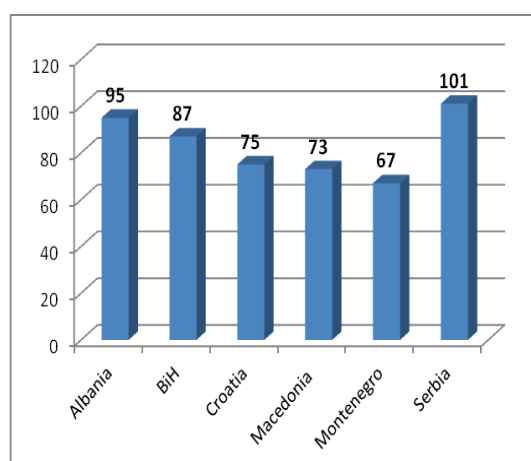
**Table 2: FDI in the Western Balkans**

Source: UNCTAD (United Nations Conference on Trade and

Country	Flow of FDI per capita 2013 (in US \$)	Stock of FDI per capita 2013 (in US \$)	Stock of FDI per capita % of world total ( in 2013)
Albania	386	1923	0.024
Bosnia & Hercegovina	87	2107	0.032
Croatia	135	7572	0.128
FRY Macedonia	158	2626	0.022
Montenegro	720	8665	0.021
Kosovo	220	1214	NA
Serbia	145	3480	0.13

Development) Statistics. For Kosovo, author’s calculations based on World Bank data.

**Table 3: Competitiveness in the Western Balkans 2013-2014; Ranking based on 148 countries researched.**



Source: Global Competitiveness Index, World Economic Forum

**Table 4: Corruption in the Western Balkans**

Country	Rank, 177 countries researched	CPI 2013 score	CPI 2012 score
Croatia	57	48	46
Macedonia FYR	67	44	43
Montenegro	67	44	41
Bosnia & Hercegovina	72	42	42
Serbia	72	42	39
Kosovo	111	33	34
Albania	116	31	33

Source: Transparency International, CPI 2013 results. The Corruption Perceptions Index ranks countries based on how corrupt their public sector is perceived to be. A country's score indicates the perceived level of public sector corruption on a scale of 0 - 100, where 0 means that a country is perceived as highly corrupt and 100 means it is perceived as very clean.



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# FORMAL AND INFORMAL ACTORS IN THE WESTERN BALKANS: MEASURING THE IMPACT ON ANTI-CORRUPTION POLICIES

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After twenty years of political and military interventions, the Western Balkan (WB) countries continue to be at the core of the European Union (EU) regional strategy. The post-war settlement is, notably, an environment in which the promises of democratic political elections and economic reconstruction are extremely high. Peacekeepers and external actors invest their efforts in long-term projects and arrangements, which emphasize the involvement of local stakeholders, but through a top-down conditionality. It is also an environment in which informal actors may easily establish patterns of behavior, which profit from state weakness and affect public interests. The legacy of communist political regimes, the influence of ethnic fragmentation, the need to face and manage a subtle transition to democracy has led the WB towards a difficult and troubled period of adaptation and evolution. Inexperienced political *élites* have been helped to turn weak institutions and inefficient bureaucracies into modern ones, to fulfill the requested criteria and, more importantly, to satisfy the needs and aspirations of a vivid – but still uneven – civil society.

The same conditions did not inhibit a variety of groups – which have used the conflicts as a means to profit from illicit activities – to flourish in all countries, building a criminal network aimed at smuggling all kinds of illicit goods. Drug routes and the set of relationships with local police officers, civil servants, businessmen, and former intelligence officers were one of the biggest concerns for the EU at the beginning of its intervention in the area and they are still on the agenda.

The need to face high level corruption, involving political *élites* – at local, federal and national levels – is still part of the efforts which are required to fulfill the enlargement criteria.

What happened – and is still happening – in the WB is a clear example of how informal actors may flourish in a post-war context, by severely influencing all aspects of the state and weakening the rule of law. It also demonstrates how external intervention may struggle significantly to reduce their impact and, paradoxically, to benefit them.

This article aims at assessing the improvements made by WB states in the policies against corruption and organized crime by stressing the role of key actors. It is divided into three main parts. Firstly, the EU aid and anticorruption policies are theoretically discussed towards the notion of informal actors. Secondly, empirical data provided by international agencies are used to describe the current condition of corruption influence in the WB. The last part completes the analysis by assessing the impact of EU polices and local responses.



Therefore, it is mainly based on three research questions:

1. Which actors are more relevant in tackling corruption and organized crime in the Western Balkans?
2. Are they formal or informal ones?
3. Do they play a role within the EU policies and strategies in the region?

#### Formal and informal actors: a theoretical overview

The conflicts that affected the WB region caused complex and long-term interventions, both in terms of peace support missions and state-building policies. The dominant theoretical paradigm under which such policies have been formed, in the last decades, follow the “Liberal Peace Thesis” that is to say the idea that the building up of political institutions is required as a preliminary condition to improve democracy reforms (Paris, 2004). They are, therefore, essential to the establishment of a new equitable political and economic setting. However, the cases that flourished since the end of the Cold War demonstrate that such ‘aid paradigm’, based on the assumption that security, stability and rule of law are prerequisites for development has not always – and not everywhere – produced suitable results. This approach put more emphasis on the security sector as a tool for change, but this transformative potential may increase the power of local actors, even without sufficient control (Cooper and Pug, 2002). It may, additionally, create those conditions in which a ‘culture of dependency’ benefits some local actors and deprives others (Chandler, 2001). In other words, the nature of democratic settlement that long-term interventions currently aim to achieve can only be defined as hybrid. Liberal peace can be hardly established *tout court*. It rather creates the conditions in which long-term measures can enhance political and social dialogue. The involvement of various actors – both local, regional, and international – is necessary to shape negotiations and a hybrid form of peace as a context in which different interests coalesce, conflict and re-coalesce (Attinà, 2012).

The assessment of the EU involvement in the WB offers a clear example of how hybrid peace was established, shaped and reshaped in several forms. The EU has been particularly involved in the region since the Dayton agreement as a peace and security provider and, going beyond the post-conflict phase, as a democracy promoter within a broader “European perspective”, made of institution-building, rule of law, governance, anticorruption measures.

The role of local actors – mainly in terms of receiving aid – remains crucial. Analyses on policy interventions stress the importance of local ownership, which is only sometimes implemented in practice and, most of the times, idealized. As comparative studies have evaluated,

external actors usually refer to local authorities and political *elites*: thus, they become both recipients of aid policies, and responsible for conditionality and compliance to criteria. As Rossi demonstrates, in the WB, international policy-makers – who have mainly conceived and promoted the transition and state-building process – continue to address only *formal* institution building (Rossi 2014). The difference among formal and informal actors is particularly interesting and essential for understanding the factors that marked the post-conflict period in the area and the performances of these countries towards the EU requests. It also sheds light on the EU approach itself.

In general terms, a formal actor is the one who holds official state-sanctioned political power and has an obligation to act in the state’s public interest, while an informal actor plays the same roles, but without holding formal office or mandate (Cheng, 2012). This definition is close to the notion of non-state actors, whose ability to play a role in the international affairs has grown in the last decades. Civil society groups, non-governmental organizations (NGOs), and interest groups can contribute to democratization and accountability of global politics and policies. However, the same environment can facilitate and strengthen ‘uncivil’ groups, such as organized crime groups (Irrera, 2011). As the WB clearly demonstrates, reconstruction and state-building policies are primarily addressed to formal local political *élites*, but with the inevitable involvement of a large *informal* environment. Here many positive actors can exert an influence, which can be transformative and direct. However, some (or several) informal actors may easily act against the public interest for personal or group gain. Driving such positive and negative influence from the top can make the difference in the short and long period.

#### Formal and informal actors in the WB: an empirical analysis

In post-conflict countries, political and institutional corruption is one of the most devious and lasting problems. While the World Bank defines corruption as the use of public power for obtaining private gain, the present analysis focuses on the implications of grand corruption, which involves local political and social actors, that is to say police, customs officials, judges, tax officers, and even doctors in the use of illegal and corrupt practices.

Several scientific articles and agency reports have investigated how, over the last twenty years, in the WB bribery has become the most frequent and rapid tool in the provision of any public service in all sectors.

The perception of corruption deals with factors that contribute to its cause, but also with those actors that are more entangled and those that are expected to be more involved in anticorruption policies. Low salaries

are usually indicated as the first origin of corruption, since public servants attempt to supplement with bribes and justify such practice as a personal necessity. This may affect all services a citizen ordinarily requires in daily life. However, grand corruption is a different and more serious phenomenon. The inefficacy and/or the lack of proper social control at the crucial legislative, judicial and administrative levels are important factors which may not only expand corrupt practices, but also affect the expected institutional performances and decrease its legitimacy and popular trust.

The last Corruption Perceptions Index 2013, compiled by Transparency International, continues to point out the almost similar undesirable conditions (Table 1).

