Annual insight on EU rule of law 2024

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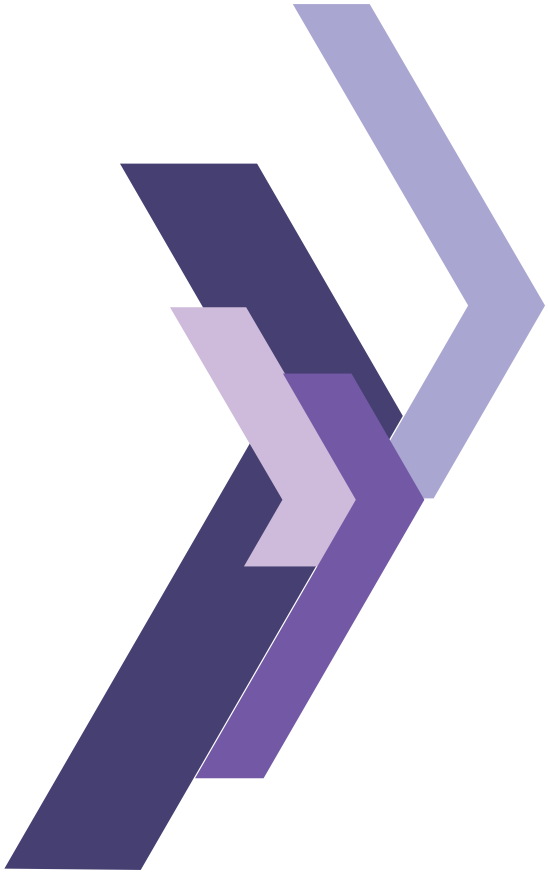

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Introduction

The rule of law is the foundation of the EU, hence it is a core value which must be respected by all EU member states and candidate countries alike. In order to advance on their path to EU accession, candidate countries must also abide by the obligations enshrined in the European Convention on Human Rights and the Charter of Fundamental Rights of the EU. For the first time this year, several candidate countries are included in the exercise of annual rule of law reports, which is another instrument for the European Commission to measure their level of alignment with EU's standards and democratic values. This annual insight focuses on that development, as well as other relevant rule of law developments on the EU level. It also concentrates on various aspects concerning Chapter 23 where some issues have been identified in North Macedonia.

EPI's team consistently monitors and reports on these developments, and concurrently, it collaborates with rule of law experts which analyze these events. Within its rule of law programme, it closely monitors the level of compliance with the rule of law principle in member states of the EU and candidate countries, in order to learn valuable lessons and present them to relevant stakeholders and the citizens of North Macedonia, as these lessons will have to be implemented now as a candidate country and as a member state in the future.

The insight begins with an analysis of the European rule of law mechanism, as one of the preventive mechanisms in the EU rule of law toolbox, which culminates with the publication of annual rule of law reports. These comprehensive reports evaluate the pillars of judicial independence, anti-corruption framework, media freedom and checks and balances across all member states. Significantly, from 2024, they extended to include several candidate countries, such as North Macedonia, aligning member states and candidate countries in their efforts to uphold the fundamental values outlined in Article 2 TEU. In that direction, the first analysis in this insight looks at the steps comprising the rule of law cycle and the novelties introduced during the past cycles, as well as a preliminary consideration on how North Macedonia would be assessed ahead of the publication of its first rule of law report.

The second analysis looks at Directive on Combating Violence against Women and Domestic Violence which was adopted on May 7, thus mandating all EU countries to criminalize acts such as female genital mutilation and forced marriage. This Directive defines specific criminal offenses and penalties, including the criminalization of female genital mutilation, forced marriage, cybercrimes, and other forms of violence against women and domestic violence. It enhances the rights and protection of victims, ensuring easier access to justice, specialized support services, and compensation. Additionally, it emphasizes prevention measures, such as targeted awareness campaigns, to challenge harmful gender stereotypes and promote gender equality and mutual respect. However, there are still some shortcomings which have been noted in the analysis and adequate recommendations for their remedy have been included.

The third analysis was prompted by a series of concerning events in the Macedonian Judicial Council which resulted in a peer review mission from the EU that analysed its work and the aforementioned events. While North Macedonia is one of the first candidate countries to introduce this type of judicial governance model, it is evident that the functioning of the judicial system in the country has not substantially improved. Hence, this analysis compares this model with two other models employed in EU member states (the Ministry of Justice model and the court service model) and elaborates the challenges these countries have faced in their own judicial systems. By reviewing their experiences, it becomes clear that there is no perfect model of judicial governance without shortcomings. This comprehensive analysis concludes that each country must carefully consider its approach to judicial governance and adapt to current judicial circumstances, aiming to safeguard judicial independence and uphold the principles of the rule of law and democracy in their societies.

The fourth analysis included in this annual insight derived from the presentations and discussion at the Forum Europaeum 2024 organized by EPI. The document contains the reflections on recent initiatives which showcase the EU's strategic efforts to ensure that the rule of law principle is upheld during the Western Balkans' integration into the EU, such as the inclusion of candidate countries in some of its key rule of law mechanisms and institutions, such as the EU Rule of Law Report, the work of the Fundamental Rights Agency and the European Economic and Social Committee, as well as the New Growth Plan for the Western Balkans.

The annual RoL report – (still) a work in progress

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The European Union (EU) applies various tools in order to preserve the rule of law (RoL) in its member states, as a fundamental value which ensures that all persons are equal before the law. Those tools comprise the EU RoL toolbox, which is comprised of a set of preventive and corrective mechanisms. The basis for the preventive tools includes reporting and dialogue as means to identify and quickly resolve RoL challengeso,[1] which are structured in the European RoL mechanism, the EU justice scoreboard, the European semester and the cooperation and verification mechanism.[2] On the other hand, the corrective tools are focused on sanctioning RoL breaches by imposing fines and suspending payments or voting rights, in order to end those breaches and restore the RoL in the country. These include the infringment procedure, the conditionality mechanism, the RoL framework and the Article 7 TEU procedure.[3]

This policy brief analyzes the annual RoL report which is the result of the European RoL mechanism – a yearly cycle intended to identify challenges and potential risks to the RoL and prevent them from transforming into RoL breaches.

1 Maria Skora, "How to Improve the EU's RoL Toolbox" (Friedrich-Ebert-Stiftung, 2023), https://library.fes.de/pdf-files/bueros/bruessel/20380.pdf

2 "RoL Report 2020 - Factsheet" (European Commission, September 2020) https://commission.europa.eu/document/download/0202c616-e7e6-4378-9961-512c56d246c5_en?filename=rule_of_law_mechanism_factsheet_en.pdf .

3 Ibid.

What is the annual RoL report?

The first annual RoL report was published by the European Commission (EC) on 30 September 2020.[4] It was prepared as part of the initiatives within the EC's Work Programme for 2020[5] and it elaborated on relevant RoL developments in EU member states beginning from January 2019.

The aim of introducing this tool was to complement and supplement the existing RoL toolbox, by providing an objective assessment of RoL trends and challenges, through an inclusive debate with the member states.[6] It provides a forum for exchange of good practices, a possibility for member states to learn from each other›s experiences and consult with each other and with EU institutions on how to prevent potential RoL challenges or tackle existing ones.

The annual RoL report contains individual country chapters for all 27 EU member states and covers the four main pillars concerning the RoL: justice systems, anti-corruption frameworks, media pluralism and freedom, and other institutional issues linked to checks and balances. As of 2022, the report contains country-specific recommendations which are aimed at assisting member states to overcome the existing challenges and improve the RoL. In addition, there is also another novelty announced to be added to the annual RoL report in 2024, which is listed below.

4 "COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS 2020 Rule of Law Report" (European Commission, September 30, 2020), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0580.

5 "COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS Commission Work Programme 2020" (European Commission, January 29, 2020), https://commission.europa.eu/document/download/01c2d55a-66f9-49c1-be0c-83ac05563d8e_en?filename=cwp-2020-publication_en.pdf

6 "Rule of Law: First Annual Report on the Rule of Law Situation across the European Union," Official Website of the European Commission (blog), September 30, 2020, https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1756

European RoL mechanism

Following the first RoL report which was published in the autumn of 2020, the annual RoL cycle is conducted each year. Considering that this tool is intended to deepen and enhance the communication between EU member states and EU institutions, the cycle begins with the launch of the dialogue with the European Parliament and national parliaments, as well as between member states in the Council, immediately after the publication of the RoL report for the previous year. Such communication and collaboration is ongoing during the entire process of preparation of the RoL report as the EC intends to include the member states in each step of that process. On the other hand, the EC strives to avoid duplicating existing reporting mechanisms and does not intend for the RoL report to represent an additional administrative burden for the member states, hence it also uses information collected and published by the Group of States against Corruption (GRECO), OECD, United Nations Convention against Corruption (UNCAC) and the Venice Commission, on the topics covered by the report.[7]

With the preparation of the first RoL report, a network of national contact points on the RoL was established in 2020.[8] Each member state appointed contact persons to coordinate its preparation at national level and to provide updates on the process. This network continues to be a channel of communication between the member states and the EC to this day. It meets in Brussels or by videoconference in order to discuss horizontal RoL issues and to exchange good practices.[9]

Toward the end of each year, the EC invites the contact persons to provide written contributions for the member states to the report. Additionally, such consultation is also performed with other relevant stakeholders, such as EU agencies and European networks and with CSOs. During the past cycle, while preparing the annual RoL report for 2023, the EC received written inputs from the member states and around 250 stakeholder contributions about developments at the EU level, but also in specific member states.[10]

In addition to the written contribution, the EC also supplements the factual findings for each member state during its country visits held in the spring of each year. Such visits serve as another opportunity for the member states to provide their opinion on the assessment of the EC on their RoL developments. They are organized in coordination with the contact persons regarding the timing, the location and the list of relevant

7 "European Rule of Law Mechanism: Methodology for the Preparation of the Annual Rule of Law Report (2022)" (European Commission, n.d.), https://commission.europa.eu/document/download/23aa1ee2-5a5c-4444-a68e-ef8517288eba_en?filename=64_1_194485_rol_methodology_en.pdf.

8 "Network of National Contact Points on the Rule of Law," *Official Website of the European Commission* (blog), n.d., https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/network-national-contact-points-rule-law_en.

9 "European Rule of Law Mechanism: Methodology for the Preparation of the Annual Rule of Law Report (2022)."

10 "RoL Report 2023 - Factsheet" (European Commission, July 5, 2023), https://commission.europa.eu/document/download/276e1d73-5e43-41c3-8e13-ff0c20ed79fe_en?filename=115_1_52676_rol_cycle_factsheet_en.pdf.

stakeholders. During the past cycle, more than 530 meetings were held across all 27 member states with around 750 national authorities, independent bodies and other stakeholders.[11]

Following such elaborate consultations, the EC compiles draft country chapters for each member state, containing the four pillars: the justice system, the anti-corruption framework, media pluralism and other institutional issues related to checks and balances, as well as country-specific recommendations. In June of each year, member states are given their final opportunity to provide factual updates before the annual RoL report is published in July. It provides a comprehensive qualitative assessment of the RoL in each member state, performed by the EC, based on the collected information of the aforementioned consultations. Such assessment is made based on EU law requirements and European standards, such as the obligations under primary and secondary EU legislation, the Charter of Fundamental Rights, Council of Europe standards, as well as the case-law of the European Court of Justice and the European Court of Human Rights case law. Each report begins with a factual description of the legal and institutional framework relevant for each pillar, followed by both positive developments and good practices, but also RoL challenges faced by the member states, and ends with recommendations for improvement. The proportionate use of the methodology for preparation of the RoL report is necessary to ensure the respect of the principle of equality of the member states.

