

Topic 2:

RULE OF LAW AND ANTI-CORRUPTION

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STATE OF PLAY

Despite the seemingly distant prospect of joining the European Union, all the Western Balkan countries are declaratively dedicated to the process of European integration, while the EU is also apparently competing in rhetorical willingness to integrate the entire region. On the ground, bearers of reforms in candidate and potential candidate countries are unable to make a shift from the authoritarian practices and to build political responsibility since their power rests at these levers. The EU is trying to keep process alive without interest to improve the monitoring and assessment tools. As a result, the simulation has primacy over the actual reforms. Moreover, through entitling the so-called pro-European elites whose commitment is questionable and power almost unlimited, the EU creates room for further decline of the rule of law.

Although at the various stages of integration, the WB countries are facing, generally speaking, similar challenges. Rule of law is an area of particular concern where substantial progress is prevented by widespread corruption and close entwinement of party and administration resulting in governance through clientelism. Besides, the reforms are slow due to the deep political crises

caused by pre and post election events in Albania, Macedonia, Montenegro and Serbia and the poor economic conditions in all the WB countries.

With certain discrepancies, shared challenges to the rule of law include: lack of accountability, integrity, independence and transparency, low level of professionalism, out-dated administrative procedures, lack of clearly established criteria for career advancement of judges, erosion of public trust in the institutions, lack of expertise and allocated resources. Up-to-date success by the EU to overcome the above deficiencies is bounded to legislative and technical improvements thus underestimating that the rule of law reform is complicated and political in nature requiring change in mind-sets and attitudes. When it comes to the judiciary, though there are developments regarding judicial capacity and alignment of the legislation with the EU *acquis*, progress is not recorded towards its independence, regardless of the formal prerequisites of which the last represents the recent constitutional changes in Kosovo. Almost every second citizen in the WB does not believe in the independence of the judiciary or that the law is applied equally to all, while the greatest dissatisfaction is shown by citizens in Bosnia and Herzegovina. The rule of law cannot be achieved without all these elements so changes should take place hand in hand.

Contrary to the commissioner Hahn's observation that the process will take time since the WB countries are not just taking over the *acquis* but also implementing its spirit, the EU is not providing enough guidelines what exactly should be done to meet such expectations. This can be finest seen in the example of Montenegro. Often qualified as the frontrunner of the integration process, Montenegro is the first country where the EU applied a new approach of opening chapters relating to the rule of law at the beginning of the accession negotiations. Yet, Montenegro is encountered with the almost same and not well-justified ratings by the European Union. The sentence "corruption remains prevalent in many areas and continues to be a serious problem" is repeated four years in a row in the European Commission's annual reports. Such assessment is a clear indication that combating corruption goes without progress but the reasoning of positive developments is not based on clarifications how the reforms are conducted. Under the common harmonized reporting framework between the two, the focus is placed on indicators such as: the legislation adopted, number of indictments, verdicts for corruption at all levels, training conducted and alike. Consequently, when the EU highlights that the legal and institutional framework is mainly in place, it does not take into account that institutions are often built with permanent violation of the law and the existence of conflicts of interest as it was the case with the establishment of the anti-corruption agency. Positioning of loyal cadres in the "independent" institutions alongside with a lack of transparency opens the door for further violation of the rule of law.

TOPICS FOR DISCUSSION

- ✓ What are the biggest challenges for the rule of law in the Western Balkans?

- ✓ How to overcome ubiquitous principle of implementing technical and not substantive reforms?

- ✓ How to improve the EU's strategy towards the Western Balkans and, in particular, the EU's approach to the rule of law issues?

- ✓ What more could be done to improve regional cooperation in fight against corruption and organized crime?

- ✓ How to secure the unbiased and impersonal application of the law and prevent further politicization of the process?

- ✓ What are the directions for securing the meaningful role of civil society in monitoring and evaluating the rule of law reform?

POTENTIAL RECOMMENDATIONS:

- ✓ The EU should further develop a benchmarking system on the rule of law, based on its modification during the process, as well as by producing special reports on the degree of fulfillment of the most demanding benchmarks;

- ✓ The EU should provide better reporting on key problems and challenges as regards to the rule of law making a clear link between the benchmarks and recommendations in its annual reports;

- ✓ Governments and the EU should secure better monitoring framework for the forceful legislative activity and country specific implementation tools;

- ✓ Governments should present required information using accurate, reliable and accessible data;

- ✓ The EU should regularly address violations of the rule of law and the erosion of democratic standards in its annual country reports;

- ✓ Governments and the EU should make the European integration process more transparent through the publication of all important documents;

- ✓ The EU should notify political influence and pressure on institutions;

- ✓ Governments should provide a favourable environment for media and civil society engagement, free from labelling, intimidation and attacks, in order to increase the role of the NGO "watchdogs" and society in control of accountability;

- ✓ The EU should secure meaningful civil society role in the decision-making process through an active role in the evaluation of their proposals and recommendations;

- ✓ Regional exchange of best practices should be improved in particular with greater cooperation among police and prosecutors;

- ✓ Efforts to tackle grand corruption should be increased.