**Table 1: Corruption in Western Balkan countries**

Country	Rank	Score	Standard error
Albania	116/177	31/100	2.1
Bosnia and Herzegovina	72/177	42/100	2.9
Macedonia	67/177	44/100	5
Croatia	57/177	48/100	3.3
Serbia	72/177	42/100	3.4
Montenegro	67/177	44/100	2.2
Kosovo	111/177	33/100	2.3

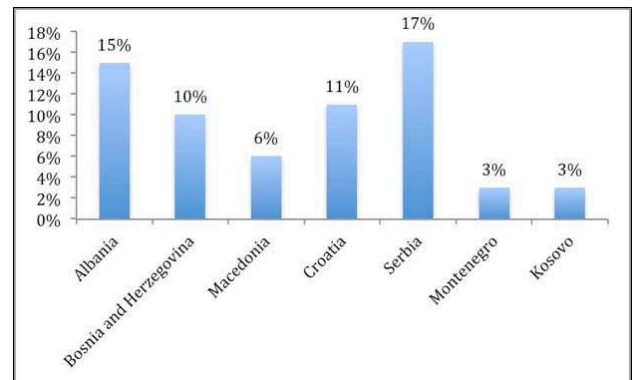
Source: Transparency International, Corruption Perception Index, 2013

The table provides three kinds of information, which are relevant to identify the position the country ranks on a global scale and, at the same time, to understand the level of political control in fostering corruption and illegal practices. The country score indicates the perceived level of corruption in the public sector on a scale of 0-100, where 0 means that a country is perceived as highly corrupt and 100 means it is perceived as very clean. The country's rank indicates its position compared to other countries included in the index and a standard error associated with the score captures the variation in scores from the data sources available for that country.

According to such data, among the WB countries Albania is the one producing the worst result, together with Kosovo, which remains a transition case (despite the independence and the recent political elections). Serbia and Bosnia are slowly improving; Macedonia and Montenegro are probably the most stable cases, while Croatia is unsurprisingly the best one. It is worth reminding that data depicts countries which are enormously diversified among each other, going from an EU member to a country in which a civilian mission is still deployed. However, from a regional point of view, they all congregate in a specific part of the Index (31-48) and, except for Macedonia, the standard error is not particularly high and quite factual.

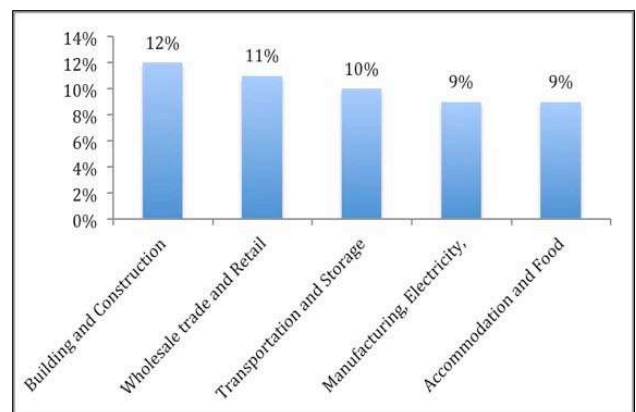
Perception of corruption needs to be combined with additional data provided by the United Nations Office on Drugs and Crime Report on the actual frequency of bribes and on the sectors which are mostly affected (Tables 2 and 3).

**Table 2: Prevalence of bribes**



Source: UNODC, 2013

**Table 3: Sectors affected by bribes prevalence**



Source: UNODC, 2013

Aggregated data on the prevalence of the use of bribes in public sector confirm the endemic impact of corruption, even though – compared to the Corruption Index – Croatia is more affected than Montenegro and Kosovo, while Albania and Serbia are still the crucial cases. The rampant privatization processes, which have been proceeded by local political élites in all countries, have left serious consequences in most relevant sectors, mainly building and construction, as well as wholesale trade. Economic actors are leading such processes, but in close relationship with governments which are chiefly responsible.

In sum, the WB is still a region marked by scores of petty and grand corruption, not compatible with a democratic regime (or even with a hybrid one) and which requires extraordinary measures.

Corruption may be driven by financial necessity and, as a consequence, justified by people, but it is unacceptable among those institutions which should be accountable and represent local interests on a national level and are requested to provide public services. They should be, in principle, free from corruption, also because they are those formal actors which are recipients of external aid. Therefore, they are expected to gradually become democratic and transparent.

In its Nations on Transit Report issued in 2014, Freedom House rates countries on a scale of 1 to 7, with 1 representing the highest and 7 the lowest level of democratic progress. The average of these ratings is each country's Democracy Score (DS).

**Table 4: Democracy scores in Western Balkans<sup>1</sup>**

Country	CS	NGOV	LGOV	JFI	CO	DS
Albania	3.00	4.75	3.50	4.75	5.25	4.18
Bosnia-Herzegovina	3.50	5.75	4.75	4.25	4.75	4.43
Macedonia	3.25	4.25	3.75	4.25	4.25	4.00
Croatia	2.75	3.50	3.75	4.50	4.00	3.68
Serbia	2.25	3.75	3.50	4.50	4.25	3.64
Montenegro	2.75	4.25	3.25	4.00	5.00	3.86
Kosovo	3.75	5.50	4.75	5.50	6.00	5.14

Freedom House mainly focuses on democracy and scores corruption as a separate variable. In the transition process, in which several formal and informal actors are involved at various levels, the relationship between the two factors can shed light on the quality of actors themselves.

In terms of overall Democracy Score, Kosovo presents the worst result, followed by Albania, while Croatia provides a score, which is still not perfectly satisfactory, even though it has the lowest level of corruption in the region. It is not surprising that political institutions, both national and local governments, continue to be considered as not truly democratic and close to the spread of corruption, especially in Kosovo, Bosnia, and Albania. Those responsible for the judicial framework deal with very similar scores. Performances are significantly better in the case of informal actors. Civil society organizations are considered more advanced in terms of democratic progress, and they are still associated with the role of impartial watchdog, even though Albania, Bosnia, and Kosovo are still critical cases.

This brief analysis emphasizes the influence corruption may exert on the political and social life, and considerably affect the democratic performance in the WB, considering that formal actors are the same ones which are expected to fulfill the EU conditionality.

#### Formal and informal actors and the EU

In previous analyses, the approach developed by the EU towards the WB has been evaluated by stressing the relevance of both institutional ties and economic assistance (Irrera, 2010). The relations between the EU and the WB are characterized by a complex mixture of programs, practices, and measures under which the EU has tried to follow and sustain the region from the resolution of conflicts to the formal entry, passing through a transition to democracy. In this framework, the fight against organized crime and corruption is a preliminary and crucial step.

The strengthening of the rule of law through the adoption, the implementation, and the internalization of norms is at the core of anticorruption policies and practices. Almost everywhere in the region, anticorruption agencies provided with the task of promoting legislative, judicial, and law enforcement measures are established. In some specific cases, for example in Kosovo, such programs are combined with a widespread package of Security Sector Reform, based on short and long term actions, and on cross-pillar (community, external relations and judicial) cooperation.

The Instrument for Pre-Accession Assistance (IPA) was designed to provide specific financial assistance for supporting transition and institution building, and cross-border cooperation. The launch of IPA II in 2014 is expected to invest about €11.7 billions in the period 2014-2020, and a new system of incentives will award those countries that can actually demonstrate their advanced path to reform. At the core of the renewed strategy, "on developing independent, efficient and professional judiciaries and supporting the development of a strong framework at national and regional level and track record of implementation in the fight against organized crime and corruption" (EU Commission, 2013, p. 7). Except Croatia, which is already a member, all other WB countries are expected to strongly benefit from it.

Montenegro has just opened accession negotiations with the EU but is still affected by organized crime activities and high-level cases of corruption. Serbia has signed an agreement of principles with the EU and has improved its commitment, even though the fulfillment of rule of law criteria is still far to be achieved. Macedonia was the first country to sign a Stabilisation and Association Agreement in 2001, and has still to demonstrate the real existence of functioning anticorruption measures. Albania is a candidate country and the new government seems fully committed towards the strengthening of cooperation between law enforcement bodies. Bosnia is

<sup>1</sup> CS – Civil Society; IM - Independent Media; NDG - National Democratic Governance; LDG - Local Democratic Governance; JFI - Judicial Framework and Independence; CO – Corruption

still a pending Stabilisation and Association Agreement (SAA) because of on-going problems, particularly the extremely high level of corruption. Kosovo is slowly advancing towards its SAA and, among difficulties, is proving a strong commitment under the control of a stronger international presence.

There are few doubts that almost everywhere formal actors are making strong efforts to demonstrate their full and proactive engagement in the fight against corruption and organized crime. However, they are still wobbling between the convenience of fulfilling the EU conditionality and the profits provided by the corruption networks, which flourished in the previous decades. This translates into a resistance to the effective internalization and implementation of norms against corruption as well as the improvements of law enforcement measures and practices. This fatal combination of formal actors and negative informal ones is balanced by the pressure exerted by other positive informal actors, namely NGO and other civil society organizations, which can be envisaged as tool for control and change. Their official role is, however, still limited and far from recognized.

#### Conclusions

The WB region represents one of the most investigated and evaluated cases, by both scholars and practitioners, in order to understand how to manage post-conflict transition. The spreading of corruption, criminal infiltrations into politics, and frequent violations of the rule of law have created a condition of insecurity in which the EU has slowly and exhaustingly played the role of peace provider and democracy promoter.

This brief analysis focused on grand corruption and discussed how an effective commitment in this field has a major impact on the democratization process. The main assumption here is that an assessment of the EU impact in the WB, two decades after its beginning, requires a broader perspective which involves the role of a set of different actors, both formal and informal ones. A very specific and sensitive policy field, like the fight against organized crime and grand corruption, demonstrates that positive and negative influences of both types can combine and cross. The EU has already experienced and identified the impact of criminals and corrupt officers and politicians. Without underestimating or idealizing the role of informal actors, it should recognize their ability to influence the formal ones and turn it into a potentiality.