Finally, subsequent to the publication of the annual RoL report, it is discussed both at the national level, and at the EU level, by relevant national authorities, EU institutions, CSOs and other relevant stakeholders. They cooperate on the implementation of the recommendations in practice and other follow-up steps necessary for each member state, while the EC begins preparations for the following RoL report.

11 Ibid.

Novelties in the annual RoL report

Since the first annual RoL report was published, four years have passed. During those years, many RoL developments have affected the EU. In addition, various candidate countries for EU accession, including North Macedonia, have entered new phases of the accession process. Hence, the necessity of amending the approach of the RoL report arose in the past years.

The EC responded to such necessity by updating the initial methodology[12] for preparation of the annual RoL report in 2022. Following consultations with the member states and by request of the European Parliament and relevant stakeholders, beginning from 2022, the report also covers new topics that emerged as relevant for ensuring the RoL, such as public service media and an overview of the implementation of judgments of the European Court of Human Rights.[13]

Likewise, from 2022, the country chapters of the reports also include country specific recommendations, aimed at advancing necessary reforms and addressing different concerns raised by the EC in the reports. Such recommendations are intended to be proportionate to the identified challenges and to entice further efforts for improvement by the national authorities. They should also be specific enough in order to allow member states to undertake concrete follow-up measures, as the subsequent RoL reports will also include such measures, or lack thereof.

Two years later, another novelty was announced to be introduced in the RoL report for 2024. Namely, four Western Balkan candidate countries for EU accession will also receive their country chapter in the RoL report: Albania, Montenegro, North Macedonia and Serbia.[14] Such initiative would require the EC to conduct the cycle in more countries than the 27 member states, thus increasing its workload, while on the other hand, providing the candidate countries with the opportunity to participate in this exercise which would be mandatory for them when they become member states in the future. In that direction, it would offer them the possibility of improving their communication with EU institutions, as well as learning valuable lessons from the current member states for enhancing the RoL.

All of the abovementioned novelties in the methodology and the structure of the RoL report have displayed the EC's awareness of the shortcomings of the European RoL mechanism and its wilingness for improvement. It must be acknowledged that this tool has a preventive purpose and as such, it does not produce more concrete results at improving

12 European Rule of Law Mechanism: Methodology for the Preparation of the Annual Rule of Law Report (2020)" (European Commission, n.d.), https://commission.europa.eu/document/download/458663dc-a9e5-4df7-813f-4aa5ee63d4a7_en?filename=2020_rule_of_law_report_methodology_en.pdf.

13 "European Rule of Law Mechanism: Methodology for the Preparation of the Annual Rule of Law Report (2022)."

14 Charles Brasseur, Vera Pachta, and Chiara Grigolo, "Towards an Enlarged Union: Upholding the Rule of Law" (International Institute for Democracy and Electoral Assistance, April 30, 2024), https://www.idea.int/sites/default/files/2024-04/towards-an-enlarged-union-upholding-the-rule-of-law.pdf.

the RoL in the EU member states. In that direction, the conditionality mechanism has been deemed the most effective mechanism in the EU RoL toolbox, as it has immediate and tangible impact and does not require unanimity from all member states to be approved.[15] Nevertheless, there are still some aspects of the RoL report which can be modified for better effects. The new composition of the EC, which will begin its mandate following the EU elections in June,[16] should continue emphasizing the priority of the RoL and thus work on the effectiveness of the annual RoL reports, by increasing their visibility and the public awareness of it, as well as by drafting more specific and detailed recommendations and following their implementation. Additionally, it should consistently report on the violations of the civic space in the country chapters and should involve CSOs more closely throughout the reporting cycle. Finally, the transparency of the consultation process needs to be improved, in order for citizens to be more informed and organizations to be able to contribute to it adequately.[17]

15 Max Griera, "EU Ministers, Candidate Countries Kickstart Rule of Law Reform Talks," EURACTIV, April 30, 2024, https://www.euractiv.com/section/politics/news/eu-ministers-candidate-countries-kickstart-rule-of-law-reform-talks/.

16 Laura Gozzi and Paul Kirby, "Why European Elections Matter and How They Work," BBC, April 28, 2024, https://www.bbc.com/news/world-europe-68899405.

17 "Joint Statement on the European Commission's 2024 Rule of Law Report," International Press Institute *(IPI)* (blog), March 27, 2024, https://ipi.media/joint-statement-european-commission-2024-rule-of-law-report/.

How would the Republic of North Macedonia be assessed if included in the following RoL report?

The inclusion of North Macedonia in the annual RoL cycle, alongside three other candidate countries, would place them on a level playing field with EU member states, giving them a sense of belonging to the EU. However, this exercise also shows them the scrutiny of various RoL aspects presented in the four pillars which awaits them when they become member states. Hence, it would be interesting to see how North Macedonia would be assessed for each of the pillars, by analyzing the findings of the EC in the latest Country Report.[18]

» justice system

The justice system pillar focuses on the independence, quality and efficiency of the justice systems in the EU member states. These criteria ensure the effective enforcement of EU law and the respect for RoL, as well as provide the opportunity for the citizens to exercise their rights prescribed by the law. Currently, the justice system of North Macedonia is considered to be in the middle of some and moderate level of preparation, while in the past year there was no progress in the field of the judiciary.[19] Such assessment made by the EC is the result of concerning developments in the Judicial Council in 2023,[20] as well as the delayed adoption of the new Development Sector Strategy for the Judiciary (2024–2028).[21] Other issues related to the judiciary include the negative impact of retirements of judges on the courts' efficiency, the delays of promotions for higher courts and shortcomings related to the automated court case management information system (ACCMIS) for random distribution of cases in courts. Most recommendations given by the EC have not been implemented yet, the most important of which is to revise the legislative framework and overall functioning of the Judicial Council to enhance its transparency and independence and improve the implementation of the human resources strategies for the judiciary and the prosecution.

18 COMMISSION STAFF WORKING DOCUMENT North Macedonia 2023 Report" (European Commission, November 8, 2023), https://neighbourhood-enlargement.ec.europa.eu/north-macedonia-report-2023_en.

19 COMMISSION STAFF WORKING DOCUMENT North Macedonia 2023 Report."

20 Angela Delevska and Beba Zhagar, "Shadow Report for Chapter 23 for the Period between October 2022 and September 2023" (European Policy Institute (EPI) - Skopje, December 2023), https://epi.org.mk/post/25876?lang=en.

21 "Development Sector Strategy for Justice (2024–2028)" (Ministry of Justice, December 2023), https://bit.ly/3V6UH3t.

» anti-corruption framework

The anti-corruption framework pillar analyzes whether the national anti-corruption policies are effective and identifies the key areas which require anti-corruption measures to be taken by the EU member states. If such measures are effective and transparency and integrity of the state instititutions is improved, it would result in increased citizens' trust in the public authorities. The EC's assessment of the fight against corruption in North Macedonia is identical to the assessment of the aforementioned pillar – the country is in between some and moderate level of preparation and no progress was made in the past year.[22] Delayed and reversed criminal procedures and the expiration of the statute of limitations in high-level corruption cases as a result of the most recent amendments of the Criminal Code[23] have caused such assessment. These amendments also reduced the maximum legal penalties for specific corruption-related criminal offences and hampered the public prosecutor's offices in their investigations and prosecution of such offences. The previous composition of the State Commission for the Prevention of Corruption was deemed proactive in providing public institutions with policy guidance on preventing corruption, however, a new composition began its mandate in February this year[24] and its conduct remains to be seen. EC's recommendations have not been fully addressed yet, and the country needs to focus especially on enhancing the implementation of the National Strategy for Prevention of Corruption and Conflict of Interests 2021-2025[25], considering that only 13% of the activities planned for 2023 were fully implemented, 33% were in the process of implementation, and 54% were not implemented at all.[26]

» media pluralism and freedom

The third pillar titled media freedom and pluralism focuses on the independence of the media regulatory authorities, transparency of media ownership and state advertising in the media, the freedom of the media and the safety of journalists, which contribute to a democratic society and access to information for the citizens. In the area of freedom of expression, North Macedonia is in between some and moderate level of preparation and in the past year, it made limited progress.[27] There have been some positive developments

22 "COMMISSION STAFF WORKING DOCUMENT North Macedonia 2023 Report."

23 "Law Amending and Supplementing the Criminal Code," Official Gazette of the Republic of North Macedonia No. 188/2023 § (n.d.).

24 "The Mandate of the New Composition of the State Commission for Prevention of Corruption Has Begun (Започна Мандатот На Новиот Состав На Државната Комисија За Спречување На Корупцијата)," Official Website of the State Commission for Prevention of Corruption (blog), February 8, 2024, https://bit.ly/43RYxkQ.

25 "The National Strategy for Prevention of Corruption and Conflict of Interest (2021-2025) with Action Plan for Its Implementation" December 2020, https://dksk.mk/wp-content/uploads/2021/01/Nacionalna-strategija-DKSK-KONECNA.pdf.

26 State Commission for Prevention of Corruption, "Annual report on the implementation of the 2021-2025 National Strategy for Prevention of Corruption and Conflict of Interest for the period between 01.01.2023 and 31.12.2023", February 2024, https://bit.ly/4dYUKH9.

27 "COMMISSION STAFF WORKING DOCUMENT North Macedonia 2023 Report."

such as the amendments to the Criminal Code[28] and the adoption of the Law on Civil Liability for Defamation and Insult,[29] which raised the level of legal protection for journalists. However, attacks and threats on journalists have been noted[30] and media independence should be further safeguarded. Likewise, the country needs to continue implementing the EC's recommendations to align the legal framework governing the media with the EU acquis, to finalise the appointments for the public service broadcaster's programme council and the media regulator's council, as well as to continue to promptly address all threats and acts of violence against journalists.

» institutional issues related to checks and balances

The fourth pillar looks at the system of institutional checks and balances in EU member states, which preserves the RoL when functioning efficiently. Topics relevant for this segment include quality and inclusiveness of the national legislative process, the role of Constitutional Courts and independent authorities such as the Ombudsperson, equality bodies and national human rights institutions and the role of CSOs in safeguarding the RoL. While the 2023 Country Report on North Macedonia does not contain such concrete segment, the EC has assessed separate aspects of this topic. The legislative process requires more efficient planning and coordination between the ruling coalition and the opposition parties. Likewise, a misuse of the EU flag was noted, prompting a recommendation of the EC to use it consistently and for laws aiming primarily at aligning national law with the EU acquis.[31]

The noted lack of consensus on important appointments has been remedied following the publication of the 2023 Country report and the composition of the Constitutional Court was completed[32] and three new members of the Commission for Protection and Prevention against Discrimination (CPPD) were proposed to be elected.[33] The memorandum of understanding signed by the Ombudsperson's office and the CPPD has been noted as a positive step forward in the fight against discrimination, with the Ombudsperson's remaining the central authority for promotion and enforcement of human rights, while the CPPD continues to be proactive, despite the lack of financial and human resources.

28 "Law Amending and Supplementing the Criminal Code," Official Gazette of the Republic of North Macedonia No. 36/2023 § (n.d.).

29 " Law on Civil Liability for Defamation and Insult," Official Gazette of the Republic of North Macedonia No. 251/2022 § (n.d.).

30 "AJM published a publication reflecting the tendencies of attacks on journalists and media workers in the last five years" Znm.Org.Mk, June 3, 2022, https://bit.ly/4aIznqO.

31 "COMMISSION STAFF WORKING DOCUMENT North Macedonia 2023 Report."

32 "Ana Pavlovska-Daneva Elected as a Constitutional Judge - the Composition of the Constitutional Court Is Complete," Telma TV, February 8, 2024, https://telma.com.mk/2024/02/08/ana-pavlovska-daneva-izbrana-za-ustaven-sudija-kompletiran-e-sostavot-na-ustavniot-sud/.

