

Rule of Law in the Western Balkans: Lessons and Way Ahead

Policy Recommendations¹

Study Group Regional Stability in South East Europe (RSSEE SG)

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Executive Summary of Recommendations:

- *EU*: Open with all candidates and aspirants the Chapters 23 and 24² of the *acquis* to underline the importance of rule of law.
- *EU*: Use IPA II³ funds to support the media and civil society in strengthening the rule of law.
- *EU Commission*: Guarantee high legal standards in regard to member states and accession aspirants.
- *OSCE*: Take a pro-active role in supporting rule of law standards beyond simply monitoring.
- *Council of Europe*: Invest in civic education of young generations.
- *International donors*: Support independent media which focus on investigative journalism.
- *Western Balkan countries*: Regional initiatives such as SELEC⁴, RAI⁵, SEEPAC⁶, etc. should be used to identify regional role models (USKOK⁷ in Croatia, Montenegro's civil society programs, etc.) and to learn from negative experiences (e.g. the vetting process in Serbia).
- *Western Balkan countries*: Increase rule of law related education in all spheres of daily life.
- *Western Balkan countries*: Ensure transparent financing of political parties.
- *Regional politicians*: Become role models for anti-corruptive behavior.



There have been national and international attempts to strengthen the rule of law, considering the region's willingness to join the Euro-Atlantic family and reform its existing structures, and mixed progress has been achieved. However, the Western Balkan countries still need to address issues such as inherited corruption and economic and political instability at a national level. Regionally, Western Balkan countries need to focus on dealing with past nationalistic and political conflicts and stalled regional cooperation.

Corruption, bribery, kleptocracy and organized crime threaten to become sustainably the ultimate thieves of democracy and prosperity in several Southern and South-eastern European states, be they already EU members or EU aspirants. Over the last decades it has been widely accepted that only a fully rule of law based democracy has a realistic chance to politically function. Consequently, the EU has risen within its set of enlargement conditionality the rule of law (chapters 23 and 24 of the *acquis*) as the crucial condition *sine qua non* for membership aspirants. Though large amounts of financial funds have been invested in the establishment of law (in particular from the EU side) and large numbers of respective laws and provisions have been adopted (on paper), progress on the ground has not yet occurred substantially. This demonstrates how complex and difficult – politically and administratively – the establishment of the rule of law is.

Situation Analysis

Western Balkan countries wishing to improve their democratic systems need to properly implement the rule of law in every aspect of social life. The region's post-conflict situation complicates this mission, giving way to weak governance and corruption which in turn facilitate transnational organized crime, disruptive influence by Russia, stalled Euro-Atlantic integration and political instability.

Foundations and Consequences of the Rule of Law

The importance of the rule of law, illegitimacy of corruption and need for order and security cannot be ordered *ex cathedra*; rather, it must be learned from scratch and be taught in the first places where an individual is educated: in the family and at school. Thus, education is our most efficient tool of conveying a value system that internalizes and incorporates the rule of law in our worldview. Although state legislation and, in case of international interventions, international state building assistance can provide a legal framework for the rule of law, it is only through the norms and values taught at school and family environment that the rule of law can be fully implemented in an individual's life. Counting on monetary assistance to 'construct' the rule of law will not offer a sustainable solution to the problem, unless a value system exists in advance. For this reason, the teaching of the rule of law requires full democratic, political and societal backing, and, if necessary, international protection and support.



Two of the main deficiencies of a weak rule of law are the lack of an independent judiciary and the selective or systemic corruption. A functioning market economy can only exist through the rule of law; on the other hand, corruption leads to poverty, brain drain and loss in human capital for the majority of the population that does not benefit from it. Regionally, the rule of law could also help to increase cooperation and tackle transnational crime through economic cooperation, such as Foreign Direct Investments and increased competitive potential. Although the Western Balkan Six are already an informal part of the Euro-Atlantic security space, public and private corruption still has negative impact on the countries' security, stability and all social aspects connected to them.

Another major consequence of a weak rule of law is the development of Transnational Organized Crime (TOC). The UN Convention against TOC in Palermo used the word 'transnational' not only for an offence committed in more than one state, but also for those that take place in one state but are planned or controlled in another. E.g. 40% of terrorist groups are globally involved in drugs trafficking and TOC. In the Western Balkans countries, TOC is often linked with public political figures, which are perceived as corrupted by 70-80% of the population.⁸ The establishment of legal frameworks that allow confiscation of criminal groups' and other suspects' assets and money is essential in targeting TOC, as money laun-

dering is part of all forms of TOC. Other tools include prosecuting transnational criminals as a group in order to limit their influence and reach the top of the chain, as well as launching financial investigations for public figures whose wealth is unrealistic compared to their profile. Despite all efforts, organized crime is still a pressing issue for the Western Balkan countries.