#### References

- Attinà F. (ed.) (2012), *The Politics and Policies of Relief, Aid and Reconstruction*, Basingstoke: Palgrave Macmillan.
- Chandler D. (2001), *Bosnia: The Democracy Paradox*, *Current History*, 100 (644), pp. 114-119.
- Cheng C. (2012), *Private and Public Interests – Informal Actors, Informal Influence, and Economic Order after War in Zaum*, D. and Berdal, M., eds. *Political economy of state-building: power after peace*. Routledge, Abingdon,
- Cooper, N. and Pug, M. (2002), *Security-sector transformation in post-conflict societies*, London: The Conflict, Security & Development Group.
- EU Commission (2013), *Enlargement Strategy and Main Challenges 2013-2014*, 16.10.2013, COM(2013) 700 final
- Freedom House (2014), *Nations in Transit 2014*, available at <http://www.freedomhouse.org/report/nations-transit/nations-transit-2014#.U-kFdlbeOg1> [accessed on 11 August 2014].
- Irrera D. (2010), *EU and Albania facing corruption and organised crime in Transitions*, Vol. L.1, pp. 125-146.
- Irrera D. (2011), *The EU Strategy in Tackling Organized Crime in the Framework of Multilateralism*, *Perspectives on European Politics and Society*, 12(4), pp. 407-419.
- Paris R. (2004), *At War's End: Building Peace After Civil Conflict*, New York: Cambridge University Press.
- Rossi R. (2014), *EU, non state actors and peace support policies in the Western Balkans*, paper presented at ReSHAPE 2nd Annual Workshop ‘Non-State Actors And Emergency Policies, Assessing The Impact Of NGOs And The Media’, 12-13 June 2014, Catania, Italy.
- Transparency International (2013), *Corruption Perception Index 2013*, available at <http://cpi.transparency.org/cpi2013/> [accessed on 11 August 2014].
- UNODC (2013), *Business, Corruption and Crime in the western Balkans, 2013*: available at [https://www.unodc.org/documents/data-and-analysis/statistics/corruption/Key\\_Findings\\_Business\\_Corruption\\_Crime\\_WB.pdf](https://www.unodc.org/documents/data-and-analysis/statistics/corruption/Key_Findings_Business_Corruption_Crime_WB.pdf) [accessed on 12 August 2014].



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# THE FIGHT AGAINST CORRUPTION AND ORGANIZED CRIME, THE CASE OF THE WESTERN BALKANS

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*“corruptissima re publica plurimae leges”*  
“In the most corrupt state are the most laws”

The region of Southeast Europe and its western part in particular is an important hub for global organized-crime networks. In terms of corruption in the public and private sphere, the region faces great difficulties, owing to history, societal norms and a number of economic factors that prohibit the full implementation of the rule of law, even though nominally all countries have adopted the necessary legal frameworks and in most respects they have legal provisions for all kinds of illicit actions and behaviors.

## Organized crime

### *Narcotics*

Southeast Europe is one of the main transit zones for the transfer of heroin from Asia to Europe, as well as an expanding cocaine re-distribution center for Latin American cocaine en route to the rest of the EU markets. According to the EU Serious and Organised Crime Threat Assessment 2013 (SOCTA) report: “Routes through Western Balkan countries remain important for the movement of many illicit commodities into the EU. Heroin and cocaine pass through the Western Balkans after transiting through Turkey and Africa.”<sup>1</sup>

The high quantities talked about and the extensive network located in the Balkans regarding drug contraband, was illustrated by a recent DEA/Greek Coast Guard operation that successfully confiscated 2 tons of pure heroin in Athens and led to the arrest of a multinational criminal network composed of Greeks, Turks, Albanians, Iranians, Bosnians, and with geographical spread from Pakistan and Dubai to Belgium, Italy and Romania. According to all available and credible information the network was just an offshoot of a much more extensive mafia-type organization with firm roots in at least two Southeast European countries and investigations are still ongoing. The confiscated amount if supplied on the street level and in non-pure form could net more than 350 million United States dollars (USD) and it was destined for the northern European countries.<sup>2</sup>

According to the United Nations Office on Drugs and Crime (UNODC): “The Balkan heroin route traverses the Islamic Republic of Iran (often via Pakistan), Turkey, Greece, and Bulgaria across Southeast Europe to the Western European market, with an annual market

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<sup>1</sup> “Turkey and Balkans battle drug trafficking”  
[http://www.setimes.com/cocoon/setimes/xhtml/en\\_GB/features/setimes/features/2013/04/22/feature-04](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2013/04/22/feature-04)

<sup>2</sup> “Greece makes record heroin bust, arrests tanker crew”  
<http://uk.reuters.com/article/2014/06/22/uk-greece-ship-drugs-idUKKBN0EX0UN20140622>

value of some \$20 billion”<sup>3</sup>. To put this number into perspective, the amount of wholesale priced heroin that passes through the Balkans each year is larger than or similar to the nominal GDP of countries such as Montenegro, the Former Yugoslav Republic of Macedonia, Albania, and Bosnia. That surely means that globally connected and financed organized criminal structures are able to greatly influence domestic security policies. Despite numerous arrests over the years, the heroin kingpins operating at the highest level have remained untouched; while mid-level and in some cases upper level operatives were arrested, “business continued as usual” by eager replacements.

The amount of cocaine reaching ports in the Balkans is also steadily increasing. Europol has noted since the early 2000s the formation of stable transport routes in the Balkans for the re-distribution of the drug to other markets, as well as for the increased local consumption. The existence of well-formed organized crime networks previously or currently involved in human trafficking, heroin trade, and tobacco contraband, provided with ample human resources, experienced in dealing with the shadowy world of illicit organized activities. Moreover the lax border controls in the region due to the recent political history and the widespread corruption has been another strong impetus.

The main locations of interest are the port of Piraeus in Greece, and most harbors in the Adriatic Sea including Italy and the coast between Croatia and Albania. Cocaine is being transported via small and mid-sized vessels, often used just for one voyage and incorporated in offshore tax heavens owned by maverick ship owners and brokers. Numerous cases have proved the link between the transfer of cocaine from mostly Colombia, Panama and Venezuela to Montenegro through Western African ports in Senegal, Nigeria, Guinea, and Sierra Leone. Each year it is estimated that up to 1,000 tons of cocaine (first product) is being produced in Southern America, with an initial price up to 10,000 USD per kilo. In the European metropolises the drug is distributed for up to 1.5 million Euros per kilo after it has been reduced in its purity, thus offering immense profit for all intermediaries involved.

Heroin and cocaine prices in the Balkans have reached a historically low level, despite a considerable increase in confiscations, which implies a steady and increasing supply by virtually uninterrupted powerful criminal groups that actually gain in strength and become even more influential in local societies.

### *Arms trafficking*

Arms trafficking of light weaponry flourished in the Balkans during the 1990s and the wars of that period,

and since then the region has been a steady hub for the global illicit procurement of AK-47, hand grenades, RPG rockets, plastic explosives, and a variety of pistols. The wars in Libya, Syria, and Iraq and the aftermath of the “Arab Spring”, have once again this trade flourish. For instance in 2011, 800,000 12.7 mm rounds of ammunition originating from Albanian surplus stocks found their way into the hands of Libyan rebels (of Jihadist origin) and a UN panel of experts suggested that Tirana had some information about the final destination of the ammunition but did not follow it through<sup>4</sup>.

In 2013, a New York Times report revealed that arms shipments originating from Croatia were heading to Jihadists in Syria via Jordan and through Saudi financing<sup>5</sup>. Further indications of a substantial flow of weaponry through radical Islamist channels based in the Balkans towards Syrian groups, was noted by Israeli sources: “The senders are the groups from Kosovo and the Republic of Bosnia and Herzegovina linked to Al Qaeda. The package includes Kornet and Fagot anti-tank systems delivered by the Soviet Union to former Yugoslavia in the past.”<sup>6</sup>

There were also numerous cases that have been extensively reported in the local press of most countries in the region, regarding well-formed arms contraband networks that are based in Belgrade, Pristina, Tirana, and Skopje that facilitate both global and international illegal arms shipments. The Greek Coast Guard estimates that there are, at any given month, dozens of vessels in the Central and East Mediterranean Sea, facilitating such trade, belonging to fictional companies and changing names and flags frequently in order to evade attention<sup>7</sup>.

### *Illegal immigration and terrorism transit flows*

The Balkan territory is the prime entry into the EU for illegal immigration and remains a source region for human trafficking victims. According to a 2012 Annual Risk Analysis report on the Western Balkans region published by Frontex, illegal immigration from and

<sup>4</sup> “Albania Faces Questions Over Arms for Libya” <http://www.balkaninsight.com/en/article/albania-weapons-diverted-to-libyan-rebels-reports-says>

<sup>5</sup> “Saudis Step Up Help for Rebels in Syria With Croatian Arms” [http://www.nytimes.com/2013/02/26/world/middleeast/in-shift-saudis-are-said-to-arm-rebels-in-syria.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/02/26/world/middleeast/in-shift-saudis-are-said-to-arm-rebels-in-syria.html?pagewanted=all&_r=0)

<sup>6</sup> “Syrian Rebels Get Arms from Kosovo and Bosnia” <http://www.strategic-culture.org/news/2013/02/23/syrian-rebels-get-arms-from-kosovo-and-bosnia.html> & <http://www.debka.com/article/22773/Syrian-Islamists-meet-Hizballah-head-on-%E2%80%93take-in-arms-from-Bosnia-Kosovo>

<sup>7</sup> Unofficial commentary by Greek Coast Guard state security directory officials in 2014

<sup>3</sup> <https://www.unodc.org/unodc/en/drug-trafficking/>



through the Western Balkan region remains the major challenge faced by the EU<sup>8</sup>.