33 'The Committee for Appointments and Elections determined the draft list for members of the CPPD and members of other commissions', 24info.Mk, 21 December 2023, https://bit.ly/3O995pc.

Finally, the EC determined that CSOs in the country continue to operate in an enabling environment, albeit it is necessary for the government to increase their inclusion in decision-making processes, as well as for the Council for Cooperation between the Government and Civil Society to restart its work.

Conclusion

Almost four years have passed since the publication of the first RoL report. Naturally, many developments throughout those years have prompted the amendment of its methodology and the introduced novelties show the EC's enthusiasm to perfect this tool and achieve tangible results with it. Nevertheless, it is still a work in progress and it remains to be assessed whether the latest addition of the candidate countries in the reports will lead to improving the RoL prior to their accession. Finally, as the RoL report was introduced to the European RoL toolbox by the previous EC composition, it will be interesting to observe whether the new composition will "sharpen" it or will it treat it as just another tool in the box.

Moving forward, but not far enough: the EU Directive on Combating Violence against Women and Domestic Violence

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In early May, the EU Directive on combating violence against women and domestic violence was adopted. It represents a significant step forward in addressing the pervasive issue of gender-based violence across the European Union. This brief delves into the key aspects of this Directive, the context surrounding it, its significance, and its shortcomings.

Introduction

Gender extends beyond binary categories, and violence against individuals who do not conform to traditional gender norms counts as gender-based violence as well. However, 'gender-based violence' and 'violence against women' are often used interchangeably, as violence against women is typically rooted in gender-based reasons and affects them disproportionately.[34] The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) is the most comprehensive international tool in the field that provides a framework for state parties to prevent violence, protect victims, and prosecute perpetrators of gender-based violence.[35] It defines violence against women as "all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life"; and domestic violence as "all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim".[36]

Violence against women and domestic violence remain persistent and widespread issues across the European Union (EU), affecting millions of women and girls every year. The various forms of such violence often have devastating and long-lasting effects on victims. While some EU legislation touches upon related issues, there has been a need for a comprehensive legal instrument to address the multifaceted nature of gender-based violence.[37] The recent adoption of the EU Directive on combating violence against women and domestic violence[38] signifies a crucial step forward in addressing these pressing issues.

34 'What Is Gender-Based Violence?', Gender Matters - Council of Europe, n.d., https://www.coe.int/en/web/gender-matters/what-is-gender-based-violence.

35 'Council of Europe Convention on preventing and combating violence against women and domestic violence' (Council of Europe, 11 May 2011), https://rm.coe.int/168008482e.

36 'Council of Europe Convention on preventing and combating violence against women and domestic violence', 3.

37 Marta Picchi, 'Violence against Women and Domestic Violence: The European Commission's Directive Proposal', Athens Journal of Law 8, no. 4 (October 2022): 395–408.

38 'EU Adopts First Law Tackling Violence against Women', DW, 7 May 2024, https://www.dw.com/en/eu-adopts-first-law-tackling-violence-against-women/a-69018272.

The need for EU-wide legislation on combating violence against women and domestic violence

The need for EU-wide legislation to address violence against women and domestic violence has been both evident and urgent for many years. Numerous studies and surveys over the past decade have highlighted the pervasive nature of this issue. For instance, an EU-wide survey conducted by the European Union Agency for Fundamental Rights revealed that one in three women in the EU has experienced physical or sexual violence.[39] Additionally, a subsequent Eurostat survey found that over nine in ten rape victims and over eight in ten victims of sexual assault are women.[40] The COVID-19 pandemic further underscored the severity of the problem. During the lockdowns, there were alarming spikes in domestic violence reports, starkly reminding us that women often face the greatest danger from individuals within their own homes.[41]

In addition to the persistent physical violence faced by women, there is a growing concern over cyber harassment targeting women and girls. While cyber violence may be perceived as less significant, its impact is far-reaching.[42] As digital and offline spaces become increasingly interconnected, cyber violence often serves as a precursor to or amplifies violence and victimisation in the physical world. Online platforms have become fertile grounds for a myriad of violent behaviours, including online sexual harassment, image-based sexual abuse (commonly known as 'revenge porn'), the creation and dissemination of deepfakes, various forms of online stalking, the propagation of psychological violence such as online sexist hate speech, online incitement of violence based on sex and gender, etc.[43] Thus, the emergence of new avenues for perpetrators to target and harass women has made it imperative to update legal frameworks to address these evolving non-traditional forms of violence.

The necessity for EU legislation arises from the need for consistency and harmonisation across Member States in addressing violence against women and domestic violence. While individual Member States have attempted to combat these issues through legislation, the varying degrees to which this is done has resulted in disparities in legal

39 'Questions and Answers: The Commission's Proposal for New EU-Wide Rules to Stop Violence against Women and Domestic Violence', European Commission, 8 March 2022, https://ec.europa.eu/commission/presscorner/detail/en/qanda_22_1534.

40 'Violent Sexual Crimes Recorded in the EU', Eurostat, 23 November 2017, https://ec.europa.eu/eurostat/web/products-eurostat-news/-/EDN-20171123-1.

41 'The Covid-19 Pandemic and Intimate Partner Violence against Women in the EU' (European Institute for Gender Equality, 2021), https://eige.europa.eu/publications-resources/publications/covid-19-pandemic-and-intimate-partner-violence-against-women-eu?language_content_entity=en.

42 'Combating Cyber Violence against Women and Girls' (European Institute for Gender Equality, 2022), https://eige.europa.eu/publications-resources/publications/combating-cyber-violence-against-women-and-girls?language_content_entity=en.

43 Adriane van der Wilk, 'Protecting Women and Girls from Violence in the Digital Age: The Relevance of the Istanbul Convention and the Budapest Convention on Cybercrime in Addressing Online and Technology-Facilitated Violence against Women' (Council of Europe, December 2021), https://rm.coe.int/the-relevance-of-the-ic-and-the-budapest-convention-on-cybercrime-in-a/1680a5eba3.

frameworks and protections.[44] This inconsistency creates a landscape of legal uncertainty for victims throughout the EU. By establishing comprehensive EU-wide legislation, a common baseline of rights and protections can be ensured for all victims, regardless of their location within the EU.[45] Importantly, violence against women and domestic violence often transcend national borders, with perpetrators and victims moving freely within the EU. Therefore, EU legislation becomes indispensable in effectively addressing the cross-border nature of these crimes and providing a unified approach to combating them.[46]

44 'Questions and Answers: The Commission's Proposal for New EU-Wide Rules to Stop Violence against Women and Domestic Violence'.

45 Ibid.

46 European Commission, 'Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on combating violence against women and domestic violence' (EUR-Lex, 8 February 2022), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0105.

Building on existing frameworks: the Istanbul Convention and other EU Directives

The Council of Europe Istanbul Convention serves as a cornerstone in international efforts to combat gender-based violence. Adopted in 2011 and in effect since 2014, the Convention mandates signatory states to implement measures for preventing violence, protecting victims, and prosecuting perpetrators. It also includes provisions for monitoring and supporting these efforts through comprehensive data collection.[47] While the EU signed the Convention in 2017, the ratification process was stalled for several years due to legal uncertainties regarding competencies and the lack of consensus among the Member States. The ratification process was finally completed in 2023, with the Convention entering into force in the EU on October 1, 2023.[48] Despite this, several EU Member States have still not ratified the Convention (Bulgaria, Czechia, Hungary, Latvia, Lithuania, and Slovakia).[49] However, the EU ratification does not exempt the remaining Member States from ratifying it themselves,[50] as the EU's limited competences mean that its ratification alone cannot ensure the full and effective implementation of the Convention's provisions across all relevant areas of law and policy affecting violence against women.

There already is some EU legislation that contributes to addressing gender-based violence, including directives on victims' rights, child sexual abuse, human trafficking, and asylum policy.[51] These frameworks provide important protections and support for victims but fall short of comprehensive legislation targeting all aspects of the problem.[52] In March 2022, the European Commission put forward a proposal for a more comprehensive directive aimed at addressing violence against women and domestic violence, which was designated as a priority in the Commission's 2023 work programme.[53] The proposal aimed to achieve the objectives of the Istanbul Convention within the EU's scope by

47 'EU Accession to the Istanbul Convention', EUR-Lex, 12 October 2023, https://eur-lex.europa.eu/EN/legal-content/summary/eu-accession-to-the-istanbul-convention.html.

48 'EU Accession to the Council of Europe Convention on preventing and combating violence against women ('Istanbul Convention')', European Parliament, 20 April 2024, https://www.europarl.europa.eu/legislative-train/theme-a-new-push-for-european-democracy/file-eu-accession-to-the-istanbul-convention.

49 Ibid.

50 'Combating Violence against Women: MEPs Back EU Accession to Istanbul Convention', European Parliament, 10 May 2023, https://www.europarl.europa.eu/news/en/press-room/20230505IPR85009/combating-violence-against-women-meps-back-eu-accession-to-istanbul-convention.

51 Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 on establishing minimum standards on the rights, support and protection of victims of crime; Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims; Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography; Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted; etc.

52 Picchi, 'Violence against Women and Domestic Violence: The European Commission's Directive Proposal', 398.

53 'Legislative Proposal on combating violence against women and domestic violence', European Parliament, 20 March 2024, https://www.europarl.europa.eu/legislative-train/theme-a-new-push-for-european-democracy/file-legislative-proposal-on-gender-based-violence.

complementing and increasing the effectiveness of existing instruments, as it was found that additional EU action was necessary for Member States, regardless of whether they had ratified the Istanbul Convention. Key areas for action included criminalising forms of violence that disproportionately affect women and are insufficiently addressed at the national level, strengthening victims' access to justice and protection, providing tailored support, preventing violence, and enhancing coordination and data collection at both national and EU levels.[54]

The main objective of the proposal was to ensure equal treatment of victims of violence against women and domestic violence across the EU by establishing minimum rules on victims' rights, rules on definitions of specific acts, and penalties for offences.[55] The offences for which harmonised criminalisation was proposed included rape (defined as a penetrative act without consent, emphasising the significance of consent in accordance with the Istanbul Convention), female genital mutilation, cyberstalking, cyber harassment, non-consensual sharing of intimate images, and cyber incitement to violence or hatred based on gender.[56] Notably, the Istanbul Convention does not specifically address the digital realm, so the proposal aimed to fill that gap, among other things. Moreover, the proposal aimed to introduce changes to the Child Sexual Abuse Directive,[57] recognising rape as a further aggravating circumstance and emphasising the lack of consent for children above the age of sexual consent.[58]

54 European Commission, 'Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on combating violence against women and domestic Violence'.

55 Ibid.

56 Ibid.

57 Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography.

58 'Questions and Answers: The Commission's Proposal for New EU-Wide Rules to Stop Violence against Women and Domestic Violence'.