Lessons and Best Practices by International Rule of Law Promotion

The prospect of accession to the European Union has been a strong impetus for strengthening the rule of law. Democratic systems based on the rule of law and fostering effective anti-corruption regimes are part of the EU's conditionality (Copenhagen criteria). As a requirement, judicial reforms have been a priority of Western Balkan countries, but are yet due to be effectively implemented. For this reason, Western Balkan countries should start with fundamental steps and learn from EU's previous enlargement processes. On the other hand, the EU lacks clarity, credibility and consistency in the eyes of many Western Balkan citizens, and its efficiency in monitoring states' progress and ability to implement accession conditions have been undermined, as alternative ways of governing do emerge.

Through its program on Rule of Law and Human Rights, the OSCE presence in Albania is another example of the promotion of rule of law. Its core activity is strengthening the country's administration and the legislative and judicial reform. This includes monitoring, which leads to reform changes and further implementation in the courts. In terms of human rights, the presence closely cooperates with civil society organizations, supports the probation service and assists with reforming the detention system.

Lessons and Best Practices of National State Efforts to Strengthen Rule of Law

Although some of the EU accession criteria have been similar for the Western Balkan Six, certain aspects have been given more priority for different countries, also in accordance to their accession status. In Albania's case, the justice reform is one of the main conditions. The country's political climate has challenged the country's political and social development and stability for the last 25 years. For promoting the justice reform, Albania has accepted donations by international experts and brand consultation, due to its difficulty in drafting the law. The justice reform also predicts the creation of new institutions based on new organizational ways and mandates, and detailed regulations drafted on the basis of standard bylaws. An immediate challenge for the new institutional establishments has been a low level of appropriate applications for human resources in these institutions, due to the lack of an effective education for required experts. Concerning the justice reform, a vetting of all existing structures and legislations is the country's key to move forward.

One example for strengthening the rule of law in a country is the State Prosecutor's Office for the Suppression of Organized Crime and Corruption (USKOK) in Zagreb which employs a variety of tools to reach its goal. To begin with, its employees, who undergo regular security checks. This is the result of frequent mid and high-level corruption in the country. USKOK has a vertical structure, with special police force and local offices. Moreover, it shows zero tolerance to any kind of corruption while also employing a pro-active approach of trust, it is multi-disciplinary and its executive powers extend so far as to punish corruption with jail time and loss of money.

Macedonia's special prosecutor's office, on the other hand, was established in 2015 to investigate the allegation of illegal wiretapping, election fraud and abuse of public office in order to investigate the people who are in power. Among the 94 individuals charged by the Special Prosecutor this year was also the Macedonian Prime Minister, Nikola Gruevski, a lack of cooperation has not allowed the office to fully practice its jurisdiction and to succeed in its investigative mission. Although this method needs to be more transparent and has to extend its network before being called successful, it must be considered that it has given rise to debates in Macedonia and its public support in polls reaches 60%.

Civil Society and the Rule of Law

The role of civil society in strengthening the rule of law is not to be ignored. A lesson of a necessary system of civic education focussing on enhancing civic responsibility and engagement comes from Podgorica. In order to reach a harmonized society where human rights are respected and the rule of law operates, civil knowledge and skills are key components. For this reasons, civil society organizations (CSO-s) in the Western Balkan countries should act to lower prejudices, protect human rights, monitor anti-corruption policies and raise awareness in order to finance their programs. Montenegro's best practices in this aspect come through the Democracy School of the Centre for Civic Education and the Leadership School of the Civil Alliance. Civil society can also help EU accession and the implementation of states' action plan, as Belgrade's case shows. The CSOs' response to the implementation of reforms and regulations is essential in trial monitoring and facilitating public discussion. Experiences with the vetting process in Serbia, for example, can be shared regionally to teach lessons and shortcomings.

Free media also lacks attention and protection in the Balkans, another factor which stalls the strengthening of the rule of law. The experience from Bosnia and Herzegovina shows how much the lack of support and financing towards independent media can harm the rule of law. Investment in independent media supports the establishment of a kind of watchdog of crime and corruption, which calls on the misuse of public posts and halts pro-Russian controlled media that bring instability into the region.