Since 2013 and onwards a considerable influx of Asian illegal immigrants has been noted in Bulgaria, whilst since spring 2014 the number of those getting into Greece through the Aegean Sea route has reached more than 300 persons daily. Consequently pressure has been exercised in the borders between Greece-FYROM, Greece-Albania, while Afghan and Pakistani nationals can be found in transit in all Balkan countries and *en route* towards Central Europe. In the case of Greece, which is the prime entry point and hub, it has been noted in most cases that the immigrant flow follows a systematic pattern and is related to a well-formed criminal network that facilitates all aspects of the “industry” such as paper forging, transportation logistics, officials bribing, and surveillance on authorities’ activities and so on. In a 2011 leaked Greek intelligence service report (NIS) in the local media, it was noted that the smugglers had formed NGOs and other front organizations to actually infiltrate local societal and political structures and also to facilitate trans-European networking for their “commodity”<sup>9</sup>.

The “Hawala” financing structures are becoming especially important in Athens, which is used as an epicenter for the Balkan immigration paths, and are in direct contact with those in Istanbul, Vienna and other with many smaller points in the midst and points in the western Balkan vicinity. Confiscations of several million Euros inside transiting vehicles for the purposes of Hawala transactions has become a routine over the past few years and in the routes aforementioned.

Illegal immigration and Middle Eastern connections also bring another matter of importance to the region: the facilitation of international terrorism and most importantly the one originating from the Middle East and is of Jihadi nature. In 2013 Austria’s domestic intelligence agency (BVT) in its public assessment reported that: “In 2013, it was established that Jihadist fighters from the Western Balkans travelled to Syria. The fact that activists on the Balkans are networking with and are concretely linked to groups in (Western) Europe, there is a significant reference to Austria. This reference becomes particularly evident in the recruitment and travelling of European or Austrian fighters going to Syria via the Western Balkans”<sup>10</sup>.

It should be noted with emphasis that there is a great deal of concern regarding the recruitment of a substan-

tial number of Western Balkan nationals going to join “Jihad” in Syria and Iraq, and although the subject is not directly related to organized crime it is surely becoming an important concern for the overall European security architecture<sup>11</sup>.

All the above are also related to the existence of home-grown Balkan radical Islamist groups centered in Bosnia and tightly collaborating with those in Vienna, Milan, and other European cities.

### Corruption

Corruption in the Balkans can be summoned by the following key words and phrases: bribes; clientelism; favoritism; nepotism; patronage; subjective use of law; and fused lines between executive, legislative and the judicial.

Although all the above could be applied to virtually most nations on the planet, the important aspect is the existence of all in excess, combination, and in direct relation to both high and low levels of the state’s apparatuses. In short, they deeply prohibit the progression of the local societies, they cause a great deal of social injustice which inevitably leads to social tensions and strains, further destabilizing society and assisting into the continuation of the vicious circle.

The UNODC in its Assessment of Corruption and Crime affecting the Business Sector in the Western Balkans (2012/2013) notes that: “Despite much progress in increasing transparency and good governance in the Western Balkans countries over the past few years, there is an increasing body of evidence that corruption is still widespread and pervasive in the region and affects large segments of society and public administration”<sup>12</sup>.

Moreover, recent reporting on public sector corruption identifies that in the energy sector the Balkan countries must tackle corruption to save money and take advantage of development opportunities according to EU institutions such as the Energy Community Secretariat, identifying Albania as a prime example<sup>13</sup>.

<sup>8</sup> “West Balkans – gateway for illegal immigrants to the EU?” <https://emn.gov.pl/ese/news/9245,West-Balkans-gateway-for-illegal-immigrants-to-the-EU.html>

<sup>9</sup> Various reports in the Greek media between 2011-2014 that have been numerous confirmed by authorities in charge

<sup>10</sup> [http://www.bmi.gv.at/cms/BMI\\_Verfassungsschutz/BVT\\_VSB\\_2014\\_V20140613\\_online.pdf](http://www.bmi.gv.at/cms/BMI_Verfassungsschutz/BVT_VSB_2014_V20140613_online.pdf)

<sup>11</sup> Several recent articles and papers of interest: <https://www.ctc.usma.edu/posts/foreign-fighters-from-the-western-balkans-in-syria>; [http://www.todayszaman.com/interviews\\_albanian-expert-turkey-waypoint-for-balkan-jihadists\\_353477.html](http://www.todayszaman.com/interviews_albanian-expert-turkey-waypoint-for-balkan-jihadists_353477.html); <http://www.balkaninsight.com/en/article/albanian-jihadist-use-internet-to-recruit-fighters>; <http://www.rimse.gr/2014/07/islamic-radicalism-in-balkans-by.html>; [http://www.setimes.com/cocoon/setimes/xhtml/en\\_GB/features/setimes/features/2014/07/21/feature-03](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2014/07/21/feature-03)

<sup>12</sup> <https://www.unodc.org/southeasterneurope/en/xe/t93-assessment-of-corruption-and-crime-in-the-western-balkans.html>

<sup>13</sup> “EU asks the Balkans to fight energy sector corruption” [http://www.setimes.com/cocoon/setimes/xhtml/en\\_GB/features/setimes/articles/2014/07/07/reportage-01](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/articles/2014/07/07/reportage-01)

A Transparency International Global Corruption Barometer 2013 identified that “There is a lack of public trust in the political system (in the Balkans), posing a threat to democracy in a region where the influence of powerful tycoons has dominated politics for more than two decades.... Despite considerable improvements in the area of party financing in the Balkans, the report found significant gaps in both election campaign financing laws and the way they are implemented.”<sup>14</sup>

EU agencies and organizations also tend to lack the necessary will or ability to provide for change in the region and important deficiencies have been revealed, such is the case of EULEX in Kosovo. According to the European Court of Auditors (ECA) that has audited the EU’s assistance to Kosovo in the field of the rule of law, “this assistance has not been sufficiently effective... Kosovo’s limited capacity to protect key witnesses and the difficulties relocating witnesses abroad are important shortcomings. There has been almost no progress in establishing the rule of law in the north of Kosovo.... EU support should be more effective<sup>15</sup>”.

The reasons and corruption origins in the Balkans and particularly in the Western part are a mixture of historical, cultural, societal, and economic causes. Due to the sheer length that a discourse would take to simply acknowledge all the above, some key points will be outlined briefly as far as the economy is concerned.

The points below present the negative state of economic affairs in the Balkans that consequently fuel corruption as a means to an income and survival either for businesses and citizens alike.

- Small markets with little opportunities for upward socio-economic mobility for citizens
- Prolonged economic recession and/or stagnation
- Rigid bureaucracy combined with heavy taxation in indirect mode
- Donor recipient mentality in many cases that prohibit private sector initiatives
- State interference in micro-management decisions of the private sector
- Lack of infrastructure
- High levels of illiteracy compared to the rest of the EU

<sup>14</sup> “Buying Influence: Money and Elections in the Balkans” [http://www.transparency.org/news/feature/buying\\_influence\\_balkans](http://www.transparency.org/news/feature/buying_influence_balkans)

<sup>15</sup> “Rule of law assistance to Kosovo not sufficiently effective” [http://europa.eu/rapid/press-release\\_ECA-12-41\\_en.htm](http://europa.eu/rapid/press-release_ECA-12-41_en.htm)

- Low to minimum social protection frameworks
- Mass immigration of highly specialized scientific personnel
- Minimum realistic opportunities for capital accumulation by corporations and citizens without getting involved in “close circuit” corrupted networks, due to lack of fundraising capabilities and shallow local monetary markets.

All the above create an explosive mix that prohibits the progression into the EU and establishes inferiority complexes with the more industrially advanced states in the EU, thus prolonging a vicious circle of mediocracy, kleptocracy, and keeping up the gloomy outlook for economy.

#### Light in the end of the tunnel?

Organized crime and corruption present still major issues to be battled against in the Balkans and vis-à-vis the final integration of the Western region into the European Union’s institutions.

First of all any initiatives taken should be multilevel ones and long-lasting, so as to have a positive impact, by taking into account the seriousness of the situation and the problems at hand.

Transparency in executive, legislative and the judicial branches could be a first key step that could be coupled with the use of new technology, the existence of well-established and impartial “watchdogs”, the periodical review or state decisions by citizen’s panels under the monitoring of international organizations, and the training of the younger generation of state officials by a variety of neutral and global organizations.

The need to limit in constitutional terms the tenure of politicians to prohibit the formation of “dynasties” is of importance. The liberalization of local markets and “closed shops” is another key step to engage entrepreneurship in the local societies and increase the chances of investments that will create jobs and lift up the economies.

Regional cooperation between existing EU member states and those to be included is of importance and it has to be of a “holistic nature” and far beyond the formalities of political and diplomatic life. The collaboration of NGOs, Unions, professional associations, security authorities, and municipalities in between Balkan countries should go beyond joint EU projects and become of a standing nature for all bureaucratic levels in order to exchange historical experiences, share intelligence, boost transactions, and propose initiatives, since the threats are trans-border and common in most respects.

The experimental introduction of direct democracy models in the primary municipal level of the regions most affected by crime and corruption could involve all citizens in the debate. In that respect all inhabitants would be obliged to assume certain responsibilities in a rotation form and be responsible for the first time themselves of the actions and decisions taken in the community level. That could be a manner under which anti-social and criminal elements could be opposed at the very primal level of social interactions.

