

# Back to Basics: Re-affirming the Rule of Law in the Western Balkans

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# Monitoring and Evaluation of the Rule of Law in the Western Balkans

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## ■ EXECUTIVE SUMMARY

This paper urges decision makers in Macedonia, Montenegro and Serbia, as well as civil society and regional organizations committed to the EU integration of the Western Balkans countries and EU institutions to address the shortcomings of the EU-related efforts of these countries to this point and the overall reforms that aim for the democratization of the region.

Evidence shows that progress in democracy and rule of law reforms in the region, albeit different across countries, is slow. Even when it has been achieved, progress has generally been more technical rather than directly focusing on politically sensitive issues. In all three countries, it is particularly worrisome that issues, which should come first on the Governments' agendas, come last. In other words, there is continuous trend of stagnation or backsliding in fundamental rights, and this has especially been reflected in deteriorating media freedom and the violation of human rights by police officers and other official institutions.

Progress in the efficiency of the judiciary can be commended, but there is no significant progress regarding its independence. Special prosecutions set up in Macedonia and Montenegro, although demonstrating a degree of independence, face obstructions from other institutions and face intense political pressures. The track record for fighting organized crime and corruption in Serbia and Montenegro is still not reflected in the final convictions of high profile cases.

In all countries, cooperation between the Government and civil society regressed, as demonstrated by smear campaigns against CSOs. Councils for cooperation between CSOs and the Government in Macedonia and Montenegro are boycotted by civil society representatives. The role of non-governmental actors in EU Accession efforts is downgraded by the lack of access to the key information on the progress made in meeting EU criteria, especially in Montenegro.

There are also more specific converging trends observed among the countries. In Macedonia and Serbia, prioritization of security and bilateral issues tends to overshadow the “fundamentals first” approach of the European Commission and to downplay the importance of the rule of law. Macedonia and Montenegro, on the other hand, have gone through political experiments with the so-called governments of electoral trust, trading off the efforts towards depoliticizing the administration for the priority of addressing the low levels of trust in the elections. Still, the aftermaths of the elections in both countries are marked by the refusal of the opposition to confirm the validity of the election results.

Curbing overarching politicization in the region is a key precondition for a more efficient fight against corruption. The EU, Governments and CSOs should thus avoid technicisation of the EU accession efforts. The EU should persist with its “fundamentals first” approach, with more efficient inclusion of civil society in the process of EU integration. CSOs should continue independent monitoring and evaluation of rule of law efforts and with promoting examples of successful reforms – the so called “agents of reform” across the region, to spur positive peer-pressure among the countries.

# ■ INTRODUCTION

The discrepancy between declarative commitment to the rule of law and the actual state on the ground is a common denominator of the EU integration efforts in all the countries of the Western Balkans. As noted by Freedom House, “the leaders of Serbia, Macedonia, and Montenegro have turned the EU’s disarray to their advantage, trusting that its longing for stability will outweigh clear evidence of individual politicians and parties capturing the state to promote their own interests”.<sup>1</sup>

The progress of the three countries in EU accession has not been even. Montenegro is a leader in EU membership talks. It opened negotiations in 2012 and it is the country to which the approach of first opening Chapters 23 and 24 was first applied. Currently, 26 chapters out of 33 of the EU’s acquis are open for negotiations, while Chapters 25 and 26 have been provisionally closed.<sup>2</sup> Serbia also kept checking boxes on its European path, as was confirmed in July 2016, when negotiations on Judiciary and Fundamental Rights (Chapter 23) and Justice, Freedom and Security (Chapter 24) were opened. Macedonia, once the front runner of the EU integration process and the first country to bring the Stabilisation and Association Agreement into force (2004), has not yet started accession talks, as Greece blocked the recommendation given by the European Commission in 2009. The lack of an EU perspective contributed to backsliding in democracy and rule of law in the following years. The illegal wiretapping scandal led to a political crisis.<sup>3</sup> The EU intervened in facilitating negotiations among political parties, resulting in early parliamentary elections, which were held on 11 December 2016. The EC Urgent Reform Priorities, derived from the Report of the Senior Expert Group on systemic rule of law issues, are currently the key document that should guide EU-related reforms, but it has not been implemented so far.