Recommendations Addressing the International Community

- The international community, including the UN, EU, OSCE, Council of Europe, G20, etc., should closely monitor and report the progress countries make in implementing the commitments they have signed up to while adopting international conventions that are relevant to the rule of law and anti-corruption practices.
- The EU and NATO should acknowledge and counteract the influence of external actors such as Turkey and Russia in civil society and media that work against democracy and the rule of law.
- The EU should be stricter and more efficient in monitoring conditionality when it comes to the rule of law reforms and track record; it should work towards upholding the rule of law for the sake of democratic development.
- The EU should urge all aspiring Western Balkan countries to create Action Plans in order to open Chapter 23 and 24 of negotiating EU accession.
- The EU should strategically plan the use of funds from the Instrument of Pre-Accession Assistance (IPA II) to support the enlargement of the civil society and the media for strengthening rule of law.
- The EU should uphold the same standards for its member states and publicly denounce negative developments in the context of democratic standards for the member states that result as non-inspiring cases.
- According to the EU Commission President Jean-Claude Juncker, all membership aspirants "must give the rule of law, justice and fundamental rights utmost priority". The European Commission, as the primary custodian of basic EU practices, therefore should monitor and legally enforce the compliance with these fundamental standards both of its member states and the accession aspirants – if necessary with the support of the European Court of Justice.
- The OSCE presence should have a pro-active role in upholding the rule of law and move beyond simply monitoring and following trends. The priorities of the OSCE can be sued to such effect.
- The Council of Europe should invest in civic education in order to prepare further generations to uphold the rule of law.

Recommendations: Rule of Law through Regional and International Cooperation

- Investors need a well-functioning, independent and effective juridical system which guarantees rapid and impartial conflict-solving in courts.
- Transnational Organized Crime has no difficulties surpassing borders, ethnic barriers, etc. Regional and international collaboration should be developed to match its counterpart's sophistication and efficiency.
- Western Balkan countries should respect their commitment to provide adequate funds, human resources and equipment to the regional initiatives such as SELEC, RAI, SEEPAC, etc. These regional initiatives are a useful tool to exchange information and best practices with regard to the rule of law, while a regional platform should be established to optimize the coordination of the countries' agendas.
- Countries should consider adopting the best regional practices that have been proved to be efficient. Such examples are Croatia's USKOK, Montenegro's successful examples in civil society programs and Serbia's practice of making severe breaches of the rule of law public.
- Countries should also draw lessons from the negative experiences of other countries, such as Serbia's problems with its vetting process, which created confusion and resulted, in some cases, in the return of judges with a problematic track record. Albania, which is still on the first stages of its vetting process, should pay attention to that.



- As a bottom-up approach: rule of law related education should be supported at home, in pre-school and at politico-social studies at grammar and high school.
- A political leadership is needed that lives and enforces the rule of law in public; politicians must set examples as role models.
- This should aim at the rule of law and at thinking and acting against corruption, kleptocracy and organized crime becoming part of the "citizens' genes".
- The legal framework of political party finance should be revised and have a serious audit system in order to limit influence of corruption on governance and politics.
- Countries should proceed in a timely manner with meeting the necessary benchmarks for the opening of Chapters 23 and 24.

Recommendations: Rule of Law through Civil Society and the Media

- CSOs should be engaged in providing opportunities for civic education and participation in order to contribute to the rule of law.
- Donors should promote and financially support independent media and particularly reports which focus on investigative journalism.
- Media should exert maximum responsibility to avoid hate speech especially during political campaigns.
- The OSCE media office should closely monitor the deteriorating media situation in the region.
- IPA funds should also be directed towards supporting civil society and independent media.

Recommendations for all Countries in South East Europe

- Political leaders and legislators in EU countries concerned as well as in the Western Balkans Six countries are urged to live visibly and sustainably the rule of law, and to introduce and enforce teaching and learning related legislation.

1. These policy recommendations reflect the findings of the workshop "Rule of Law in the Western Balkans: Lessons and Way Ahead", convened by the PfP Consortium Study Group on "Regional Stability in Southeast Europe", the Austrian National Defence Academy, the George C. Marshall European Centre for Security Studies and the Albanian Institute for International Studies (AIIS), from 29 September to 2 October 2017 in Tirana/Albania. They were prepared by Alba Cela and Sidonja Manushi, both from AIIS. Valuable support came from Predrag Jureković, Benedikt Hensellek and Veronika Fuchshuber, all from the Austrian National Defence Academy in Vienna.
2. "Judiciary and fundamental rights" resp. "Justice, freedom and security"
3. Instrument for Pre-accession Assistance (IPA); means by which the EU supports reforms in the 'enlargement countries'. IPA II: period from 2014 to 2020.
4. Southeast European Law Enforcement Center (SELEC).
5. Regional Anti-corruption Initiative (RAI).
6. South Eastern European Parliamentarians Against Corruption (SEEPAC).
7. State Prosecutor's Office for the Suppression of Organized Crime and Corruption (USKOK).
8. Balkan Barometer 2017.