The EU could play a vital role in supporting youth fundraising projects to provide alternative career options for a vast number of people that are trapped in a life of crime due to lack of other opportunities and consequent peer pressure.

Modernization of the local police, intelligence, security and judicial systems, and introduction of present-day know-how both in operational and analytic perspective in terms of combating organized crime is of a key nature.

The assistance into the research of all of these issues aimed at the academic community, as well as the whole of the educational system and the private sector awareness is the crucial first step before venturing further.

Younger generations should be promoted by EU structures to assume responsibilities by education, training and establishment of international connections. Only if there is a balance between the old guard (not necessarily on an age structure) and the younger one there could be an ease in issues discussed.

In any case the struggle to overcome all of the problems mentioned is tremendous and no easy solutions are available. The rule of law in the Balkans is essentially a political issue and of a high nature. Thus it requires the mobilization of both the societies and the EU in order to be able to see tangible results in the near future.

*“Politics is the art of the possible”*  
Otto von Bismarck

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# BACKGROUND PAPER ON THE PROTECTION OF BASIC CIVIL, POLITICAL, SOCIAL, AND ECONOMIC RIGHTS IN THE WESTERN BALKANS

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## Introduction to the context

Human rights have played a critical role in the dramatic transformation of the Western Balkan region. Civil society organizations and grassroots movements have all turned to human rights to shape constitutions, expose violations of human rights and strengthen civil liberties. Human rights language has become a common currency, shaping public debates in the region and fostering demands for greater protection of economic, social and cultural as well as civil and political rights.

Unfortunately, these advances have not been successfully translated into the rule of law and social justice. Poverty, inequalities, labor abuses, and cultural degradation still threaten to undermine the fragile progress in this field. Strengthening the protection of journalists and effective guarantees for freedom of expression still represent daunting challenges. At the same time, the rising gap between rich and poor, deepened by the global financial crisis that began in 2007, has created a rising clamor for progressive changes.

Mindful of these gains and trends as well as of the advanced European integration process, this paper provides a brief overview of policy and institutional developments concerning the protection of civil, political, social, and economic rights in the Western Balkans, as well as measures aimed at safeguarding these rights. The paper pinpoints the problems most frequently encountered by citizens when exercising their civil, political, social, and economic rights, with a view of presenting, in a distinctive way, the situation in the region regarding civil, political, social, and economic rights. At last, but not least, the paper seeks to outline options for future actions in order to help address the shortcomings in the protection of these rights.

## Policy environment and framework instruments

Following the general democratic progress in the region, particularly the included in the EU accession framework, Western Balkan countries have introduced national constitutions with strong provisions on basic civil, political, social, and economic rights in order to meet the Copenhagen criteria. Strong commitments under the international law have taken place as well, based on the Universal Declaration of Human Rights, European Convention of Human Rights and Freedoms, the Revised European Social Charter, as well as on multilateral international covenants on human rights, most notably the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and related human rights instruments.

These states have found themselves bound by the ratification of treaties' terms which obliged them to work toward granting of economic, social and cultural rights to citizens and legal entities, irrespective of the lack of resources resulting from economic crises. Almost all of these instruments were ratified without revision, with the exception of the revised European Social Charter in certain countries (such as in Serbia and Montenegro).<sup>1</sup> The covenants require the states to take reasonable measures within its available resources to progressively realize these rights. The responsibility of the states in securing respect for economic, social and cultural rights has been also elaborated upon by the Maastricht Guidelines and Limburg Principles, both of which emphasize states' responsibility to provide effective remedies for the victims of human rights violations.

In parallel with these policy developments, new mechanisms to safeguard basic civil, political, social, and economic rights have been more or less introduced in most of the countries, depending on different constitutional and institutional settings. Special human rights institutions, such as the Ombudsman, have been established as institutional mechanisms for the protection from discrimination and national mechanisms for the prevention of torture. This authority examines citizens' complaints against the decisions and procedures of state authorities and produces recommendations, which are not, however, legally binding for institutions. The Commissioner for Free Access to Information of Public Importance has been instituted in certain countries as well, so as to secure transparency of public information and facilitate greater openness of public institutions.

Judicial independence, integrity and impartiality has been strengthened through constitutional and legal guaranties for the judicial branch of power, as well as through specific bodies, such as Judicial and Prosecutorial Councils, designed to reduce excessive influence by the political elites and ensure less executive branch domination over judicial appointments. Measures have been undertaken to prevent the incorrect application of the right at stake, including through strengthened fair trial standards or the introduction of specific legal remedies, such as the constitutional appeal.

However, despite the fact that the region's formal democracies has the potential to ensure the protection of basic rights, they still suffer from an apparent lack of judicial and political acceptance of the notion of human rights. Namely, the Western Balkan region has entered a transition process with state organizations less than fully responsive to citizens' needs. As a consequence, the high level of normative human rights regulations is

not in line with their practical application in everyday life. In addition, some of the countries have experienced war activities that have led to economic degradation and serious human rights infringements that are yet to be properly addressed.

For these reason, new solutions to improve the protection of citizens' rights are being constantly sought after, even though the constitutions of the Western Balkan countries guarantee the full respect for civil liberties. In such a context, the European integration prospect is seen as a model for economic and political integration, which can bring prosperity to the region and contribute to better protection of basic rights. Certain or almost full alignment with the EU legislation have been already achieved in some of the countries, such as in Montenegro, while in some others, such as in Kosovo, considerable efforts are needed in order to build legal framework and strengthen institutions that are responsible for human rights protection.

#### **Common shortcomings and challenges in the protection of basic rights in Western Balkans**

Relevant reports, general comments, recommendations and observations made by the special procedures of the Human Rights Council, other human rights treaty bodies, the European Commission, civil society, international organizations and academics also point to certain shortcomings in the enforcement of civil, social and economic rights in the region. Most of these shortcomings refer to restrained access to public information; undue length of proceedings; discrimination in accessing labor market, education, social security or public services; torture; and the protection of labor rights, especially of the victims of economic transition.

As stated in the recent report of the Protector of Human Rights and Freedoms of Montenegro (the Ombudsman) for 2013, the largest number of citizen complaints pertains to the right to a trial within a reasonable time (82 complaints), the right to free access to information (78), discrimination (51), torture and cruel inhuman or degrading treatment or punishment (23), and the rights of persons deprived of liberty (112 complaints). When economic, social and cultural rights are in question, 170 complaints have been filed in relation to the right to health care and health insurance (41), labor rights (28), the right to peaceful enjoyment of property (20), the right to social protection (12), the right to housing (5), and the right to education (2).

There are several reasons for such a state of play. As for the civil and political rights, these reasons lie in delayed investigations, long drawn out trials and the failure to enforce court decisions, especially in cases of torture, hate speech, and threats to sexual minorities. On the other hand, effective legal means to remedy these shortcomings are still not fully in place. Despite criminal legislation in the region invoking the right to a fair trial

<sup>1</sup> Holders of rights are not entitled to use collective complaints to redress the violations of rights protected under the Charter, so the submission of periodic state reports to the Committee of Independent Experts remains the only oversight mechanism when the implementation of Charter is concerned.



as a founding principle, the poor execution of judgments and frequent overruling of first-instance judgments affect the implementation of the fair trial guarantees in practice. Furthermore, the right of access to court has not been effectively exercised in all of the countries as some of them still lack the legal framework and infrastructure (such as Serbia), while in some others (such as in Montenegro) the number of beneficiaries and the scope of proceedings eligible for free legal aid is still limited. The conditions of stay and treatment of convicted persons in prisons still have to be harmonized with international standards, in terms of accommodation, out-of-cells activities and rehabilitation/re-socialization programs.

Even though the anti-discrimination policy framework is generally in place in the region, its effective implementation is missing; the number of enforceable judgments in discrimination cases is still limited, while anti-discrimination bodies lack functional and financial independence. Serious gaps relating to the enforcement of gender equality policy and combating discrimination and sexual/gender-based crimes have been noticed as well, which puts the victims at the risk of additional victimization. The effective prosecution of war crime cases drawing from the nineties is also missing. The tendency of non-punishment is due to inefficient investigations and inconsistent application of international law standards. Selective accusations, along with the lack of command responsibility and prolonged proceedings constitute a main concern, requiring additional efforts to ensure victims' rights to truth, justice, indemnity, and non-recurrence.

In relation to the absolute prohibition of torture and other forms of ill-treatment, and in particular to the obligation of effective prosecution of serious allegations of torture and ill-treatment, lenient penal policy has been noticed in almost all countries of the region. Cases related to the assault of journalists and violations of freedom of expression, which have still not been effectively investigated, represent a sound example in this sense (the case Slavko Ćuruvija in Serbia or the case Duško Jovanović in Montenegro), recalling that both perpetrators and principals of crime ought to be identified and convicted. Moreover, due to the growing violence against media and their property that has been noticed in recent years, journalists have become exposed to evolving risks that rendered an environment where journalists do not feel safe to dispel corruption, organized crime or state abuses. At the same time, media themselves need to work more progressively on raising the professionalism, objectivity and accountability of their own work. Simultaneously, media self-regulation needs to be stepped-up significantly.