This policy brief additionally tackles the weakest points of the rule of law in Macedonia, Montenegro and Serbia. It is based on the data collected during the comprehensive assessments of the state of play in these countries carried out as part of the research within the project *MERLIN WB: Monitoring and Evaluation of the Rule of Law in the Western Balkans*. Conclusions drawn and presented in the paper are based on a comparative insight into the key factors impeding the meeting of political criteria in the selected areas in the three countries.

The first section focuses on an overview of the manner in which the fusion of state and party hampers the ability to enact needed reforms. It is followed by a comparative insight into challenges in the field of fundamental rights, the judiciary and the fight against corruption. The paper proceeds with analysis of key challenges faced by civil society. Its two last sections place emphasis on certain converging trends among the selected countries – governments of electoral trust in Macedonia and Montenegro and the effect on bilateral and security issues in Macedonia and Serbia. The conclusions and recommendations of the paper suggest the need for and potential approaches to more substantial reforms in the field.

<sup>1</sup>Nations in Transit 2016: Europe and Eurasia Brace for Impact, Freedom House, available at: <https://freedomhouse.org/report/nations-transit/nations-transit-2016>

<sup>2</sup>Chapter 25 – Science and research and Chapter 26 – Education and culture are provisionally closed, while two other chapters Chapter 11 – Agriculture and rural development and Chapter 19 – Social policy and employment were opened just recently, on 13 December 2016.

<sup>3</sup>In Macedonia, in the beginning of 2015, the leader of the main opposition party Zoran Zaev accused the government of an illegal surveillance programme - the phone tapping of up to 20,000 people, including journalists. This caused a major political crisis which further deepened with the publication of the intercepted conversations (the so-called ‘bombs’), which revealed serious indications of breaches of fundamental rights, interference with judicial independence, media freedom and elections, as well as politicisation and corruption in various fields by senior government and governing party officials.

# 1. Mimicry of Reforms Instead of Disentangling Party from the State

Evidence shows that progress in democracy and rule of law reforms in the region, albeit different across countries, is slow. Even when it is achieved, progress is more technical rather than focusing on politically sensitive issues – such as judicial independence and merit-based systems in public administration in general.

In Montenegro, the introduction of merit-based appointments in public administration was one of the key preconditions to open accession negotiations, but the country still falls short of increasing trust in public sector employment.<sup>4</sup> The failure to disentangle the long-term embrace of the state and the party in the country is vividly illustrated by the fact that two MPs in the previous parliamentary term kept their civil service posts in parallel.<sup>5</sup> Likewise, the establishment of a merit-based system of promotion and recruitment is the area where the least amount of progress has been achieved in the implementation of the Serbian Public Administration Reform Strategy, with two thirds of measures not having been implemented within the envisaged deadlines.<sup>6</sup> The lines between professional and political posts in this country are also blurred by excessive reliance on using acting officials instead of those in full capacity. In Macedonia, the former prime minister has continued to make public appearances in the electoral campaign, taking credit for the work of specific ministries, and also sending out the message that holding a top party post is still the most secure way of taking control of state institutions.<sup>7</sup> Additionally, given that the election date was postponed twice (shortly before the electoral campaigns were supposed to begin), the moratorium for new employments in the public administration did not enter in force until mid-November, thus resulting in further pressure and insecurity among public servants. Lastly, although a new Strategy for Public Administration Reform is being drafted, there is no official evaluation and assessment of the implementation of the former Strategy.

The key challenge to the establishment of the rule of law is precisely the inability of current political elites in three countries to comply with EU conditionality, which might be very harmful for their positions and political fate. As a consequence, the approach of the governments towards the EU accession agenda can be largely characterized as a declarative - mimicry of reforms or soft-wrapping reforms, rather than actual commitment to essential implementation of democratic principles and rule of law standards.

The results of the 2016 Balkan Barometer, a public opinion survey commissioned by the Regional Cooperation Council, also paint a gloomy picture of public perception on rule of law in three countries. On average, more than 71 per cent of citizens in Macedonia, Montenegro and Serbia, disagree with the statement that the law is applied to everyone equally, while 67 per cent of them disagree with the statement that judicial system is independent from political influence.<sup>8</sup>

<sup>4</sup>The type of discrimination in employment cited most commonly by respondents (81.8%) is based on political affiliation. The discrimination trend in employment has been strong since 2010, with every other citizen stating that political discrimination is present. Public opinion research conducted by CEDEM in December 2015.

