

The Annual Rule of Law (RoL) Report: (Still) a Work in Progress

Author:
Beba Zhagar

Skopje, June 2024

This policy brief analyses the annual RoL report, which results from 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.

The European Union (EU) applies various tools 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 contains a set of preventive and corrective mechanisms. The basis for the preventive tools includes reporting and dialogue as a means to identify and quickly resolve RoL challenges,¹ which are structured in the European RoL mechanism, the EU justice scoreboard, and 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 infringement procedure, the conditionality mechanism, the RoL framework, and the Article 7 TEU procedure.³

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 2020⁵ and 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 the 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.

1 Maria Skóra, "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.

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-83ac-05563d8e_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.



The annual RoL report contains individual country chapters for all 27 EU member states. It 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 aimed at assisting member states to overcome the existing challenges and improve the RoL. In addition, there is also another feature announced to be added to the annual RoL report in 2024, which is listed below.

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 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 are 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), the Organisation for Economic Co-operation and Development (OECD), the 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 the national level and to provide updates on the process. This network continues to be a communication channel between the member states and the EC to this day. It meets face-to-face in Brussels or by videoconference 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 civil society organisations (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 offer their opinion on the assessment of the EC on their RoL developments. They are coordinated with the contact persons regarding the timing, the location and the list of relevant 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 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 from 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

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.

11 Ibid.

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 preparing the RoL report is necessary to ensure the respect of the principle of equality of the member states.

Finally, after 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.

New features 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 methodology¹² to prepare the annual RoL report in 2022. Following consultations with the member states and at the request of the European Parliament and relevant stakeholders, beginning in 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 encourage further efforts for improvement by the national authorities. They should also be specific enough to allow member states to undertake concrete follow-up measures, as the subsequent RoL reports will also include an assessment of such measures or the lack thereof.

Two years later, another feature 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 an 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 the abovementioned new features 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 willingness for improvement. It must be acknowledged that this tool has a preventive purpose, and as such, it does not produce more concrete results in improving 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 an 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 emphasising the priority of the RoL and thus work on the effectiveness of the

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>.

¹⁵ Max Grier, "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>.

annual RoL reports by increasing their visibility and 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 for citizens to be more informed and organisations to be able to contribute to it adequately.¹⁷

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 exposes them to the scrutiny of various RoL aspects presented in the four pillars that await 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 analysing 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 citizens the opportunity to exercise their rights as prescribed by the law. Currently, the justice system of North Macedonia is considered to be between ‘some’ and ‘a moderate’ level of preparation. At the same time, 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 the retirement 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 the random distribution of cases in courts. Most recommendations given by the EC have not yet been implemented, 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.

» **anti-corruption framework**

The anti-corruption framework pillar analyses 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 institutions are 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 between ‘some’ and ‘a 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 because of the most recent amendments of the Criminal Code²³ 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

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/>.

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>.

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.).

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. The EC's recommendations have not been fully addressed yet. The country needs to focus especially on enhancing the implementation of the National Strategy for Prevention of Corruption and Conflict of Interests 2021–2025²⁵, 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 citizens. In the area of freedom of expression, North Macedonia is between 'some' and 'a moderate' level of preparation and, in the past year, has made only limited progress.²⁷ There have been some positive developments, such as the amendments to the Criminal Code²⁸ 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 noted³⁰ 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 to this segment include the 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 include such a concrete segment, the EC has evaluated various aspects of this subject. The legislative process requires more efficient planning and coordination between the ruling coalition and the opposition parties. Additionally, inappropriate use of the EU flag was observed, leading to a recommendation from the EC to utilise it consistently and for laws primarily aimed at harmonising 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. Likewise, the composition of the Constitutional Court was completed³² 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 remaining the central authority for the promotion and enforcement of human rights. At the same time, the CPPD continues to be proactive despite the lack of financial and human resources.

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.

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/43RYkQ>.

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."

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/4alznq0>.

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/30995pc>.

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 features 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 treat it as just another tool in the box.