Progress and remaining issues: assessing the new EU Directive

Following extensive negotiations and overcoming various legal and political hurdles, including initial resistance from some Member States regarding specific provisions, the Directive was finalised in early 2024.[59] The Directive outlines the following criminal offences: female genital mutilation, forced marriage, non-consensual sharing of intimate or manipulated material, cyberstalking, cyber harassment, and cyber incitement to violence or hatred.[60] Penalties for these offences are also prescribed, ranging from a maximum term of imprisonment of at least one year for offences such as cyber harassment and non-consensual sharing of intimate material to a maximum term of imprisonment of at least five years for female genital mutilation.[61] Furthermore, the Directive mandates Member States to establish extensive specialist support services for victims, including helplines, shelters and rape crisis centres.[62] Additionally, it requires Member States to implement measures for the prevention of violence and improve reporting mechanisms to tackle under-reporting, including online reporting options, particularly for offences like non-consensual sharing of intimate or manipulated material and cyber incitement to violence and hatred.[63] The Directive's adoption represents a crucial step in ensuring that women across the EU receive equal protection and support, aligning EU law with international standards like the Istanbul Convention.[64]

However, despite including robust prevention measures addressing consent in sexual relationships, the Directive falls short in two crucial aspects. Firstly, the failure to reach an agreement on criminalising rape based on lack of consent at the EU level,[65] as originally proposed, leaves a critical gap. This omission has drawn sharp criticism from civil society, which, while acknowledging positive aspects, finds it unacceptable that some Member States managed to derail the opportunity to adopt a unified definition of rape based on consent.[66] The other shortcoming pertains to undocumented migrant women's protection. While the Directive acknowledges that being undocumented deters migrant women from reporting out of fear of deportation,[67] it lacks provisions safeguarding undocumented women's personal data from being transmitted to immigration authorities.[68]

59 'Legislative Proposal on combating violence against women and domestic violence'.

60 'Directive of the European Parliament and of the Council on combating violence against women and domestic violence', 25 April 2024, 53–56, https://data.consilium.europa.eu/doc/document/PE-33-2024-INIT/en/pdf.

61 Directive of the European Parliament and of the Council on combating violence against women and domestic violence', 57–58.

62 'Directive of the European Parliament and of the Council on combating violence against women and domestic violence', 77.

63 'Directive of the European Parliament and of the Council on combating violence against women and domestic violence', 62.

64 'Commission Welcomes Political Agreement on New Rules to Combat Violence against Women and Domestic Violence', European Commission, 6 February 2024, https://ec.europa.eu/commission/presscorner/detail/en/ip_24_649.

65 'EU Fails to Agree on Legal Definition of Rape', DW, 7 February 2024, https://www.dw.com/en/eu-fails-to-agree-on-legal-definition-of-rape/a-68195256.

66 'Joint Civil Society Reaction to the Adoption of the EU Directive on combating violence against women and domestic violence', ILGA Europe, 7 May 2024, https://www.ilga-europe.org/news/joint-civil-society-reaction-to-the-adoption-of-the-eu-directive-on-combating-violence-against-women-and-domestic-violence/.

67 'Directive of the European Parliament and of the Council on combating violence against women and domestic violence', 23.

68 'Joint Civil Society Reaction to the Adoption of the EU Directive on combating violence against women and domestic violence'.

In conclusion, this Directive was urgently needed to provide a comprehensive framework for preventing violence, protecting victims, and prosecuting perpetrators across the EU. For that reason, its adoption marks a significant milestone. The Directive represents progress in ensuring higher minimum standards and addressing gaps, particularly by criminalising online offences. However, its shortcomings cannot be overlooked. The failure to criminalise rape based on lack of consent at the EU level is deeply concerning, as, without a unified definition of rape, the risk that some instances of sexual violence may go unrecognised and unprosecuted remains very high.

Similarly, the Directive's oversight in protecting the personal data of undocumented migrant women not only leaves a vulnerable population unprotected but also undermines the Directive's overarching goal of ensuring equal protection and support for all victims of gender-based violence. It is important to recognise that the Directive sets minimum standards for combating violence against women and domestic violence across the EU. Thus, while these standards provide a crucial foundation for action, Member States have the autonomy and responsibility to go beyond these minimum requirements to better protect and support victims within their jurisdictions. For instance, despite the Directive's failure to criminalise rape with a consent-based definition at the EU level, Member States that have not yet done so can take proactive steps to adopt consent-based laws within their national legal frameworks. By aligning their legislation with international best practices, they can strengthen legal protections for survivors of sexual violence and send a clear message that rape and sexual assault will not be tolerated under any circumstances. The feedback from civil society underscores the ongoing imperative for vigilance and advocacy to ensure legislative measures adequately address the complexities of gender-based violence. Moving forward, sustained dialogue between policymakers, civil society organisations, and affected communities becomes increasingly vital in refining and fortifying the Directive to better cater to all those affected by the problem. Additionally, continuous efforts to raise awareness, promote education on consent and healthy relationships, and offer comprehensive support for victims remain fundamental pillars of the collective approach to combating gender-based violence.

Judicial Governance: Is there a one-size-fits-all model?

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Introduction

Judicial independence is one of the key elements of the rule of law and is one of the basic fundamental values on which the European Union (EU) is based. Considering the separation of powers and the system of checks and balances, the judiciary acts as a corrective to the executive branch and the actions of the political parties comprising the government. Hence, the courts should protect the rule of law, thus contributing to a democratic society. Additionally, judges are tasked with the obligation and the responsibility to guarantee and enforce the rights of citizens. Their rights cannot be enforced if the courts do not operate independently and adhere to the Constitution and laws. The model of judicial governance is intended to ensure that these two functions of the judicial branch are correctly carried out by independent judges.

In that search for a model of judicial governance which would provide sufficient safeguards for an independent judiciary, most European countries, including North Macedonia, have turned to judicial self-governance by establishing a strong judicial council, which has been promoted by the EU. Although this model might seem adequate to achieve its intended purpose on paper, there are many examples of countries where it has failed to do so. This resulted in the judiciary being separated but not independent from the other branches of power, which led to a lack of judicial ownership over the process of judicial governance.[69] Hence, European countries have explored other models of judicial governance to achieve genuine judicial independence and increase citizens' trust in the court system.

This policy brief focuses on judicial governance, which has a central role in the functioning of democracies. It also discusses the different models of judicial governance represented in EU member states, the challenges they currently face, and the model represented in North Macedonia.

69 Denis Preshova, "Separate but Not Independent: The (In)Compatibility of the Judicial Culture with Judicial Self-Governance in North Macedonia" (Institute for Democracy "Societas Civilis"—Skopje, April 2022), https://idscs.org.mk/wp-content/uploads/2022/05/B5_Separate-but-not-Independent-The-InCompatibility-of-the-Judicial-Culture-with-Judicial-Self-Governance-in-North-Macedonia.pdf, p. 7.

Judicial governance: definition and models

Judicial governance may be defined as the set of institutions, rules, and practices in a jurisdiction that organise, facilitate, and regulate the judicial branch's function of applying the law to concrete cases.[70] This includes oversight of the quality of the court system, allocation of cases to judges, appointment, promotion, and dismissal of judges, imposing disciplinary sanctions on judges, as well as allocation of resources and judicial budget, among others.

There are several different models of judicial governance that have been identified in the EU. Three main models are identified as follows: the judicial council model, the courts service model, and the Ministry of Justice model.[71] When looking at the map of the EU, currently, the most frequent model of judicial governance is the judicial council model (otherwise known as the South European Council model), followed by the courts service model (otherwise known as the North European Council model). At the same time, the least represented is the Ministry of Justice model.[72] However, there are other models of judicial governance beyond these, which have been identified worldwide. These include a model where an administrative entity manages the judiciary, such as a Director of Courts,[73] a Supreme Court model,[74] as well as more decentralised models where the role of court presidents and chief justices is key in regulating and overseeing the courts.[75] Nevertheless, the classification of judicial governance as concrete models is difficult because many countries within the EU and worldwide exhibit differing characteristics, thus making it impossible to identify one of the aforementioned models in those countries. Such systems can be classified as either sui generis or hybrid models.

The following analysis covers the three main models of judicial governance identified in the EU, providing examples of member states for each model to illustrate the challenges and shortcomings they face.

70 Pablo Castillo-Ortiz, "The politics of implementation of the judicial council model in Europe" (European Political Science Review, 2019), https://bit.ly/3QAbkDl, p. 503.

71 Pablo Castillo-Ortiz, "Judicial governance and democracy in Europe" (SpringerBriefs in Law, 2023), https://doi.org/10.1007/978-3-031-20190-5_1, p. 2.

72 Map of EU member states, with the parameter of judicial governance model applied. Judiciary Hub (Democracy Reporting International gGmbH), Available at: https://judiciaryhub.eu/map/.

73 Yair Sagy, Guy Lurie, and Amnon Reichman, "A history of the administration of courts in Israel" (Journal of Israeli History, 2022), https://www.tandfonline.com/doi/full/10.1080/13531042.2023.2235784, p. 356.

74 Gloria Orrego Hoyos, "Judicial power and high courts in Latin America" (Hauser Global Law School Program, New York University School of Law, 2021), https://www.nyulawglobal.org/globalex/Judicial_Power_High_Courts_Latin_America.html.

75 Castillo-Ortiz, "Judicial governance and democracy in Europe", p. 6.

» Judicial council model

The most frequent model of judicial governance in the EU entails the establishment and functioning of an institution independent from the other branches of power—a judicial council. Such an institution bears powers over judicial careers regarding their appointments and promotions, but it may also impose disciplinary sanctions on judges. In addition, it is also responsible for the management of the judiciary. Those powers cover certain aspects, such as the management of the computer software used by the judiciary, receiving citizens' complaints related to the justice system, and management of judicial workloads.[76]

Suppose the judicial council performs its role without allowing any interference from other state institutions or political party figures. In that case, it may be considered the most comprehensive model of judicial governance, albeit not without shortcomings. In general, judicial councils are regulated by national constitutions in order to preserve their independence and prevent frequent changes of their regulation by the executive and legislative branches in case it is prescribed by law. However, such an arrangement also entails a risk. If a genuine need arises to change the composition or role of a judicial council, it would be very difficult to achieve the political consensus required to amend the constitutional provisions regulating it.

A frequent issue concerning judicial councils is their actual independence from the other branches of power. Depending on which institutions appoint the members of the judicial council and whether they have the power to dismiss them, the council might be influenced by the government, the parliament, or the president of the country. Since it bears many powers of judicial governance, it may be pressured by influential members of political parties that hold office to adopt certain decisions regarding judicial careers.

Moreover, there may be judicial corporatism, which occurs when judges on the council make decisions collectively, preventing non-judge council members from expressing their views. This internal influence differs from politicisation, which is an external form of influence over the council. In both cases, the judiciary's overall functioning is jeopardised, and the democratic values of the country may deteriorate, as seen in the countries analysed below.

The Italian Judicial Council represents one of the first examples of this model.[77] The High Council of Magistracy counts thirty members, twenty of which are elected by their peers, while ten are elected by the Parliament. The members of this body cannot be dismissed other than through a disciplinary process, and there is a lack of possibility of immediate re-election. The High Council is tasked with powers regarding recruitment, promotion,

76 Ibid, p. 3.

77 Country profile: Italy. Judiciary Hub (Democracy Reporting International GmbH), Available at: https://judiciaryhub.eu/country/italy/.

transfers and disciplining magistrates, selection and appointment of court presidents, adopting the rules for creating work schedules and drafting opinions on legislation. The 2022 reform[78] of the judiciary in Italy tackles serious concerns about the politicisation of the High Council. On the one hand, the members of the Council elected by the Parliament were selected based on party affiliations rather than merits, opening the door to the risk of politicisation.[79] On the other hand, there have been concerns about the influence of professional associations of magistrates on decision-making in the High Council. Namely, the magistrates were previously grouped based on their membership in those associations. Hence, they could informally influence decision-making through coordinated voting within these groups and vote trading between various groups, ultimately leading to judicial corporatism.[80] These trends have attributed to the low level of perceived judicial independence among Italian citizens.[81] The new rules introduced in 2022 transformed the composition and the manner of election of the High Council, aimed at reducing the influence of political parties and professional associations. The candidates for members of the Council no longer need to collect a minimum of twenty-five signatures from colleagues of the same judicial district. Thus, they do not need to be supported by an association of their peers, and they cannot be members of political parties during their tenure. However, this reform is relatively recent, having been implemented during the elections of Council members in September 2022 for magistrate members elected by their peers and in January 2023 for non-magistrate members elected by Parliament.[82] Thus, it remains to be seen whether it will yield successful results for the independence of this body or if further efforts will be necessary.