<sup>5</sup>See: MPs or civil servants? Put an end to violation of the law and work in parallel tracks, Institute Alternative, August 2016, available at: <http://institut-alternativa.org/poslanici-ili-sluzbenici-zaustaviti-zloupotrebu-zakona-i-rad-na-dva-kolosjeka/?lang=en>

<sup>6</sup>“Sestomesečni izveštaj za prvu polovinu 2016. godine o implementaciji Akcionog plana za sprovođenje Strategije reforme javne uprave u Republici Srbiji za period 2015-2017.” (Belgrade: Ministry of Public Administration and local Self-Government, July 2016).

<sup>7</sup>Although Nikola Gruevski resigned in January 2016, as part of the political agreement, he kept his omnipresence in media which appeared to be undermining the new prime minister, Emil Dimitriev

<sup>8</sup>Regional Cooperation Council, Public Opinion Survey, Balkan Opinion Barometer 2016, available at: <http://www.rcc.int/seeds/results/2/balkan-opinion-barometer>

## 2. “Fundamentals Last”

In all three countries, it is particularly worrisome that issues, which should come first on the Governments' agendas, come last. In other words, there is a continuous trend of stagnation or backsliding in fundamental rights – a fact which is especially reflected in deteriorating media freedom and violation of human rights by police officers and other official institutions.

The ranking of Macedonia and Montenegro in the 2016 Press Freedom Index of Reporters without Borders demonstrate the troubled state of the media and freedom of expression in both countries. Macedonia occupies 118th place out of 175 countries, while Montenegro, although well ahead of Macedonia in its bid to join the EU, has not advanced much in this regard, being at the 106th place.<sup>9</sup> Montenegro still has failed to resolve numerous attacks perpetrated against journalists, including the 2004 murder of editor of daily newspaper Dan. Macedonia's decline in democracy is largely attributed precisely to the disclosed practices of large-scale and illegal government wiretapping of journalists, to the corrupt ties between officials and media owners, and to increased numbers of threats to and attacks on media workers.

Serbia is not an isolated case in this respect either. The silencing of media carried out by Aleksandar Vucic, current prime minister and former information minister under the regime of Slobodan Milosevic, further continues with threats and violence against the few remaining independent media outlets, which are often attacked by public officials and the pro-government media.<sup>10</sup>

Torture and excessive use of force by the police have not been adequately prosecuted, either in Macedonia or in Montenegro, which both have witnessed mass protests in recent period.<sup>11</sup> In Macedonia, the Public Prosecution Service has not taken a single ex officio procedure against police officers who overstepped their authorities during the Colorful Revolution, while in Montenegro, the Magistrates' Court initiated the trial of two police officials who voluntarily admitted to have excessively used force during the October 2015 protest. Yet, the 28 police officers who participated in brutal beatings of citizens are still unknown, despite there being video footage of the incident. On the other hand, the so-called Savamala incident also casts a shadow on the integrity of the Serbian police. This incident occurred on the night of the elections in April 2016, when a group of approximately 30 masked men completely blocked a street in downtown Belgrade, extra-judicially detained several people and demolished private property. Police turned a deaf ear to the reports of citizens on the incident.

Ombudsman offices in Macedonia and Montenegro lack impact, although they have been assigned more staff in the previous period, and they have been undergoing limited capacity-building. On the other hand, the Serbian Ombudsman stands as a sole example of a proactive independent institution aimed at safeguarding human rights.

<sup>9</sup>World Press Freedom Index 2016, Reporters without borders for freedom of information, available at: <https://rsf.org/en/ranking>

<sup>10</sup>In Serbia, “hostile” media are subjected to frequent arbitrary financial and administrative inspections. Three laws complying with European “standards” on freedom of information were approved with the aim of facilitating admission to the EU but were never put into effect.