The results of the opinion poll conducted by CEDEM in 2012 may be used here to illustrate the situation: about 45% of the respondents estimated the state of media freedom in Montenegro as positive, while over 1/3 of

them pointed out the violations of the media rights and freedoms as highly important.<sup>2</sup> When asked to rate the seriousness of the problem of attacks on journalists, over 30% of citizens stated that this is a very serious problem. The absolute majority of citizens believe that the state should adopt special measures to protect journalists, whilst almost 55% of them support for an attack on journalists to be treated as an attack on the official in the performance of his/her official duties.

The protection of economic, social and cultural rights has been hindered by the economic transition and by the relative economic weakness of the region. As a result, minimum levels of old-age pension, unemployment benefits, and social assistance are reportedly manifested as inadequate. A decline in access to work, social welfare programs, and affordable food, housing and other basic necessities have occurred, heavily impacting vulnerable persons, i.e. women, children, older persons, persons with disabilities, migrants, and ethnic minorities, especially Roma. On the other hand, the negative impact of the crisis has been further exacerbated by inappropriate policy responses, compounding a threat to economic, social and cultural rights beyond the one posed by the crisis alone. Austerity measures reduced spending on social welfare and induced disproportionate costs upon the disadvantaged communities as well as wage differences between men and women, thus hindering, if not derailing, the effects of the social policy reforms. The expenditures for culture have decreased as well, leading to cultural deterioration.

Active employment policy measures devised to raise employability of hard-to-employ persons in almost all countries of the region produce limited impact, as they are not always adjusted to the target groups' needs. Besides, the enrolment of hard-to-employ persons in these measures rarely exceeds 10% of the registered unemployed population. Although specific measures to protect mothers and children have been crafted, forced and minor marriages and child labor, which expose Roma women and children to severe security and health risks, remains a significant concern, as well as the number of persons living in informal settlements and overcrowded or structurally unsafe housing. Several forcible evictions were conducted, but no long-term viable solutions to social housing have been established.

Roma persons still face severe poverty and the risk of social exclusion, which is reflected in difficult access to the labor market, social and health protection and education, as well as in insufficient participation in the political and social life of the country. Excessive school dropout rates at various levels of education are still present among Roma and Egyptian pupils, despite

<sup>2</sup> Available at: <http://cedem.me/sr/ostala-istraivanja/viewdownload/38-ostala-istraivanja/357-izvjestaj-stavovi-gradjana-o-medijskim-slobodama-u-crnoj-gori.html>



measures taken to sensitize communities with high dropout rates of the importance of education.

### Conclusions and recommendations

Notwithstanding the fact that some countries in the region have yet to incorporate certain international norms in their domestic laws, the level of proclaimed rights at the national level is relatively high. However, even though the guaranties of civil, political, social, and economic rights have been enshrined in national constitutions, their enforcement is still far from being practical and effective. There are considerable discrepancies between these declarations on the one side and the possibilities for the protection of rights on the other, including the effective means to remedy the violations. These discrepancies are particularly noticeable when it comes to torture and discrimination, labor rights, the right to fair trial as well as the rights of ethnic and sexual minorities. Based on the noticed gaps, common obstacles to ensuring the protection of civil, political, social, and economic rights in the Western Balkans may be structured around such factors as political conditions, policy environment, administrative capacities and resources to uphold adopted policy standards.

Mindful of the universality, indivisibility, interrelatedness and interdependence of all human rights for all people, irrespective of their origin, gender or social status, the states should preserve policy space for the development of rights-based regulations that will employ basic human rights guarantees in a manner that makes them actionable. This is not possible without joint efforts by state institutions, private sector, civil society, and media to create a sound environment for building the states' capacities for good governance, rule of law and well-functioning democracy. Therefore, the states should, in the strongest possible terms, promote participation, particularly of the most vulnerable, transparency and accountability in all decision-making related to or affecting the protection of basic civil, political, social and economic rights, and underpin every effort to engage all protagonists on the social scene in necessary changes.

A conducive environment for responding effectively to human rights violations should take place, *inter alia* by promoting non-tolerance policies to fight discrimination and violence based on social and national origin, sexual orientation or gender identity; allowing free flow of information related to human rights; lifting restrictions to peaceful protests; and eradicating hate speech both in public and private discourse. States should become staunch advocates of freedom of opinion and expression that are intrinsically linked to media freedoms. Special measures for the protection of journalists and bloggers should be established, including through effective and consistent convictions of the attacks on media, as well as through specific guarantees of media freedoms.

Migrants, refugees, internally displaced persons and other persons under UNHCR's International Protection who are passing through or residing in the region should be granted effective access to basic rights and services. Efforts to increase employability and employment need to be invested through adult literacy and vocational training programs. Finally, states' responses to the current crisis should not lead to a situation which would increase poverty and a rise in racial discrimination, gender-based violence, xenophobia and related intolerance. Namely, the states should maintain a social protection floor for the vulnerable and disadvantaged in order to promote equality of opportunities and mobilize available resources, including through lower taxation of vulnerable groups, stimulus spending or improved tax collection.

To sum up, in a wider and more long-term oriented perspective, fostering good governance at all levels, fighting discrimination and violence, creating a productive employment environment and decent work for all, and safeguarding economic and social gains remain some of the key priorities for the Western Balkan countries when the protection of basic rights is concerned. The European integration framework that represents the lifeblood to the development of the region should therefore be heavily used to take stock of the progress made and stimulate the implementation of measures aimed at full respect for economic, social and cultural rights as well as civil and political rights. More progressed countries in terms of the EU accession process should help mainstream the process of political and economic integration of the region, while the candidate countries should use the opportunity to learn from both developments and mistakes made by other countries on their path to the EU.

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# THE PROTECTION OF BASIC RIGHTS IN THE WESTERN BALKANS

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Western Balkan countries continue to struggle with some major institutional and structural problems, which affect progress in almost all areas. The rule of law, which is a central feature of a modern democratic society, is not ensured. Human Rights, which consist of a wide range of civil, cultural, economic, political and social rights, are denied and this denial is not “by law” but “by practice”.

The aim of this analysis is to give a brief overview of the situation with regard to the enjoyment of the basic human rights in the Western Balkans. The main line of argumentation is that Western Balkan states have been reviewing much of their domestic laws, regulations, structures etc. to comply with the European Union (EU) standards. As a result, the backbone that is necessary to protect the basic civil, political, social, and economic rights are in place; however implementation of these ambitious legal framework, which is the key for ensuring the guarantee of all rights, is lacking.

## **Minority Rights Protection**

Minority rights are about ensuring respect for distinctive identities. To strengthen the rights of the minorities and disadvantaged groups is the basic requirement of the human rights. Adopted in 1992, the United Nations Minorities Declaration refers to minorities as based on national or ethnic, cultural, religious, and linguistic identity, and provides that states should protect their existence.<sup>1</sup>

Multiculturalism is the core feature of the Western Balkans; almost all states are multiethnic, multi-religious, multi-cultural, and multi-national. The region is infamous for poor management of this diversity. The times when the Western Balkan people peacefully co-existed are fairly seldom.<sup>2</sup> Freedom has largely been perceived just as the freedom of a certain group while the others have been deprived of it. Western Balkan states present a mixed picture regarding human rights and the protection of minorities. For the states of the region, especially those that suffered from interethnic violence, human rights issues are mainly concentrated on the protection of the minorities. Thanks to the EU integration process, the legal infrastructure, which is a precondition for reaching full minority rights protection, has been introduced in all the Western Balkan countries. The EU legislation has been harmonized to comply with the European standards. As part of the accession process, the most important universal documents such as the European Convention on Human Rights and the Charter of

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<sup>1</sup> United Nations Human Rights Office of the High Commissioner, *Minority Rights: International Standards and Guidance for Implementation*, United Nations, New York and Geneva, 2010, p.2.

<sup>2</sup> Maria Djurdjevic, *The Balkans: Past and Present of Cultural Pluralism*, *Quaderns de la Mediterrània*, pp.155-165.

Fundamental Rights of the European Union that protect minority rights have been ratified.

In all of the Western Balkan states, the legislative and institutional framework for the observance of international human rights law is in place. The minority statuses have been, more or less, protected by laws, but have been poorly or partially implemented. All states are in principle committed to the protection of the universal human rights. In the preambles of their constitutions, all states refer to the superiority of the rule of law principle. In some state constitutions, the rule of law is even present as a separate article of the constitution. However there is need for further efforts to ensure full implementation of the legal framework and international instruments.