In Poland,[83] the National Council of the Judiciary of Poland is composed of twenty-five members, including fifteen judges, four MPs, two senators, one representative of the president of Poland, the first president of the Supreme Court, the president of the Supreme Administrative Court and the Minister of Justice. This body has the power to select and recommend candidates for judicial positions and promotions, to perform professional evaluation of judges, to reassign judges to other posts, to adopt ethical rules and supervise their compliance, as well as to comment on legislative drafts, including on the budget and other legal acts. In 2018, the mandates of the Council members were

78 Francesco Palermo, "Judicial Reform in the Midst of Crisis," Legal Tribune Online, August 2, 2022, https://www.lto.de/recht/justiz/j/judicial-system-reform-italy-overlong-proceedings-judges-independence/.

79 Simone Benvenuti and Davide Paris, "Judicial Self-Government in Italy: Merits, Limits and the Reality of an Export Model" (Cambridge University Press, March 6, 2019), https://www.cambridge.org/core/services/aop-cambridge-core/content/view/6802EA8FD4BCFF18FA18DC35B3D2361C/S2071832200023191a.pdf/judicial-self-government-in-italy-merits-limits-and-the-reality-of-an-export-model.pdf, p. 1657.

80 Simone Benvenuti, "The Politics of Judicial Accountability in Italy: Shifting the Balance" (Cambridge University Press, July 4, 2018), https://bit.ly/3VY1aht, p. 383.

81 "2023 Rule of Law Report - Country chapter on the rule of law situation in Italy" (European Commission, 2023), https://commission.europa.eu/system/files/2023-07/29_1_52611_coun_chap_italy_en.pdf, p. 3.

82 Ibid, p. 4.

83 Country profile: Poland. Judiciary Hub (Democracy Reporting International gGmbH), Available at: https://judiciaryhub.eu/country/poland/.

terminated, and Parliament introduced a new model for appointing judges to the Council.[84] The new Council members were appointed by the previous ruling coalition in Parliament and are perceived as representing and defending their backing party's political interests over the judiciary's independence and integrity.[85] Since 2018, the Council's actions have led to breaches of the European Convention on Human Rights and EU law, contributing to judges' vulnerability to external pressures and affecting their independence and impartiality. Consequently, judges have engaged in various activities to defend themselves from political pressure, forming judicial associations and initiating cases before the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) regarding their status and broader issues.[86]

Following the 2023 parliamentary elections,[87] the new government decided to address the rule of law crisis and reverse the reform of the Council member election process.[88] However, this effort may be hindered by the Constitutional Tribunal, which is perceived as politicised and lacking independence,[89] and by the President of Poland, who is hostile to reforming the judiciary and annulling the changes he endorsed.[90] One of the first steps of this reform was the issuing of a non-binding resolution by the Parliament, which declared the National Council of the Judiciary to lack independence.[91] Subsequently, it concluded the first phase of adopting a law reinstating the procedure whereby the majority of members of the National Council of the Judiciary are elected in secret and direct elections by their peers.[92] The analysis of the judicial council model through Poland's experience shows that although the judicial council is established as an independent body on paper, the reality does not reflect such independence. Political parties may exert influence on the judicial council by appointing its members, exposing judges to pressure, leading to subjective judgments, and ultimately deteriorating the rule of law.

84 Christian Davies, "Hostile takeover: How law and justice captured Poland's courts" (Freedom House, 2018), https://freedomhouse.org/report/analytical-brief/2018/hostile-takeover-how-law-and-justice-captured-polands-courts, p.5.

85 Ibid, p.6.

86 Claudia Matthes, "Judges as activists: How Polish judges mobilise to defend the rule of law" (East European Politics, 2022), https://doi.org/10.1080/21599165.2022.2092843, p. 473-477.

87 Piotr Maciej Kaczyński and Dariusz Dybka, "Liberal Poland is back: The impact on Europe of the 2023 Polish vote," Royal Institute Elcano (blog), February 13, 2024, https://www.realinstitutoelcano.org/en/analyses/liberal-poland-is-back-the-impact-on-europe-of-the-2023-polish-vote/.

88 "Polish Government approves changes to remove political influence over Judicial Council," Notes from Poland, February 21, 2024, https://notesfrompoland.com/2024/02/21/polish-government-approves-changes-to-remove-political-influence-over-judicial-council/.

89 Tomasz Tadeusz Koncewicz, "Why Europe must never forget about the Polish Constitutional Court: On the importance of European institutional memory" Verfassungsblog (blog), July 10, 2023, https://verfassungsblog.de/why-europe-must-never-forget-about-the-polish-constitutional-court/, p. 19.

90 Rob Schmitz, "Poland's judiciary was a tool of its Government. New leaders are trying to undo that," National Public Radio (blog), February 26, 2024, https://www.npr.org/2024/02/26/1232834640/poland-courts-judicial-reform-donald-tusk.

91 "Polish Parliament votes for court reform resolution," Reuters, December 21, 2023, https://www.reuters.com/world/europe/polish-parliament-votes-court-reform-resolution-2023-12-21/.

92 "Polish Parliament Passes Bill to Reverse Previous Government's Reform of Judicial Council," Notes from Poland (blog), April 13, 2024, https://notesfrompoland.com/2024/04/13/polish-parliament-passes-bill-to-reverse-previous-governments-reform-of-judicial-council/.

Such political influence is also present in Bulgaria's Supreme Judicial Council.[93] It previously consisted of two colleges: judicial and prosecutorial. The Judicial College had fourteen members: six elected by judges from among their ranks, six elected by the National Parliament, and two ex officio members—the president of the Supreme Court of Cassation and the president of the Supreme Administrative Court. The Group of States against Corruption of the Council of Europe (GRECO) has raised concerns about the appointment process for members of the Judicial College of the Council, warning that the significant number of members appointed by the national parliament[94] could politicise decision-making and undermine the Council's independence. These members tend to act in line with governmental preferences, raising the question of whether the Council's independence exists only on paper while, in practice, it is captured by the executive.[95] Pursuant to this remark, the European Commission (EC) recommended that Bulgaria change the composition of the Council to include more judges elected by their peers. Initially, the government informed the EC that making such a change would require a constitutional amendment, which could not be easily achieved in the political context at the time.[96] However, to remedy this situation, the Parliament adopted the amendments to the Constitution of Bulgaria in December 2023.[97] These amendments provide for the division of the Supreme Judicial Council into two separate entities, the Supreme Prosecutorial Council and the Supreme Judicial Council, which are intended to exercise their powers independently. The Supreme Judicial Council retained its powers related to appointments, promotions, transfers and dismissals of judges, and it is also tasked with the responsibility of periodically certifying judges, imposing disciplinary penalties, resolving organisational matters relating to court activities, approving the court system's draft budget and overseeing the budget's implementation. The aforementioned remarks on the appointment of the members of the Judicial Council are addressed with the constitutional amendments, which change its composition. There will be fifteen members in the Council, eight of whom will be elected directly by judges, five members will be elected by the National Parliament, and the two ex-officio members will remain the same. It remains to be seen whether these amendments will indeed increase the independence of the Supreme Judicial Council in such a manner for it to be able to exercise its powers in the interest of the citizens and the country and not to comply with the demands of ruling political parties.

93 Country profile: Bulgaria. Judiciary Hub (Democracy Reporting International gGmbH), Available at: https://judiciaryhub.eu/country/bulgaria/.

94 "Fourth evaluation round: Corruption prevention in respect of members of parliament, judges and prosecutors, Second Compliance Report Bulgaria" (GRECO, January 17, 2020), https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/16809981f2, p. 4.

95 Radosveta Vassileva, "The Polish Judicial Council v the Bulgarian Judicial Council: Can you spot the difference?" Verfassungsblog (blog), September 22, 2018, https://verfassungsblog.de/the-polish-judicial-council-v-the-bulgarian-judicial-council-can-you-spot-the-difference/, p. 2.

96 "2023 Rule of Law Report—Country chapter on the rule of law situation in Bulgaria" (European Commission, 2023), https://commission.europa.eu/system/files/2023-07/10_1_52568_coun_chap_bulgaria_en.pdf, p. 8.

97 Iana Fremer, "Bulgaria: New constitutional amendments introduce judicial reform and abolish requirement for senior public officials to hold only Bulgarian citizenship," Law Library of Congress, January 31, 2024, https://bit.ly/4aQItCN.

Another interesting example of the judicial council model is Slovakia,[98] where this institution has been criticised for judicial corporatism for almost two decades. Currently, it consists of eighteen members, with nine judges elected by their peers. The remaining members are appointed by the president of the republic, the government, and the National Council, creating a balance between judges and non-judges on the Council. Hence, it should increase the public control of the judiciary and prevent the judge members from overpowering their colleagues in the Council. Its tasks include proposing candidates eligible to be appointed judges to the president of the republic, as well as candidates to be appointed chairman and deputy chairman of the Supreme Court and the Supreme Administrative Court, deciding on the assignment and transfer of judges, proposing candidate judges who should represent the republic in international judicial bodies to the government, commenting on a draft budget of the courts, issuing the principles of judicial ethics, in cooperation with the bodies of judicial self-administration, participating in the management and administration of the courts, adopting measures to strengthen public confidence in the judiciary, etc.

Before introducing the Judicial Council, the executive held the powers related to judicial careers. Thus, there was great hope that with its work, this institution would relieve the judges of external influences and politicisation. However, once deemed the solution to that problem, this initiative went in a different direction than expected. It contributed to the rise of judicial elites and reduced democratic accountability.[99] Prior to the constitutional amendments in 2020,[100] there were no regulations governing the balance between judges and non-judges on the Council. This led to a predominance of judges: initially, they constituted two-thirds of all members in the first term, increasing to 16 members in the second term.[101] Consequently, judge members had the majority votes in the Council, which led to decisions made based on their interests rather than quality and impartial decisions made in the interests of the entire judiciary and, ultimately, the citizens of Slovakia. While this issue has been tackled with the constitutional amendments, there are still some remaining concerns that have been emphasised by the EC. Namely, the prerequisites for the dismissal of non-judge members of the Council are still not regulated by law, which enables an environment where they might be removed from office prematurely and arbitrarily. The EC has made a recommendation, which has been reiterated in 2023, that the members of the Judicial Council need to be subject to sufficient guarantees of independence regarding their dismissal, considering the European standards on

98 Country profile: Slovakia. Judiciary Hub (Democracy Reporting International GmbH), Available at: https://judiciaryhub.eu/country/slovakia/.

99 Samuel Spáč, Katarína Šipulová, and Marína Urbániková, "Capturing the Judiciary from Inside: The Story of Judicial Self-Governance in Slovakia" (Cambridge University Press, March 6, 2019), https://bit.ly/3zIualL, p. 1741.

100 Peter Čuroš, "Panopticon of the Slovak Judiciary – Continuity of Power Centers and Mental Dependence" (Cambridge University Press, October 27, 2021), https://bit.ly/3zK47dX, p. 1278-1279.