<sup>11</sup>In Montenegro, the opposition party Democratic Front has repeatedly accused the ruling party of election fraud and political corruption while the growing dissatisfaction with the issue brought about the parliamentary boycott (October 2015–May 2016) and sparked protests organised by the in autumn 2015. However, the protests ended violently and were marked by an excessive use of force of the police officers, which caused suffering to numerous citizens. The political crisis in Macedonia has also resulted in multiple protest movements since 5 May 2015, yet the biggest and the longest-lasting one was the Protestiram (I Protest) movement, which later became the Colorful Revolution. The protests by citizens, in the form of the Colorful Revolution were most intense during the spring of 2016 but became less frequent following Przhino 2 Agreement



### 3. Judiciary Reform and Anti-corruption Efforts: Vicious Circle of Impunity

Progress in efficiency of the judiciary can be commended, but there is no significant progress regarding independence. Special prosecutions set up in Macedonia and Montenegro, although demonstrating degree of independence, face obstructions from other institutions and face intense political pressures. The track record in fighting organized crime and corruption in Serbia and Montenegro is still not reflected in the final convictions of high profile cases.

Improved efficiency of the judiciary is namely reflected in the reduction of case backlog. Nonetheless, the key challenges related to the reduction of political influence over the judiciary still remain prominent in all three countries. In Macedonia, prosecutorial and judicial councils, the two institutions that should guarantee the independence of the judiciary from political influence, have served as a long arm of the political parties.<sup>12</sup> This was particularly reflected in the appointment of Special Public Prosecutor, a new institution aimed at advancing the fight against corruption and organized crime. Although this appointment was an urgent procedure, the Council obstructed the start of its work by not approving the team requested by the Special Prosecutor. The work of the newly established institution was further obstructed by the Basic Court in Skopje, which rejected almost all of the Special Prosecutor's requests for detention.

The Macedonian developments to a great extent mirror the establishment and start of the work of Montenegro's Special Prosecution Office. This institution also faced obstructions to its work, to the extent that the Special Prosecutor once stated that there was a "special war" waged against him.<sup>13</sup> Some of these obstructions include a lack of cooperation from the Director of Police (for example, while forming the Special Police Department) and an inability to directly access the databases of other state authorities. In addition, although declaratively Montenegro pledged to introduce a merit-based system in the judiciary, a recent case of appointment of a judge by the Judicial Council went against the mandate to appoint the highest-ranked candidate for the role, because the other candidate received a higher ranking, suggesting deficient implementation of the laws in this field.<sup>14</sup>

In Serbia, constitutional reform aimed at safeguarding elections of judges and prosecutors against political influence is planned for 2017, as part of the EU conditionality imposed on the country. However, political pressure on the appointments of judges and prosecutors is still evident. In December 2015 a new Chief Prosecutor for Organised Crime was elected by a majority of parliamentary votes, despite the fact that several watchdog organisations and independent experts identified a number of deficiencies in the process, including potential fraudulent testing of candidates.<sup>15</sup>

<sup>12</sup> See Dane Taleski, Marko Kmezić and Lura Pollozhanii, *Improving Checks and Balances in the Republic of Macedonia: Judicial Control of Executive*, European Policy Institute, Skopje 2016. Available at [http://epi.org.mk/docs/D4V\\_Democracy%20and%20Rule%20of%20Law\\_en.pdf](http://epi.org.mk/docs/D4V_Democracy%20and%20Rule%20of%20Law_en.pdf)

<sup>13</sup> "The special war is being led against me", Chief State Prosecutor Milivoje Katnić, Dan Online, February 11, 2016, available at: <http://www.dan.co.me/?nivo=3&rubrika=Hronika&datum=2016-02-11&clanak=532483>

<sup>14</sup> In September 2016, the Administrative court dismissed a lawsuit by a candidate for the seat of judge of the Administrative Court against last year's decision by the Judicial Council on the election of two new judges of this court. The candidate that filed the lawsuit claimed to have had better scores, better language knowledge and computer skills, and unlike the chosen candidate, experience of working in that court. She also claimed that the chosen candidate had not filed evidence regarding training in the areas being assessed.

<sup>15</sup> See: Saša Dragoljo, "Trials Await Serbia's New Organized Crime Prosecutor," *Balkan Insight*, December 23, 2015, available at: <http://www.balkaninsight.com/en/article/trials-await-serbia-s-new-organised-crime-prosecutor-12-22-2015>. The then Minister of Justice, Nikola Selaković "I would be a complete political masochist if the people on the list were completely opposed to the government... but that does not change the fact they are the best candidates.", Saša Dragoljo, "Serbian MPs Quarrel Over New Prosecutors," *Balkan Insight*, December 22, 2015, available at: <http://www.balkaninsight.com/en/article/serbia-elected-new-organized-crime-prosecutor-12-22-2015>.