The governments should intensify their efforts to fight against discrimination and ill-treatment of vulnerable groups, in particular the Roma and the lesbian, gay, bisexual, and transgender (LGBT). Roma remains the most vulnerable group throughout the Western Balkans. Attacks and harassment against the Roma minority continue in Serbia. Furthermore the right of adequately housing is denied to them in Albania. Governments have failed to implement decades of plans for Roma inclusion. In Bosnia-Herzegovina discriminatory restrictions on Jews and Roma running for political office still continue despite an EU deadline to end. The action plan revised in 2011 remains to be adopted. The inclusion of Roma people in all levels of society is still non-existent. There is a decrease in the number of refugees and internally displaced persons due to concerns about conditions in pre-war communities and the governments are reluctant to implement the action plans for housing, as is the case with regard to the Kosovar refugees willing to return to Montenegro<sup>3</sup>

Homophobia, discrimination, and hate crimes based on sexual or gender identity is another widespread phenomenon in the region. The introduction of several progressive anti-discrimination bills to comply with EU standards led to the introduction of very advanced anti-discrimination legislations with regard to the sexual minorities.<sup>4</sup> The introduced EU standards prohibit discrimination on grounds of sex, ethnic origin, religious beliefs, disability, age, and sexual orientation. However these laws have brought very limited change related to the rights of the LGBT people. In June 2013, the EU adopted guidelines for the promotion and protection of the enjoyment of all human rights by LGBT people to provide guidance for the EU's external actions in this field. According to the 2013 progress reports to the European Parliament's Committee on Foreign Affairs, the

situation of the LGBT people is worse than in previous years.<sup>5</sup> Discrimination has in fact risen in the past year. LGBT people are continuously facing discrimination, threats and violence in the region. This is to some extent a consequence of a lack of anti-discrimination and hate crime legislation in some countries, and a lack of effective implementation in the others. Major cases of intolerance against LGBT people exist in Macedonia, Montenegro, Serbia, Bosnia and Herzegovina and Kosovo, including threats and attacks. A gay pride parade that was scheduled to take place in October in Belgrade was canceled after ultra-nationalists threatened the march following condemnation by the country's Orthodox Church.<sup>6</sup> This was the third annual gay pride parade in a row that has been banned in Serbia. The ban on the gay parade is a failure to guarantee freedom of expression. A successful strategy in this field in the enlargement countries requires strong political commitment from governments, local authorities, and law enforcement bodies concerned, as well as from the EU. In this regard, the burden falls on the authorities in the Western Balkans. They can play a key role in bringing about a change in mind-set across society as a whole towards LGBT persons, which is often at best ambivalent and at worst hostile. There have been several attacks to the LGBT activists and none of them is adequately investigated by the local authorities. The perpetrators of hate crimes against the LGBT people should be brought to justice.

#### Freedom and Independence of Media

In genuinely democratic states, citizens are able to influence public policy, public administration, and public opinion, and in order to do this they need to express themselves. Freedom of expression and freedom of media are fundamental and inalienable rights of all citizens and an indispensable requirement for democratic states. They are also vital for democracy and rule of law. Restricting them is a very severe restriction of human rights.

Media play a critical role as the channels of mass communication through which messages, ideas, thoughts are disseminated to the citizens and have remarkable power to influence public opinion and the political discourse. A free and open media within everyone's reach is valued as a basic right in all democratic states. Founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law, and respect for human rights, Freedom of expression and independence of media is a great concern for the EU as well. As one of

<sup>3</sup> World Report 2014, Human Rights Watch, available at: <http://www.hrw.org/world-report/2014>

<sup>4</sup> Communication From the Commission to the European Parliament and the Council Enlargement Strategy and Main Challenges, 2013-2014

<sup>5</sup> Enlargement Package 2013, European Commission, available at: [http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index\\_en.htm](http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index_en.htm)

<sup>6</sup> New EU accession reports: LGBT rights in the Western Balkans and Turkey, The EP's Intergroup LGBT Rights, available at: <http://www.lgbt-ep.eu/press-releases/new-eu-accession-reports-lgbt-rights-in-south-eastern-europe-and-turkey/>

the world’s largest “values block” with a collective commitment to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the European Convention on Human Rights, the EU plays an important role in the promotion and defending of the freedom of expression and media independence outside its borders.

These core values are actively promoted through the efforts of the international community. Ensuring freedom of expression and media independence, besides many others, is realized as two of the most important goals in the region. The prospect of the EU integration has been so far the most powerful tool for realizing press freedom. As the Commissioner for Enlargement and European Neighbourhood Policy Štefan Füle said: “freedom of expression and media is a core value of the EU and its promotion is a key priority. The EU is addressing this important issue in the early stages of the accession period as an integrated part of the chapters that deal with the judiciary and fundamental rights.”<sup>7</sup>

In terms of press freedom the picture is not positive in the Western Balkans. The Freedom House ranks the countries of the Western Balkans as partially free in its recent Press Freedom Index 2014.<sup>8</sup> Reporters Without Borders confirms the worrying trend. In the overview of the 2014 World Press Freedom Report, the severity of the situation for the media and particular concern about developments in the Balkan journalism is depicted under a chapter entitled “Balkan powder keg for journalists”.<sup>9</sup> According to the overview, journalists are often the victims of threats and physical attacks in the region, some of which have been extremely serious.<sup>10</sup> One of the causes of this is without doubt the European model’s erosion. The EU membership process, despite being in progress is not helping them to improve their position in the index. Membership bidding no longer encourages the candidate states to respect for civil liberties. Macedonia’s position (57th), in particular, has never been so low in the index.<sup>11</sup> The present situation with regard to the media independence in Macedonia is described as: “the democratic window-dressing of the past few years is not enough to hide the many freedom of information violations.”<sup>12</sup>

There are several challenges ahead. The interference of the politicians in the media, economic concerns such as

concentration of media ownership, and various forms of harassment, including violence against journalists, are the most fundamental of them. There is no will on the side of the politicians to implement regulations that have been adopted. They do not want to give up the control over media and hands are tied due to the lack of transparency in media ownership.

In this regard, the internationally owned media groups are providing some transparency to a media market that is dominated by tycoons. The state owned media should be drawn from the strong hand of the state and dedicated to public service. Even though the transformation from state media to public services is completed in the entire Western Balkans, governments still have various mechanisms to control public broadcasters. Governments are the biggest advertisers in their countries and some newspapers and television channels are subject to unequal treatment.

Privately owned independent media lack financial means to develop. Especially in the smaller countries of the Western Balkans where the market is too small, there is no space for small independent media to survive economically. This is the case especially for Montenegro, where there is a strong competition of media from countries like Serbia and Bosnia-Herzegovina that are speaking the same language. Privately owned media should be supported by all means if a truly independent media environment is desired in the Western Balkans.

Ownership structure is very important for free media. The majority of the media is controlled/owned by government sympathetic powerful political groups. The real owners are most of the time not known. The media is not representing the public opinion but influencing it for the benefit of the politicians. The journalists are under constant pressure and self-censorship is a natural consequence if they want to keep their jobs. Investigative journalism is the key for keeping those in authority accountable and for battling crime organizations. The international society should promote the ‘watchdog’ role played by the media through supporting and institutionalizing investigative journalism. The roots of the current difficulties lie back in the post-Yugoslav transition period. The transformation of the media in that period had been very controversial; politicians from the early 1990s onwards started to play an important role in this new Western Balkan media architecture, which has not changed up until today.

Despite this negative picture, there have been some progressive steps in the past decade. Various media laws have been introduced which comply with the universal standards of media legislation. Aspiring to become EU members, the Western Balkan countries signed and ratified core international conventions and harmonized their legislations to comply with the EU and international standards with regard to the freedom of expression and media. The EU integration process

<sup>7</sup> Speak Up!2 conference on media freedom in the Western Balkans and Turkey European Commission - IP/13/551 17/06/2013

<sup>8</sup> Europe, Freedom House, available at [http://www.freedomhouse.org/regions/europe#.U\\_NQ\\_LflpgU](http://www.freedomhouse.org/regions/europe#.U_NQ_LflpgU)

<sup>9</sup> World Press Freedom Index 2014, Reporters Without Borders, available at: <http://rsf.org/index2014/en-eu.php>

<sup>10</sup> Biggest Rises and Falls in the 2014 Index, Reporters Without Borders available at: <http://rsf.org/index2014/en-index2014.php#>

<sup>11</sup> Biggest Rises and Falls in the 2014 Index, Reporters Without Borders available at: <http://rsf.org/index2014/en-index2014.php#>

<sup>12</sup> World Press Freedom Index 2014, Reporters Without Borders, available at: <http://rsf.org/index2014/en-eu.php>



brought many mandatory reforms. Most governments in the Western Balkans acknowledge the importance of freedom of expression for the EU accession process. As a result, media laws achieved a high level of formal compliance with the EU standards. However, the enforcement and effective implementation of these directives and conventions are very problematic. Today, the laws that regulate the media are in compliance with the European standards. Several legislations have been adopted, the most important of which is the EU Audio-visual Media Services Directive, which addresses advanced regulatory issues of media.<sup>13</sup> The Serbian government, under the pressure of the EU, adopted a media strategy in 2011 as the basis for new laws regulating Serbia's media system, with the aim of aligning of the legal framework in the media sector with EU standards. However the Serbian government is reluctant to implement the strategy.

#### **Decriminalization of Defamation**

According to the European Court of Human Rights (ECHR), in a democratic society, characterized by its tolerance to unpleasant or even shocking and hurtful opinions, the imprisonment penalty is unacceptable sentence for the use of freedom of expression. The threat of criminal proceedings has been an insidious form of intimidation against the media in the Western Balkans. In practice, this had the potential to restrict freedom of expression and lead to self-censure in the media. When defamation is punished by criminal law, those laws are abused in semi-autocratic societies, and often do not protect human dignity but are used in political struggles.<sup>14</sup>

There are efforts of the EU authorities and the European Court of Human Rights to decriminalize defamation in the Western Balkans. There was a call on the Western Balkan countries, with some positive returns, to remove "defamation" from their civil code. Except Albania, where the Criminal Code penalizes defamatory expressions, Western Balkan states no longer provide imprisonment sentences for defamation and insult to the honor and dignity of a person. Bosnia and Herzegovina was the first country in Europe to decriminalize defamation in 1999; Montenegro decriminalized speech offences in 2011 in the context of national legislation alignment with the case law of the ECHR. In November 2012, the Parliament in Skopje adopted a new civil law regulating

insult and defamation and removed sanctions for speech offences from the Criminal Code.<sup>15</sup>

These amendments will have a positive impact on freedom of expression. However the abolishing of defamation from the civil code does not mean that the intimidation of journalist is coming to an end. Everywhere in the Western Balkans, independent journalists and media are experiencing threats, attacks, and reprisals for publishing views critical of the governments and businessmen. In the past couple of years, there have been very few known cases of the restrictions of freedom of expression but in reality, below the surface, attempts to manipulate or command the news media continue. There is widespread intimidation of journalists, with a high incidence of beatings and threats leading to self-censorship. The impunity of senior officials in the region is an obstacle that has to be addressed for solving the cases of murdered journalists. Without doubt, the impotency of the journalist trade unions has a direct effect in the first place. Media as an industrial organization is weak in the region. Stronger journalist trade unions is important to create an independent and more ethical media however the government controlled media workers associations are influential everywhere.