101 Simona Farkašová, "The Constitutional Reform of the Judicial Council in the Slovak Republic from the European Comparative Context" (Bucharest Academy of Economic Studies, June 2022), https://tribunajuridica.eu/arhiva/An12v2/1.%20Simona%20Farkasova.pdf, p. 169.

the independence of judicial councils.[102] However, Slovakia has not yet introduced these legal amendments, arguing that the absence of such regulations has not been exploited in practice. Moreover, achieving the constitutional majority required to adopt such amendments appears impossible in the current political context.[103]

» Courts service model

While the courts service model also entails the presence of a separate institution that manages the judiciary as in the judicial council model, the main difference between these two models is that the courts services' powers are mostly related to court administration and management. In contrast, its powers over judicial careers are much more limited. The courts service model envisages an independent intermediary organisation whose functions are focused on administration (supervision of judicial registry offices, caseloads, flow rates, the promotion of legal uniformity, quality care, etc.), court management (housing, automation, recruitment, training, etc.), and budgeting of the courts.[104]

Accordingly, the courts services have a limited role in the appointment and promotion of judges, as well as in imposing disciplinary sanctions on judges. In the countries that have adopted this model of judicial governance, such roles are vested in independent organs, such as commissions, that function independently from the court service. Hence, it could be argued whether this model is a separate model in itself or a hybrid one encompassing elements of the judicial council model combined with other characteristics. In addition, considering that the court service model does not have all the powers of the judicial council, its effectiveness can be questioned. The decision-making power regarding judicial careers is arguably the most important aspect of judicial governance influencing the overall independence of the judiciary; thus, an adequate regulation of that issue is necessary.

One of the EU member states which has adopted this model is Belgium.[105] There, the High Council of Justice represents the courts service, and it is composed of forty-four members, including judges, lawyers, university professors, and civil society representatives, who hold four-year mandates. This institution is tasked with organising examinations, preparing general guidelines for judicial traineeships and continuous training, external oversight on the functioning of the judicial order and receiving initiatives and providing advice for improving the functioning of the justice system. Additionally, there are two

102 "2023 Rule of Law Report—Country chapter on the rule of law situation in Slovakia" (European Commission, 2023), https://commission.europa.eu/document/download/bbc910bb-df4a-49df-a86e-3b6c7b7ebb83_en?filename=56_1_52633_coun_chap_slovakia_en.pdf, p. 5.

103 "EUROPEAN RULE OF LAW REPORT 2023: Input of the Slovak Republic" (European Commission, July 2023), https://commission.europa.eu/system/files/2023-07/103_1_52820_input_mem_slovakia_en.pdf, p. 2.

104 Michal Bobek and David Kosař, "Global solutions, local damages: A critical study in judicial councils in Central and Eastern Europe" (German Law Journal, 2014), https://bit.ly/49LBKIM, p. 1266.

105 Country profile: Belgium. Judiciary Hub (Democracy Reporting International GmbH), Available at: https://judiciaryhub.eu/country/belgium/.

disciplinary tribunals and two appeal courts, which are competent for trying judges and other members of the judiciary and are tasked to produce reports on disciplinary cases. The challenge that this model faces in Belgium is connected to the linguistic divide in the country and its political system, which is also reflected in the High Council of Justice and has caused blockages in judicial appointments.[106] If not resolved as soon as possible, this issue could affect the functioning of the courts and the quality of justice, as well as lower the public's trust in the court system.

Another EU member state with the same judicial governance model is the Netherlands.[107] However, the distribution of responsibility in the judiciary is much more complicated than in Belgium. In the Netherlands, the Council for the Judiciary is composed of three to five members, and it is tasked with the preparation of budgets for the courts, distributing funds among courts, supervising the implementation of budgets, supporting and supervising the operations at the courts, helping to secure the quality of justice, etc. Each court has its own court management board composed of three members, including a court president, who is responsible for adopting internal regulations on working methods, allocating cases, managing cases, daily managing of the courts, deciding on judicial promotions in district and appeals courts, etc. The National Selection Committee comprises six judges and six non-judge members, and it initially selects the candidate judges. At the same time, the Minister of Justice and Security signs the appointment decision, which is also signed by the King. However, judges do not elect judge members of the governing bodies, such as the Council for the Judiciary, which opens room for influence by the executive branch. Currently, the possibility of amending the selection procedure for Council members to limit the influence of the Minister of Justice and Security is being considered.[108]

106 "Tensions between Dutch and French speakers paralyze the High Council of Justice" La Libre, October 11, 2023, https://www.lalibre.be/belgique/judiciaire/2023/10/11/les-tensions-entre-neerlandophones-et-francophones-paralysent-le-conseil-superieur-de-la-justice-2FINEO2IEFGEPC4WBPXDTGZDLY/.

107 Country profile: Netherlands. Judiciary Hub (Democracy Reporting International GmbH), Available at: https://judiciary-hub.eu/country/netherlands/.

108 "2023 Rule of Law Report - Country chapter on the rule of law situation in the Netherlands" (European Commission, 2023), https://commission.europa.eu/system/files/2023-07/44_1_52625_coun_chap_netherlands_en.pdf, p. 5.

» Ministry of Justice model

The third model of judicial governance, which is the least represented within the EU member states, is the Ministry of Justice model. It is also very different from the two aforementioned models, with the most notable difference being that the institution responsible for governing the judicial system is the Ministry of Justice, as part of the executive branch rather than an independent institution. In such systems, the Ministry of Justice plays a key role in the appointment and promotion of judges and in the court administration and management.[109] Nevertheless, in the countries where this model has been adopted, there has been an increased influence of the judges in judicial governance as a counter-balance to the prevailing influence of the executive branch.[110]

While this is the longest-standing model of judicial governance, its main shortcoming is evident. With the Ministry of Justice as a pivotal actor, there is a risk that the ruling political party could exert control over the judiciary, including decisions on judge appointments and dismissals. This could undermine judicial independence, weaken the system of checks and balances, and ultimately contribute to the erosion of the rule of law in the country.

One of the EU member states that has adopted this model of judicial governance is Germany.[111] It has consistently opposed the judicial council model because establishing such a council where judges elected by their peers have the majority to decide on judicial careers would be unconstitutional. This is because their administrative mandate would not be derived from the German people.[112] Within this model, the federal Ministry of Justice is responsible for administering federal courts, while competent ministries oversee courts at the state level. In addition, the Ministry of Justice is also responsible for judicial appointments, including the appointments of court presidents. Furthermore, there are appointment councils established at the level of the state, which participate in the appointment process by preparing a written opinion containing a judge's personal and professional aptitude. Similarly, at the federal level, an appointment committee is composed of the competent federal minister, state ministers, and members selected by the Bundestag. This committee appoints federal court judges, but its composition raises concerns about the potential politicisation of the process, which could undermine judicial independence.

109 Bobek and Kosař, "Global Solutions, Local Damages: A Critical Study in Judicial Councils in Central and Eastern Europe", p. 1265.

110 Castillo-Ortiz, "Judicial governance and democracy in Europe", p. 4.

111 Country profile: Germany. Judiciary Hub (Democracy Reporting International GmbH), Available at: https://judiciaryhub.eu/country/germany/.

112 Fabian Wittreck, "German judicial self-government—institutions and constraints" (German Law Journal, 2018), https://www.cambridge.org/core/journals/german-law-journal/article/german-judicial-selfgovernment-institutions-and-constraints/6C0EDAD79794CC792C5E7D34DFA14CD1, p. 1946.

While the influence of the executive branch is to a greater extent in Germany, there are still possibilities for judicial participation in judicial governance. There are councils of judges, which participate in all questions relevant to the professional lives of judges, except in the appointment process. However, the powers of such councils depend on the state because they are not regulated at the federal level. Although there are other practices that have been set up in Germany to prevent the undermining of judicial independence and the deterioration of the rule of law,[113] the judicial associations in the country have continued to call for increased judicial involvement through establishing a judicial council. Thus far, there is no movement in that direction aiming at reducing or ending the influence of the government on the judiciary and the appointment of judges to top positions due to their connection to the big political parties.[114]

Another EU member state which has adopted the Ministry of Justice model is the Czech Republic.[115] In this country, a major reform of the selection process in the judiciary has been introduced with the amendments to the Act on Courts and Judges, which entered into force on 1 January 2022.[116] These amendments introduced a new system of selection of judges and court presidents, with the aim of correcting the previous selection method, where the court presidents handpicked judges. In such a process, the court presidents displayed different levels of transparency, and it provided grounds for favouritism and selection based on criteria other than merits, ultimately endangering the independence of appointed judges.

Following the 2022 reform, selection committees now choose judicial candidates and court presidents through open competitions starting in January 2022. The Ministry of Justice is responsible for presenting judicial candidates and recommending high and regional court presidents to the president of the republic for appointment. Furthermore, the ministry appoints district court presidents, makes decisions on promotions and secondments, and prepares the judiciary's budget. The Ministry also initiates disciplinary proceedings together with the court presidents, and disciplinary panels can impose disciplinary sanctions on judges. There are also judicial boards which provide opinions on the promotion and secondment of judges, the court's case load, and the system of case assignment. While relatively recent, the aforementioned reform seems to limit the influence of the court presidents on the judicial selection and reduces the risk of internal pressure on the judges and the risk of diminishing judicial independence. Nevertheless,

113 Anne Sanders and Luc von Danwitz, "The Polish judiciary reform: Problematic under European standards and a challenge for Germany" Verfassungsblog (blog), March 28, 2017, https://verfassungsblog.de/the-polish-judiciary-reform-problematic-under-european-standards-and-a-challenge-for-germany/, p. 3 - 4.

114 "Liberties Rule of Law Report 2024" (Civil Liberties Union for Europe, 2024), https://dq4n3btxmr8c9.cloudfront.net/files/oj7hht/Liberties_Rule_Of_Law_Report_2024_FULL.pdf, p. 248.

115 Country profile: Czech Republic. Judiciary Hub (Democracy Reporting International GmbH), Available at: https://judiciaryhub.eu/country/czechia/.

116 "Fourth evaluation round: Corruption prevention in respect of members of parliament, judges and prosecutors, Second Compliance Report Czech Republic" (GRECO, June 16, 2023), https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680ab9d42, p. 6.

the new appointment system is deemed impractical by presidents of several courts in the Czech Republic because they are not allowed to be members of the selection committees. Thus, they concluded that transparency prevailed over practicality and that new reforms should aim in that direction.[117] Such opinions run counter to efforts to combat favouritism and subjective decision-making within the judiciary, issues that persist in other aspects of judicial governance in the Czech Republic. Specifically, in a case concerning disciplinary action against an enforcement officer, the ECtHR highlighted significant flaws in the Czech criminal justice system, including lack of impartiality and judicial independence, as well as non-transparent judge selection processes.[118] This underscores how subjective relationships and opinions can also influence disciplinary proceedings. It suggests that a more comprehensive reform of the judiciary may be necessary to ensure objective and impartial decision-making.

117 "Liberties Rule of Law Report 2023" (Civil Liberties Union for Europe, 2023), https://dq4n3btxmr8c9.cloudfront.net/files/-3lkvi/Liberties_Rule_of_Law_Report_2023_EU.pdf, p. 138.

118 ECtHR, "Case of Grosam v. the Czech Republic (A.no. 19750/13)," June 1, 2023, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-225231%22]}.

Perceived independence of the judicial governance models

While a universally ideal judicial governance model for every country in the world, or even only in the EU, cannot be identified, the selected models in the countries above may be assessed according to their contribution to the perceived independence of the judiciary in those countries. Effective and independent justice systems are essential for the application and enforcement of EU law and the fundamental values of the EU, as well as for building the trust of the citizens in the judiciary. One informative tool of the EU that measures the parameters of efficiency, quality, and independence of the justice systems in the EU member states is the EU Justice Scoreboard.[119] Its purpose is to aid the member states in improving the effectiveness of their national justice systems by providing data on the abovementioned parameters.

According to the latest data from the EU Justice Scoreboard[120] regarding the countries analysed earlier, the general public perceives the courts and judges in Germany as the most independent, while Bulgaria is seen as having the least independent judiciary, with Poland and Italy closely competing for similar rankings. The Czech Republic is somewhere in the middle of this range, while Belgium and the Netherlands are perceived as having a slightly less independent judiciary than Germany. This data leads to the conclusion that the citizens of the countries having a courts service model or a Ministry of Justice model of judicial governance believe their judicial systems are more independent in comparison to those living in countries with a judicial council model.