In Montenegro and Serbia, there has been limited progress in prosecuting organized crime and corruption cases, but it is still not enough progress to claim that a substantial breakthrough in the field has been achieved. In Serbia especially, high-profile police actions performed in 2015 and in 2016, which were characterised by mass arrests of suspects for various and mostly unrelated crimes followed by excessive and detailed media coverage, have not had a judicial epilogue. Many of the arrested were subsequently released without charges. In Montenegro, the fight against corruption and organized crime slightly progressed, mainly owing to the work of Special Prosecutor. However, it has so far been solely concentrated on the prosecution of corruption affairs in Municipality of Budva, a touristic site.

## 4. Civil Society and Government: Distrust Mirrored in Dysfunctional Institutions

In all countries, cooperation between the Government and civil society slid backwards, as was demonstrated by smear campaigns against CSO representatives. Councils for cooperation between CSOs and Government in Macedonia and Montenegro are boycotted by civil society representatives. The role of non-governmental actors in EU Accession efforts is downgraded by the lack of access to the key information on the progress made in meeting EU criteria, especially in Montenegro.

The institutional set-up for cooperation between Government and civil society is in place in all the three countries. However, it is largely dysfunctional due to the generally hostile environment towards CSOs. Mainstream rhetoric against CSOs in all three countries has retrograded, promoting civil society leaders as foreign or opposition agents and public enemies. In all three countries, media campaigns depicting CSOs and their leaders as profit-oriented organizations led by private interests have been particularly prominent. In Macedonia, the pro-government media even went so far as to disclose documents on the income of several members of prominent CSOs, academics and experts. Councils for cooperation between the Government and non-governmental organizations, which have been established in Montenegro and Macedonia in 2014 and in 2015 respectively, are boycotted by NGOs in both countries, suggesting that these institutions failed to achieve their role as forums for discussion and cooperation with civil society.

Montenegro is usually praised for including CSOs in working groups for negotiations with the EU. Still, CSOs are not on an equal footing with government representatives and membership talks continue to evolve almost exclusively between the government and the European Commission. The role of civil society, Parliament and the general public in scrutinizing EU integration efforts is further downgraded by the lack of public access to expert opinions issued in the process of alignment of Montenegro with EU standards.<sup>16</sup>

<sup>16</sup>See: Jovana Marović, Stevo Muk, Negotiations Between Montenegro And The EU: Data Access For The Privileged Only, Institute Alternative, September 2015, available at: <http://media.institut-alternativa.org/2015/10/ia-negotiations-between-montenegro-and-the-eu.pdf>

## 5. Sisyphean Task of Increasing Trust in Elections

The low trust in elections is at worrisome levels in all three countries. The Governments of the electoral trust in Macedonia and Montenegro failed to increase trust in the fairness of the electoral process.

The blurred lines between state and party politics have one of the most vibrant manifestations in periods preceding elections in all three countries. In Montenegro, the affair of the published recordings from the session of the Main Committee of the Democratic Party of Socialists (DPS) in Montenegro in 2012, and the intercepted conversations from Macedonia during 2015 and 2016, further highlighted issues of abuse of public resources. Even though there is clear evidence, prosecutorial and judicial outcomes are essentially lacking.

In 2016, elections in all three countries were held. The integrity of the elections, however, has been troublesome. Early parliamentary elections in Serbia were organized in April 2016 despite stable support for the ruling party. They were marked by the unequal opportunities between the incumbent ruling party and other parties, which resulted in biased media coverage and a blurring of distinction between state and party activities. Also, significant irregularities were reported.<sup>17</sup> In Montenegro and in Macedonia, where in light of the goal of returning trust in the electoral process, the so-called “transitional governments” or “governments of electoral trust” were formed by the representatives of the Government and the opposition, with a specific task of preparing conditions for fair elections.

The concept of government of electoral trust in Montenegro, although praised by the EU and supported by most CSOs, has not resulted in the desired outcome. Obstructions of the ruling party (DPS) and its public officials largely contributed to this. Only part of the opposition actually participated in the government, most of them indirectly, while one of the three parties abandoned the concept two months prior to elections. Therefore, after the elections, the overall opposition (notwithstanding the political differences) did not recognise the regularity of elections and refused to participate in the work of the parliament, doubting the truthfulness of the activities of the Special State Prosecutor and security services on election day which stopped the alleged *coup d'état*.