#### **Liberal Democracy, a Necessary Condition for the Development of Human Rights**

There is an interdependent relationship between human rights and democracy. Liberal democratic systems characterized by the principle of rule of law provide the best setting for the development of human rights whereas the repressive authoritarian regimes in which rights of the individuals are at the mercy of the politicians often curtail them.

The Washington-based non-governmental organization (NGO) Freedom House publishes annual surveys of democratic governance among 29 different countries from Central Europe to Central Asia that measure progress along indicators such as electoral process, civil society, and local democratic governance. The 2013 report clearly shows that two and a half decades after the end of the first major conflicts, the Western Balkans still suffer fundamental problems. Much remains to be accomplished in the Western Balkan States, even in more progressive ones like Croatia, Serbia, Montenegro, and Macedonia. The report highlights that implementation of all reforms essential to rule of law has stalled in the absence of political will. Despite their various levels of democratic development, all Balkan countries share common epidemic problems that hamper democratic developments including media independence, freedom of speech, and an independent judicial framework.

<sup>13</sup> Kristina Irion, Tarik Jusic, International Assistance and Media Democratization in the Western Balkans: A Cross-National Comparison, Working Paper, Analitika, 1/2013.

<sup>14</sup> Council of Europe, Parliamentary Assembly, 2007 Ordinary Session, Thirty Fourth Sitting, <http://assembly.coe.int/Main.asp?link=/Documents/Records/2007/E/0710041000E.htm>

<sup>15</sup> Western Balkans and Turkey Media and Freedom of Expression Fact-finding and Scoping Study [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/wbt\\_media\\_study.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/wbt_media_study.pdf)

**Table 1. Ten-year comparison of Western Balkan democratization<sup>16</sup>**

	Freedom House Democracy Score 2003	Freedom House Democracy Score 2013
Albania	4.17	4.25
Bosnia	4.54	4.39
Croatia	3.79	3.61
Kosovo	3.88 (Part of FRY)	5.25
Montenegro	3.88 (Part of FRY)	3.82
Macedonia	4.29	3.93
Serbia	3.88 (Part of FRY)	3.64

The above table clearly indicates that the region has made very little progress in terms of democratic development. If there is no change in this trend, the development of the human rights conditions and reaching the universal standards would not be possible. As the experience in the past two decades amply proves, in the Western Balkans, in the absence of a liberal democracy, the basic civil, political, social, and economic rights would always be limited.

#### Conclusion

In conclusion, Western Balkan states, driven by the EU membership aspirations, have been reviewing much of their domestic structure. As a result of the convergence with EU rules on technical regulation, today the basic civil, political, social, and economic rights are guaranteed by law; however convergence in rule adoption alone is not enough if they are poorly or partially implemented by the governments. Lack of political will is perhaps the most serious obstacle to the implementation of the rights. The not too distant prospect of membership played a decisive role in the reformist tendencies of the local elites, which disappeared almost completely once the membership prospects disappeared.

Above all, it is the responsibility of the EU and the other key members of the international society to ensure the guarantee of the basic rights, and particularly media independence. Introducing a developed monitoring system to secure the implementation of the laws by the local elites should be a priority.

<sup>16</sup> Freedom House Nation in Transit, [http://www.freedomhouse.org/report-types/nations-transit#.U\\_tFz8XV-0U](http://www.freedomhouse.org/report-types/nations-transit#.U_tFz8XV-0U)



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# ACRONYMS USED

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AK Parti	Justice and Development Party
BiH	Bosnia and Herzegovina
BTI	Bertelsmann Transformation Index
BVT	Bundesamt für Verfassungsschutz und Terrorismusbekämpfung
CEFTA	Central European Free Trade Agreement
CO	Corruption
CEEC	Central and Eastern Countries
CEDEM	Centre for Democracy and Human Rights
CS	Civil Society
DEA	Drug Enforcement Administration
DG	Directorate General
DS	Democracy Score
EBRD	European Bank of Reconstruction and Development
EC	European Commission
ECA	European Court of Auditors
ECHR	European Court of Human Rights
EU	European Union
EULEX	European Union Rule of Law Mission
FDI	Foreign direct investment
FYROM	Former Yugoslav Republic of Macedonia
GDP	Gross Domestic Product
HJP	High Judicial Council
HJPC	High Judicial and Prosecutorial Council
HSYK	High Council of Judges and Prosecutors
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IM	Independent Media
IPA	Instrument for Pre-Accession Assistance
IT	Information Technology
JFI	Judicial Framework and Independence
KCK	Kurdistan Communities Union
LGBT	Lesbian, gay, bisexual, and transgender
LDG	Local Democratic Governance
NDG	National Democratic Governance
NIS	National Intelligence Service
NGO	Non-governmental organization
OECD	Economic Co-operation and Development
PIC	Peace Implementation Council
RS	Republika Srpska
SAA	Stabilization and Association Agreement
SEE	Southeastern Europe
FRY	Socialist Federal Republic of Yugoslavia
SPC	State Prosecutorial Council
SOCTA	Serious and Organised Crime Threat Assessment
TCK	Turkish Penal Code
TMK	Anti-Terror Act
UNHCR	United Nations High Commissioner for Refugees
UNODC	United Nations Office on Drugs and Crime
WB	Western Balkan
WTO	World Trade Organization



**The mission of the Aspen Institute is the promotion of values-based leadership by encouraging the reflection of ideals and ideas of a good society. The Aspen Institute offers a bipartisan neutral platform to discuss and elaborate on critical issues. In order to achieve its mission, the Aspen Institute Germany offers three programs, the Leadership Program, Policy Program, and Public Program.**

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The Aspen Institute Germany has had a focus on the developments in Southeast Europe since the early 1990s. In cooperation with the Carnegie Endowment for International Peace, Aspen’s former Executive Director David Anderson initiated the International Commission on the Balkans in 1995 under the leadership of former Belgian Prime Minister Leo Tindemans, which in 1996 published the report “Unfinished Peace”, an analysis of the causes of the Balkan conflicts and an independent assessment of the European, American, and UN responses. This high-level international commission was followed by a young leaders study group on the future of the Balkans as well as several other events with a focus on this region.

Since 2008, one of the Policy Program’s key focus has again been on the countries of former Yugoslavia and Albania, the so-called Western Balkans. In its closed-door meetings, the Aspen Institute Germany facilitates an open and honest high-level exchange between former conflict parties in support of regional cooperation and dialog and the region’s agenda of Euro-Atlantic integration including the transformation processes this entails. The goal of this exchange is to openly address achievements and progress as well as remaining problems and conflict issues between decision-makers of the region. In pursuit of this goal, the Aspen Institute Germany’s Southeast Europe Program has two different formats, the Aspen Southeast Europe Foreign Ministers’ Conferences and the so-called Sub-cabinet Meetings.

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The Public Program consists of three different formats. The first one is the Aspen Forum, a series of evening events for a small public of no more than 50 guests. They are invited to listen to the ideas of a guest speaker in a familiar and exclusive interview situation or brief lecture. Some of these events are hosted in cooperation with Deutschlandradio Kultur. While Deutschlandradio Kultur broadcasts the first part of the event, the second part is an intimate off-the-record discussion with our guests only. The second format is the Aspen Brown Bag Lunch series, aiming at constructive dialog on current political, economic and social issues. Two to four experts provide short input statements before the discussion is opened to 20-30 selected guests. Finally, the Public Program includes major events such as the annual summer party, the President’s Night in 2012, or the upcoming celebration of 40 Years Aspen Germany.



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## **RULE OF LAW ENHANCEMENT IN THE WESTERN BALKANS: IDENTIFYING THE NEXT STEPS**

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“Through its work, Aspen demonstrates the importance of the Atlantic community for Europe. Moreover, Aspen successfully assists the leaders and countries of Southeast Europe to become members of this of community. I personally have gained a lot from having the opportunity to participate in your workshops and events, and I would recommend Aspen for everyone interested in personal educational growth, professional networking and increasing their leadership skills.”

*Ana Trišić-Babić  
Deputy Foreign Minister of  
Bosnia and Herzegovina*

“The Aspen Institute SEE program provides a critical approach and a strategic look at the issues that are of great interest for peace, security and Euro-Atlantic integration.”

*Edita Tahiri  
Deputy Prime Minister of Kosovo*

“Thanks to the Aspen Institute, analysts and decision makers are convened regularly in order to find solutions even for complex issues like the Balkans – which remains a real challenge to be solved.”

*Michael Brand  
Member of the German  
Parliament*

“Aspen did a wonderful job, gathering people together who are working in bringing understanding and cooperation back to the Western Balkans.”

*Marieluise Beck  
Member of the German  
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“It is very important that Aspen remains committed to SEE and follows its European path.”

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President, Belgrade Fund for  
Political Excellence*