119 "EU Justice Scoreboard 2024 Shows That Perception of Judicial Independence Has Improved," European *Commission*, June 11, 2024, https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3164.

120 Figure 51, "2024 EU Justice Scoreboard" (European Commission, June 11, 2024), https://commission.europa.eu/document/download/84aa3726-82d7-4401-98c1-fee04a7d2dd6_en?filename=2024%20EU%20Justice%20Scoreboard.pdf, p. 45.

Model of judicial governance in North Macedonia

As a candidate country for accession, North Macedonia must comply with the EU's values and fulfil the Copenhagen criteria. This includes respecting the rule of law in the country by establishing public institutions that provide quality services for the citizens and function independently from political influence, with the aim of providing adequate conditions for exercising the citizens' rights. In that sense, a functioning judiciary is essential in upholding those rights, and the chosen model of judicial governance significantly impacts its effectiveness. In North Macedonia, a judicial council was introduced through a series of constitutional amendments on the judiciary adopted in 2005,[121] with the institution formally established in 2006. Currently, it comprises fifteen members, of which eight members are judges elected by their peers, three members are elected by the Parliament, and two members are proposed by the president of the Republic of North Macedonia and elected by the Parliament. In contrast, the president of the Supreme Court and the minister of justice are ex officio members of the Judicial Council.[122] It bears all the powers that characterise this model: monitoring and evaluating the work of judges, appointing, promoting and dismissing judges and presidents of the courts, determining the disciplinary responsibility of judges, deciding on the caseload and acting on petitions and complaints of citizens and legal entities concerning the work of judges, presidents of courts, and courts.

The aim of introducing this model of judicial governance in the country was to create an institution that is isolated from the influence of the executive and legislative branches, and that will make decisions regarding judicial careers and the functioning of the courts in an independent manner. North Macedonia was one of the first candidate countries to introduce this type of reform in the judiciary, and it is deemed to have achieved a high level of alignment of its legal framework with the EU standards on judicial independence.[123] Nevertheless, it is evident that the functioning of the judicial system has not substantially improved. There have been past allegations of politically motivated appointments, promotions, and dismissals of judges, along with government and political party influence over high-profile court verdicts.[124] More recently, the former president of the Judicial Council cited pressure from the judicial business elite as a reason for her resignation.[125] Subsequently, a series of concerning events in the Judicial Council beginning

121 Amendment XX-XXX to the Constitution of the Republic of Macedonia (Official Gazette of the Republic of Macedonia No. 107/2005).

122 Law on the Judicial Council of the Republic of North Macedonia (Official Gazette of the Republic of North Macedonia No. 102/2019).

123 Denis Preshova, Ivan Damjanovski, and Zoran Nechev, "The effectiveness of the 'European model' of judicial independence in the Western Balkans: Judicial councils as a solution or a new cause of concern for judicial reforms" (Centre for the Law of EU External Relations, T.M.C. Asser Instituut inter-university research centre, 2017), https://www.asser.nl/media/3475/cleer17-1_web.pdf, p. 25.

124 Ibid.

125 "Crvenkovska with resignation and accusations of influence of the judicial-business elite on the Judicial Council," Telma TV, November 29, 2022, https://telma.com.mk/2022/11/29/crvenkovska-so-ostavka-i-obvinuvanja-za-vlijanie-na-sudsko-biznis-elitata-vrz-sudskiot-sovet/.

in December 2022, including the controversial dismissal of the current President of the Council and the administrative court dispute regarding it, have been noted by the EC.[126] It resulted in the recommendation for the country to revise the legislative framework and overall functioning of the Council in order to protect it from undue political influence and to enhance its transparency and independence. Following this assessment made by the EC, a peer review mission from the EU analysed the work of the Judicial Council and the aforementioned events,[127] after which it prepared a report on the functioning of the Council with forty short-term and medium-term recommendations for improving its work. Seventeen of those recommendations refer to the improvement of the practice and operation of the Judicial Council itself. They can be implemented without any legislative amendments. In contrast, the others encompass constitutional or legislative amendments and refer to the composition of the Council, the responsibility of the members of the Council and the length of their mandate, the procedure and decision for sanctioning judges, as well as other aspects of judicial governance.[128] The current members of the Judicial Council have refused to resign despite the criticism of the EU and the civil society organisations in the country,[129] but have expressed their intent to work on implementing the recommendations received from the peer review mission,[130] by introducing amendments to its Rules of Procedure in that direction.[131]

126 "North Macedonia 2023 Report" (European Commission, 2023), https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_693%20North%20Macedonia%20report.pdf, p. 18.

127 "The peer review mission of the EU for the Judicial Council has ended, measures are expected" 360 Stepeni, September 23, 2023, https://360stepeni.mk/otsenskata-misija-na-eu-za-sudskiot-sovet-zavrshi-se-ochekuvaat-merki/.

128 "The Judicial Council is preparing a new communication strategy," Kanal 5, April 26, 2024, https://kanal5.com.mk/sudskiot-sovet-podgotvuva-nova-komunikaciska-strategija/a637440.

129 "Collective resignation and public election of new members of the Judicial Council are requested by civil society organizations," Radio Slobodna Evropa, June 9, 2023, https://bit.ly/4dcIpi9.

130 "The Judicial Council announces the implementation of the recommendations of the EU peer review mission," Radio Slobodna Evropa, April 26, 2024, https://www.slobodnaevropa.mk/a/32922184.html.

131 Rules of Procedure amending and supplementing the Rules of Procedure on the work of the Judicial Council of the Republic of North Macedonia (Official Gazette of the Republic of North Macedonia no. 117/2024).

Conclusion

This analysis examines eight different EU member states that have adopted one of the three most common models of judicial governance. By reviewing their experiences, it becomes clear that there is no perfect model of judicial governance without shortcomings. Each system has encountered challenges that threaten the rule of law and democracy. Including North Macedonia in this assessment, with its complex issues surrounding the judicial council, reinforces the understanding that no model is flawless. Each country must carefully consider its approach to judicial governance and adapt to current judicial circumstances, aiming to safeguard judicial independence and uphold the principles of the rule of law and democracy in their societies.

Reflections on rule of law instruments in view of EU accession

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Introduction: Fundamentals first – rule of law at the centre of EU enlargement policy

The European Union (EU) has long been committed to promoting democracy, human rights, and the rule of law within its member states and in candidate countries seeking EU membership. These core values are fundamental not only to the EU's internal cohesion but also to its external relations and particularly its enlargement policy, which features a "fundamentals first" approach.[132] The EU has recently opened its door for candidate countries to some of its key rule of law mechanisms and institutions, such as the EU Rule of Law Report, the work of the Fundamental Rights Agency and the European Economic and Social Committee. At the same time, the New Growth Plan for the Western Balkans – a new instrument supporting socio-economic development and EU accession reforms – has placed rule of law at the centre by incorporating a preconditions for the new EU financial support. These recent initiatives showcase the EU's strategic efforts to ensure that rule of law principles are upheld during the region's integration into the EU.

Together, these initiatives highlight the EU's dual approach to fostering both economic growth and democratic governance in the Western Balkans. However, the challenges associated with their implementation underline the need for continuous refinement and support to ensure that these mechanisms achieve their intended impact. This paper explores the opportunities and challenges surrounding the implementation of these instruments and offers recommendations to enhance their effectiveness in promoting stability, prosperity, and adherence to European values in the region.[133]

132 The "fundamentals first" approach in EU enlargement policy prioritizes the establishment of solid foundations in rule of law, democratic governance, human rights, and economic stability before advancing further in the accession process. Its application means that Cluster 1 – Fundamnetals is the first one opened and the last one closed in the accession negotiations. Moreover, progress across all other clusters is conditioned by sufficient progress in the first cluster, making it a "blocking" cluster in the negotiations process.

133 This policy brief is mainly based on the presentations and discussion at the Forum Europaeum 2024. Conference recording is available at: https://www.facebook.com/EPI.Skopje/videos/1419268872121633. References in the text are only provided where other sources are used.

Socialising and Peer Learning: Early participation of candidate countries in the EU's rule of law mechanisms and institutions

Following years of intensive advocacy by the Western Balkan civil society, the EU has opened its rule of law mechanisms to candidate countries. Thus, the 2023 Enlargement Package announced the inclusion of four candidate countries – Albania, North Macedonia, Montenegro and Serbia – into the Rule of Law Report, with the objective of supporting "these countries' reform efforts to achieve irreversible progress on democracy and the rule of law ahead of accession," and guaranteeing "that high standards will continue after accession."[134]. At the same time, the newly introduced accelerated integration measures have made it possible for candidates to start participating in the activities of certain EU institutions and agencies, including the Fundamental Rights Agency (FRA) and the European Economic and Social Committee (EESC), already during the EU accession process. This section of the paper takes stock of the progress made to date and assesses the challenges going forward.

» Progress and Limitations of the EU Rule of Law Report

The Rule of Law Report is designed to monitor and address challenges in four key areas for the rule of law: the justice system, the anti-corruption framework, media pluralism and freedom, and other institutional issues related to checks and balances.[135] It has evolved over the past four years, driven by advocacy efforts from human rights organisations and supported by EU institutions. While there has been progress, it remains slow, underlining the need for a robust negotiating framework to effectively address rule of law issues. A significant development within the mechanism has been the introduction of recommendations in the Rule of Law Report, which aim to facilitate dialogue between civil society, academia, and EU institutions. However, these recommendations often lack precision, which limits their effectiveness in addressing the specific challenges faced by member states.

Comparisons with other preventive tools in the rule of law domain suggest that the Rule of Law Report has potential, but it needs to be sharpened to have a more substantial impact. Initial implementation in some member states revealed minimal involvement from civil society and academia, with meaningful dialogue occurring mostly through the intervention of external actors, such as the European Commission and the Fundamental Rights Agency. To enhance the mechanism's effectiveness, clearer legislative frameworks and processes are needed to ensure more significant public participation in strengthening governance structures across the EU.

134 2024 Rule of Law Report, "The rule of law situation in the European Union," Brussels, 24.7.2024, COM(2024) 800 final, https://commission.europa.eu/document/download/27db4143-58b4-4b61-a021-a215940e19d0_en?filename=1_1_58120_communication_rol_en.pdf, p. 1.

135 European Commission, Annual Rule of Law Cycle, https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/annual-rule-law-cycle_en

The inclusion of a dedicated pillar on fundamental rights within the EU's Rule of Law Mechanism, proposed by the European Parliament,[136] is essential for addressing discrimination and hate speech against minorities. Such a pillar would provide a structured approach to monitoring and combating xenophobia, racism, anti-Semitism, Islamophobia, homophobia, and other forms of discrimination across EU member states and the involved candidate countries. This addition would enhance the specificity and impact of the Rule of Law Report, mitigating the risk of normalising human rights violations and reinforcing the interrelationship between human rights and the rule of law. This approach would also align with Article 2 of the Treaty on European Union (TEU), which enshrines respect for human dignity, freedom, democracy, equality, and human rights and strengthen the EU's commitment to upholding these values consistently across member states and candidate countries. Yet, to achieve this goal, the language of these reports needs to be more precise and less driven by political considerations.