The EU actively participated in the evaluation of conditions for free elections in Macedonia, while in Montenegro the EU was merely the observer of the process. However, even in Macedonia, the EU is more focused on repairing the damage than pressuring for real reforms. A day after the elections in Macedonia, both the ruling party (The Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity (VMRO-DPMNE)) and the opposition Social Democratic Union of Macedonia (SDSM) declared victory.<sup>18</sup> The majority of the meetings of the State Electoral Commission were not public, and the clean-up of the electoral roll also raised many controversies. All of this suggests that the trust in the elections has not been increased.<sup>19</sup>

<sup>17</sup> The Citizens on the Watch observation mission identified a number of irregularities, including: the forgeries of supporting signatures for seven out of 29 electoral lists; serious omissions and irregularities registered at 4% of the polling stations; and controversies around the voter registration

<sup>18</sup> Izbori u Makedoniji: I Gruvski i Zaev proglasili pobjedu, Portal Antena M, 12 December, 2016, available at: <http://antenam.net/index.php/region/item/20193-izbori-u-makedoniji-i-gruevski-i-zaev-proglasili-pobjedu>

<sup>19</sup> See Malinka Ristevska Jordanova and Kristina Dimovska, Monitoring and Evaluation of the Rule of Law in Macedonia, European Policy Institute, November 2016

## 6. Trading democracy for security in the region?

Especially in Macedonia and Serbia, the need for government response to security and bilateral issues, such as the refugee crisis, the name dispute, and the Pristina-Belgrade dialogue, tends to overshadow the “fundamentals first” approach of the European Commission and to rule out the rule of law.

The geo-political situation in the previous period exposed Serbia and Macedonia to the global problems of the refugee and migrant crisis and the fight against terrorism. While some of the EU member states, such as Hungary, have been severely criticized for their handling of the refugee flow, Serbia and Macedonia were praised for their efforts in dealing with the crisis.<sup>20</sup> In addition to these pressing stability concerns of the EU - which put Macedonia and Serbia under a different spotlight than the one associated solely with the EU enlargement efforts - both countries are continuously faced with domestic and bilateral issues which tend to outweigh the importance of the EU “fundamentals first” approach. This approach, which should be characterized by caveat on core issues of the rule of law, fundamental rights, strengthening democratic institutions, public administration reform, as well as on economic development and competitiveness,<sup>21</sup> is thus in reality damaged by other ongoing parallel processes.

Parallel developments namely involve pan-European party solidarity and prominence of bilateral issues faced by Serbia and Macedonia along with other countries. Recent cases of support of parties from some EU-member states to their sister parties in Macedonia and Serbia, without regard and sometimes opposite to the conclusions of the EU General Affairs Council on the state of affairs in these two countries,<sup>22</sup> suggest the potential for this party solidarity to comprehensively endanger the EU's approach to the region. Also, (potential) awards in the accession process are largely connected to addressing bilateral issues (Serbia – Kosovo, Macedonia-Greece), regardless of (lack) of essential reforms in democracy and rule of law. Serbia also faces obstacles in opening Chapter 26 on Education and Culture due to Croatia's demands for a more efficient inclusion of the Croat minority in the Serbian education system. Similarly, due to unresolved issues with Croatia, the opening of the most important chapter, Chapter 23 on Judiciary and Fundamental Rights, has been delayed for months.

<sup>20</sup> See: Austria's Interior Minister: Macedonia Has Done More for Europe's Stability Than Certain EU Members, Independent.mk, March 15, 2016, available at: <http://www.independent.mk/articles/29020/Austria's+Interior+Minister+Macedonia+Has+Done+More+for+Europe's+Stability+Than+Certain+EU+Members> and Commissioner Hahn visits Serbia, European Commission, 24 September 2015, available at: [https://ec.europa.eu/commission/2014-2019/hahn/announcements/commissioner-hahn-visits-serbia\\_en](https://ec.europa.eu/commission/2014-2019/hahn/announcements/commissioner-hahn-visits-serbia_en)

<sup>21</sup> EU Enlargement Strategy 2016, European Commission, November 2016, available at: <http://ec.europa.eu/neighbourhood-enlargement/countries/package/>

<sup>22</sup> The statement of Sebastian Kurtz, minister of foreign affairs of Austria, that “Macedonia is well on its way to become part of the EU and it is a very important partner to us all, Austria's Foreign Minister Sebastian Kurtz, who is attending the VMRO-DPMNE rally in Skopje, said.” went opposite of the conclusions of the General Affairs Council. Austria's Foreign Minister Kurtz Attends VMRO-DPMNE Rally in Skopje, Independent.mk, Foreign Minister Kurtz Attends VMRO-DPMNE Rally in Skopje, Independent.mk, available at: <http://www.independent.mk/articles/39012/Austria's+Foreign+Minister+Kurtz+Attends+VMRO-DPMNE+Rally+in+Skopje>

<sup>23</sup> General Secretariat of the Council, Council of the European Union, Enlargement and Stabilization and Association Process – Council Conclusions, Brussels 15 December 2015, Available at: <http://data.consilium.europa.eu/doc/document/ST-15356-2015-INIT/en/pdf>

## ■ INSTEAD OF CONCLUSION

Although the pace of their EU accession efforts differs, all three countries demonstrate surprising similarities in many fields, starting from the judiciary and public administration, through the media sector, to the overall state of art in the field of rule of law. This suggests that the EU's leverage in pushing painful reforms does not depend much on the stage reached in the overall bid of joining the EU. Rather, the future success of the required rule of law reforms depends on several complex long-term processes, which involve the priorities of delineating ruling parties from the state apparatus, creating a more favorable environment for independent media and CSOs, and ensuring the pro-activeness and independence of key institutions in an anti-corruption chain, especially of police, prosecutors and judges. Soft preventive mechanisms, however, which so far have largely been underestimated, need to be reaffirmed in the region as well.

EU integration as the common aim of the three countries should be further promoted as a framework for exchange of best practices aimed at advancing the rule of law, especially in light of the fact that findings of the MERLIN WB project suggest that a form of “negative peer learning” has been taking root across the region. In other words, a transfer of bad instead of best practices among the three countries is observed, such as extensively televised police actions, smear campaigns against civil society, obstructions to newly-established anti-corruption institutions, and the resistance of institutions to adopt new modes of functioning and adhere to the merit principle in their management practices.

## ■ KEY RECOMMENDATIONS

1. The EU should persist with its “fundamentals first” approach, which has been threatened by prioritization of security concerns and bilateral issues faced by some countries;

2. Party patronage should be addressed as a priority issue in overall rule of law efforts of civil society, EU, and regional and national decision-makers, in order to curb overarching politicization, which is, in the long term, a key impediment to the fight against corruption;

3. More efficient inclusion of civil society in the process of EU integration should be entrenched in the access to key information and opinions on the EU-related reforms;

4. CSOs should continue monitoring and evaluation efforts in order to map key burning issues regarding rule of law and, on a permanent basis, jointly advocate for meaningful change.

5. CSOs should identify and promote agents of reforms across the region in order to use them as role models and steer positive peer pressure among the countries.

# ■ REFERENCES

- Aleksandra Vavic, Ana Djurnic, Dina Bajramspahic, Ivana Bogojevic, Milena Milosevic, Milica Milonjic, Milica Raznatovic and Stevo Muk, *Monitoring and Evaluation of the Rule of Law in Montenegro*, Institute Alternative, November 2016
- Bojan Elek, Katarina Djokic, Sofija Mandic and Andrej Stefanovic, *Monitoring and Evaluation of the Rule of Law in Serbia*, Belgrade Centre for Security Policy, November 2016
- Dane Taleski, Marko Kmezic and Lura Pollozhani, *Improving Checks and Balances in the Republic of Macedonia: Judicial Control of Executive*, European Policy Institute, Skopje 2016. Available at [http://epi.org.mk/docs/D4V\\_Democracy%20and%20Rule%20of%20Law\\_en.pdf](http://epi.org.mk/docs/D4V_Democracy%20and%20Rule%20of%20Law_en.pdf)
- Erhan Turbedar (ed.), *Balkan Opinion Barometar 2016, Public Opinion Survey*, Regional Cooperation Council, June 2016. Available at: <http://www.rcc.int/pubs/36/balkan-barometer-2016-public-opinion-survey#!prettyPhoto>
- European Commission, *Commissioner Hahn visits Serbia*, European Commission, 24 September 2015, Available at: [https://ec.europa.eu/commission/2014-2019/hahn/announcements/commissioner-hahn-visits-serbia\\_en](https://ec.europa.eu/commission/2014-2019/hahn/announcements/commissioner-hahn-visits-serbia_en)
- European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2016 Communication on EU Enlargement Policy, Brussels, European Union Enlargement Strategy 2016, European Commission, November 2016 Available at: [http://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2016/20161109\\_strategy\\_paper\\_en.pdf](http://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_strategy_paper_en.pdf)
- General Secretariat of the Council, Council of the European Union, *Enlargement and Stabilization and Association Process – Council Conclusions*, Brussels 15 December 2015, Available at: <http://data.consilium.europa.eu/doc/document/ST-15356-2015-INIT/en/pdf>