» Benefits of early integration into EU rule of law mechanisms and institutions

Integration into EU mechanisms and institutions in the rule of law area during the accession process presents numerous opportunities and benefits for candidate countries. Most importantly, the European Commission has included four candidate countries in the 2024 Rule of Law Report – Albania, North Macedonia, Montenegro and Serbia – based on their achieved level of preparedness in the rule of law chapters. This initiative by the Commission is seen as an essential step towards improving the protection of human rights and strengthening the rule of law in the future EU member states. The involved candidate countries will benefit from the learning process in reporting according to the standards imposed on EU member states as well as from the benchmarking against the EU peers, rather than just against other candidates. Moreover, its value is also seen in the fostering of a community of common democratic principles and legal standards between member states and candidate countrie

Furthermore, the inclusion of candidate countries, particularly from the Western Balkans, into activities of the Fundamental Rights Agency (FRA) also has multiple benefits. Firstly, the FRA reports provide a structured mechanism for monitoring rule of law standards and identifying deficiencies. Participation in the work of the Agency facilitates learning and cooperation between candidate countries and EU member states. Such a process exposes candidate countries to best practices in human rights monitoring and reporting, helping them align their legal frameworks with EU standards. This exchange of

136 In its Report on the Commission's 2023 Rule of Law Report, the European Parliament stressed the necessity to fight against all types of discrimination, hate speech and crimes specifically targeting minority groups and members of national, ethnic, linguistic and religious minorities. Accordingly, the Parliament called on the Commission "to include a specific new pillar on this in the next report, mapping all forms of xenophobia, racism, antisemitism, islamophobia, anti-gypsyism, LGBTIQ-phobia, hate speech and discrimination across all Member States." The Report is available at: https://www.europarl.europa.eu/doceo/document/A-9-2024-0025_EN.html.

knowledge fosters a shared commitment to democratic values and rule of law principles. Moreover, the detailed FRA reports will enable early detection of the rule of law backsliding and violations of human rights in the associated candidate countries. By identifying and proactively addressing these issues, the EU can prevent their entrenchment and ensure that candidate countries effectively meet the accession criteria. Finally, the engagement of international organisations and external actors has a potential to empower civil society in candidate countries to actively engage in the rule of law reforms by strengthening their capacity to advocate for human rights and participate meaningfully in decision-making processes. This empowerment is crucial to promote transparency, accountability and inclusiveness in governance.

Finally, the initiative of the EESC to involve civil society organisations from the candidate countries in its work also bares significance for the improvement of rule of law in those countries. The EESC aims to encourage dialogue, mutual understanding and cooperation between civil society actors from the candidate countries and the EU institutions in Brussels. Representatives of civil society from candidate countries can establish direct communication with members of the European Parliament, the EC and other EU bodies through the activities of the EESC. By actively participating in the EESC's debates, public hearings and opinion-building processes, members of civil society gain significant experience in the EU's decision-making mechanisms. Such participation of civil society improves its capacity to understand and influence EU policies and prepares its representatives for future roles in their countries' accession process. Considering the fundamental role that civil society plays in the EU dialogue on the rule of law, the integration of the candidates' CSOs into wider European networks allows them to align their advocacy efforts with European standards and practices, strengthening their position in promoting the reforms necessary for EU accession. This system is crucial for facilitating the exchange of knowledge, fostering partnerships and building trust between the various stakeholders involved in the accession process.

Integrating rule of law conditionality into new accession instruments – New Growth Plan for the Western Balkans

The New Growth Plan for the Western Balkans aims to spur economic development and institutional reforms in the region. At its heart is the Reform and Growth Facility, a new performance-based funding mechanism which links financial support to the fulfilment of specific governance criteria and reform actions.[137] Its key component is the conditionality mechanism tied to the rule of law, which seeks to ensure that financial support is contingent upon progress in upholding democratic principles, human rights, and the rule of law. However, the design and implementation of this conditionality present significant challenges that could undermine the Plan's effectiveness.

» Design challenges of rule of law conditionality

The rule of law conditionality embedded in the New Growth Plan is designed to incentivise reforms by linking access to EU funds with the fulfilment of specific governance criteria. However, the effectiveness of this approach is contingent upon the clarity, ambition, and enforceability of the conditions set forth. One of the primary design challenges is **the lack of precision in defining the conditions** that Western Balkan countries must meet to secure funding. The European Court of Auditors has noted that the procedures for withholding funds in case of non-compliance are not sufficiently detailed, leaving room for ambiguity in their application. This vagueness could allow countries to design Reform Agendas that are not ambitious enough to drive substantial change, thereby weakening the overall impact of the conditionality.

Another design issue is the **limited scope of the conditionality** itself. While the plan emphasizes the importance of upholding the rule of law, it does not sufficiently address the broader institutional weaknesses that could hinder the effective implementation of reforms. The plan's focus on procedural compliance, rather than on the substantive outcomes of reforms, risks creating a situation where countries meet the formal requirements without achieving meaningful progress in areas such as judicial independence, media freedom, and the protection of fundamental rights.

Moreover, the conditionality framework relies heavily on the **assumption that compliance with EU standards will lead to automatic economic benefits**. However, the relationship between institutional reforms and economic growth is complex and bidirectional. Even if Western Balkan countries improve their institutional frameworks, economic gains may not immediately follow, especially in the absence of robust economic support measures. This disconnect between institutional and economic progress challenges the effectiveness of the conditionality as a tool for driving comprehensive development in the region.

137 EUR-Lex, Regulation (EU) 2024/1449 of the European Parliament and of the Council of 14 May 2024 on establishing the Reform and Growth Facility for the Western Balkans, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AL_202401449

» Implementation challenges of rule of law conditionality

The implementation of the rule of law conditionality within the Reform and Growth Facility faces several significant hurdles. One of the most pressing is the **weak administrative capacity in many Western Balkan countries**. Even if the conditions for funding are clearly defined, the ability of these countries to meet them depends on their institutional capacity to implement and sustain reforms. The region's historically weak governance structures and limited resources pose a substantial risk to the long-term success of the conditionality framework.

Another implementation challenge is the potential **inconsistent application of the conditionality across different countries and contexts**. The effectiveness of the rule of law conditionality is undermined when the EU applies it unevenly, either due to political considerations or variations in how the conditions are interpreted and enforced. Previous research related to the sub-area "Functioning of Democratic Institutions" revealed that even the Commission's annual assessments lack consistency among the different candidate countries.[138] Such inconsistencies can lead to perceptions of unfairness and reduce the incentive for countries to engage in meaningful reforms. Additionally, the political nature of the enlargement process means that decisions on whether to enforce conditionality may be influenced by broader geopolitical considerations, rather than strictly by adherence to rule of law principles.

The **involvement of civil society in the implementation of the conditionality** is also critical but remains underdeveloped. While the regulation stipulates that Reform Agendas should be developed in consultation with civil society, the actual practice varies widely across the region. In some cases, governments have not adequately involved civil society in the drafting of reform agendas, limiting their ability to hold governments accountable and contribute to the reform process. The next major test for both the European Commission and the Western Balkan governments will come with the establishment of national monitoring committees which will follow the implementation of the Reform Agendas which are expected to include representatives of civil society organisations. Without meaningful civil society participation, the conditionality mechanism risks becoming a top-down exercise that lacks the necessary checks and balances to ensure its effectiveness.

138 Strahinja Subotic and Milos Pavkovic, "Identifying Inconsistencies in the 2022 European Commission's Annual Reports for WB6", European Policy Centre – CEP, Belgrade, September 2023, https://cep.org.rs/en/publications/identifying-deficiencies-in-the-2022-european-commission-s-annual-reports-for-wb6/.

Building on past experience while looking to the future

The EU's engagement with the Western Balkans through initiatives such as integration into its rule of law mechanisms and the introduction of the New Growth Plan reflects its commitment to fostering stability, democratic governance, and economic development in the region. However, the effectiveness of these initiatives hinges on the EU's ability to learn from past experiences and to adapt its strategies to the newly emerging challenges. To enhance the impact of these efforts, it is essential to implement the following recommendations, grouped into two key categories:

I. Strengthening Rule of Law Mechanisms

- **To enhance the effectiveness of the Rule of Law Mechanism, EU institutions, member states and candidate countries should ensure continuous and structured communication, emphasising the importance of ongoing dialogue.**
- **The Commission should address the ambiguity and broad scope of recommendations in the Rule of Law Reports by making them more precise and enforceable, ensuring they are actionable for both member states and candidate countries.**
- **To strengthen the Rule of Law Reports, the Commission should incorporate a specific pillar on fundamental rights, focusing on issues such as non-discrimination, equality, hate speech, racism, and intolerance, while also emphasising the interconnection of these rights with other pillars like judicial independence and anti-corruption measures.**
- **The Commission should conduct a thorough assessment of the Rule of Law mechanism's application in candidate countries, drawing on lessons learned from its implementation in EU member states, to help to enhance its effectiveness.**
- **Civil society organisations should advocate for increased resources and capacity-building efforts by the European Commission, particularly in supporting the national implementation and monitoring of the Rule of Law reports.**
- **Member states and EU institutions should jointly work to enhance the role of the European Commission in monitoring adherence to fundamental rights standards, ensuring consistent and rigorous oversight across all member states and candidate countries.**
- **Candidate countries should utilise participation in the Fundamental Rights Agency as an opportunity to build state institutions' capacities and help align national human rights practices with EU standards in support of the accession process.**
- **Strengthening the engagement of civil society in the Rule of Law Mechanism is key, ensuring their active participation in dialogues and policy discussions, and providing technical assistance to improve their capacity to engage effectively with EU institutions. Both the Commission and EU member states should support such engagement.**

- **The Commission should support local initiatives that empower citizens to participate actively in the reform process as an essential tool to ensure that these reforms address the real needs of citizens and not just EU requirements. This should be stressed as a priority in the dialogue with candidate countries and member states alike.**
- **The Commission should encourage and support civil society organisations in candidate countries to become associate members or observers of European platforms like the European Civil Society Forum in order to promote deeper integration and cooperation.**
- **Building on the recent experience of the European Economic and Social Committee (EESC), the Commission and other EU institutions should further support civil society organisations from candidate countries to contribute to EU policy formulation by enabling their participating in various activities at EU level.**
- **Finally, it is important to ensure that civil society perspectives are integrated into EU assessments and evaluations – those of the European Commission, FRA and other relevant institutions and agencies, thereby improving monitoring, accountability mechanisms, and the overall effectiveness of EU initiatives in the Western Balkans.**

II. Enhancing Conditionality and Economic Support

- **Western Balkan countries should adhere to effective democratic mechanisms, including the multi-party parliamentary system and the rule of law, as well as respect for human rights obligations, including the rights of persons belonging to minorities, all in order to be able to gain access to the funds provided by the Reform and Growth Facility.**
- **Western Balkan countries (both candidates and potential candidates) should consider initiating a joint action or a potential coalition with EU member states, to address the need to increase the funds provided for reforms and economic development, in order to increase the stakes for potential failure to implement the designated reforms and improve the effectiveness of the rule of law conditionality under the Reform and Growth Facility.**
- **Western Balkan governments should conduct mandatory consultations with civil society organisations, national parliaments and other relevant stakeholders in the process of preparing their Reform Agendas under the Reform and Growth Facility. In the implementation phase, it will be of utmost importance to enable participation of CSOs in the national monitoring committees. Their meaningful participation will in turn be dependent on the transparency of all relevant documents generated in the implementation process.**
- **The European Commission should provide a transparent methodology for assessing whether the preconditions for Union support under the Reform and Growth Facility are met. It should also clarify the procedure for withholding funds from the Facility, in case the conditions are violated by a beneficiary country.**

The path to EU integration for the Western Balkans is a complex and multifaceted journey that requires a careful balance of incentives, oversight, and support. By learning from past experiences and implementing these recommendations, the EU can strengthen its approach, ensuring that its initiatives not only promote stability and prosperity in the region but also uphold the fundamental values that are at the heart of the European project. The success of these efforts will ultimately depend on the EU's ability to remain steadfast in its commitment to the region while taking firm steps to protect and uphold rule of law among its own ranks.