- Jovana Marović, Stevo Muk, *Negotiations between Montenegro and the EU: Data Access For The Privileged Only*, Institute Alternative, September 2015, Available at: <http://institut-alternativa.org/crnogorski-pregovori-informacije-samo-za-odabrane/?lang=en>,
- Malinka Ristevska Jordanova and Kristina Dimovska, *Monitoring and Evaluation of the Rule of Law in Macedonia*, European Policy Institute, November 2016
- Milena Milosevic, *MPs or civil servants? Put an end to violation of the law and work in parallel tracks*, Institute Alternative, August 2016, Available at: <http://institut-alternativa.org/poslanici-ili-sluzbenici-zaustaviti-zloupotrebu-zakona-i-rad-na-dva-kolosjeka/?lang=en>
- Ministarstvo državne uprave i lokalne samouprave, Republika Srbija, Šestomesečni izveštaj za prvu polovinu 2016. godine o implementaciji Akcionog plana za sprovođenje Strategije reforme javne uprave u Republici Srbiji za period 2015-2017., Beograd, Jul 2016 (in English: A Six months report for the first half of 2016 regarding the implementation of the Action Plan for implementation of the Strategy for Public Administration Reform in Serbia for the period 2015-2017, Belgrade: Ministry of Public Administration and local Self-Government, Belgrade, July 2016)
- Mirjana Dragas, *Gruevski: Što prije formirati vladu*, Portal Antena M, 1 December, 2016, (in English: *Gruevski: To form a Government as soon as possible*) Available at: <http://antenam.net/index.php/region/item/20375-gruevski-sto-prije-formirati-vladu>
- Nate Schenkkan, *Nations in Transit 2016: Europe and Eurasia Brace for Impact*, Freedom House
- Public opinion research CEDEM, December 2015, Available at: [https://freedomhouse.org/sites/default/files/FH\\_NIT2016\\_Final\\_FWeb.pdf](https://freedomhouse.org/sites/default/files/FH_NIT2016_Final_FWeb.pdf)
- Saša Dragojlo, "Serbian MPs Quarrel Over New Prosecutors," *Balkan Insight*, December 22, 2015, Available at: <http://www.balkaninsight.com/en/article/serbia-elected-new-organized-crime-prosecutor-12-22-2015>



Saša Dragojlo, "Trials Await Serbia's New Organized Crime Prosecutor," Balkan Insight, December 23, 2015, Available at: <http://www.balkaninsight.com/en/article/trials-await-serbia-s-new-organised-crime-prosecutor-12-22-2015>

Vladana Jovanovic, *Izbori u Makedoniji: I Gruevski i Zaev proglasili pobjedu*, Portal Antena M, December, 2016 (in English: *Elections in Macedonia: Gruevski and Zaev declared victory*), Available at: <http://antenam.net/index.php/region/item/20193-izbori-u-makedoniji-i-gruevski-i-zaev-proglasili-pobjedu>

World Press Freedom Index 2016, Reporters without borders for freedom of information

[www.independent.mk](http://www.independent.mk), *Austria's Foreign Minister Kurz Attends VMRO-DPMNE Rally in Skopje*, November 27, 2016, Available at: <http://www.independent.mk/articles/39012/Austria's+Foreign+Minister+Kurz+Attends+VMRO-DPMNE+Rally+in+Skopje>

[www.independent.mk](http://www.independent.mk), *Austria's Interior Minister: Macedonia Has Done More for Europe's Stability Than Certain EU Members*, March 15, 2016, Available at: <http://www.independent.mk/articles/29020/Austria's+Interior+Minister+Macedonia+Has+Done+More+for+Europe's+Stability+Than+Certain+EU+Members>



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