



CEPS ENGAGE FELLOWSHIP

National Event, Skopje, Republic of Macedonia

The Rule of Law: Where Are We Heading?

14-15 September 2017
Hotel Aleksandar Palace, Skopje

PANEL DESCRIPTIONS



PANEL I: Transparency and the Rule of Law

This Panel assesses the rule of law and the good governance state of affairs by taking the perspective of transparency. Governance in this panel will be considered as per the World Bank explanation: "Governance consists of the traditions and institutions by which authority in a country is exercised. This includes the process by which governments are selected, monitored and replaced; the capacity of the government to effectively formulate and implement sound policies; and the respect of citizens and the state for the institutions that govern economic and social interactions among them." In that sense the World Bank structures good governance in six dimensions: voice and accountability; political stability and absence of violence; government effectiveness; regulatory quality; Rule of Law; and the control of corruption.

This panel examines the options for the rehabilitation of the Western Balkan's loss of rule of law. The visible deterioration of the institutions, and in particular of transparency, accountability and regulatory quality has been broadly observed. It has however become clear during recent years that this deterioration led to the dislocation of the entire fabric of the liberal democracy. For the past few years conditions have been highly abnormal. The road towards illiberal democracies and the maintenance of the 'hybrid regimes', by trading democracy for stability, engulfed all aspects of national economies of the Western Balkans. Transparency is an important value to assess when plotting a way back to Rule of Law, both for societal and economic purposes.

Each panellist will give a reflection on the transparency and rule of law from different points of view. We will hear from the practice of the Constitutional court in Macedonia and the human rights perspective but also from the perspective of the fiscal social contract in parliamentary democracy and how instruments like fiscal councils could increase fiscal transparency and make the good governance more stable. The European fiscal board experience in this context is an interesting contribution to the discussion.

PANEL II: Criminal justice and mutual trust in the Western Balkans and the EU

The enforcement of the Rule of Law is a crucial accession criterion. Emphasis is placed on judiciary reform including the modernisation of the institutional setup, upgraded infrastructure, impartiality and independence, professionalism, judicial trainings or the establishment of autonomous judicial councils. Criminal justice reform plays a pivotal role, including the fight against organized crime and a promotion of dealing with past injustices, among others by way of cooperation between Western Balkan states and the International Criminal Tribunal for the Former Yugoslavia. Experts will discuss the details of EU influence and its efficiency in the area of justice reform in the Balkans.

Moreover, this panel will also look at the situation inside the EU, especially on how Rule of Law deficiencies impact on mutual trust between the member states. While future member states are vetted for their compliance with these values *before* they accede to the Union, no similar method exists to supervise adherence to these foundational principles *after* accession. This has implications on the principle of mutual recognition in the EU criminal justice setting, according to which judicial decisions taken in one member state should automatically be accepted across the Union. Mutual recognition presupposes mutual trust, suggesting that all member states share foundational EU values, i.e. their legal systems are based on the rule of law, they respect human rights and judicial decisions are the outcome of a fair process. EU history has however proven that mutual trust was premature and unjustified: certain member states notoriously disrespect the dictates of the rule of law or engage in systemic human rights violations. States, which adhere to EU values find themselves between a rock and a hard place: they either adhere to mutual recognition based laws and thereby become responsible for the proliferation of rule of law problems and human rights abuses, or they disrespect EU secondary laws. During the workshop experts will discuss how the EU's rigid insistence on mutual trust puts into jeopardy the operation of mutual recognition based instruments, but also the whole body of EU law and values underlying EU integration. Experts will also dedicate analysis to the current views and implications on the establishment of the European Public Prosecutor Office (EPPO). Central parts to the analysis on EPPO will include the scope of financial crimes that will fall under its jurisdiction, its relationship to the national court systems, and the broader context of the policy on the fight against financial crimes in the EU.

Panel III: Balkan Spring – Can the EU end the Rule of Law stalemate?

The regime classification of Western Balkans countries according to the Freedom House “Nations in Transit” 2016 varies from “semi-consolidated democracy” (Serbia and Montenegro) and “hybrid regime” (Albania, Macedonia, Bosnia & Herzegovina), to “semi-consolidated authoritarian regime” in the case of Kosovo. The region’s EU membership perspective has been an important driving force for reforms and consolidation of democracy in the first decade of the new millennium. The rule of law is a fundamental value on which the EU is founded and which is at heart of both the Enlargement Process and of the Stabilisation and Association Process. Following Croatia’s accession in the EU (2013), the level of preparedness of Western Balkans countries suggested that there would be no new enlargement of the Union in the near future. The rise of populism in EU member states, enlargement fatigue and other crises facing the EU, led to a loosened focus on the Western Balkans region over the past five years and, on the other hand, higher activity as a response.

The Berlin Process launched in 2014 as an “alleviating carrot” didn’t always succeed to keep alive the region’s commitment to EU accession reforms, including the rule of law. While underlining EU’s commitment and engagement at all levels to support them in conducting EU-oriented reforms and projects, European Council conclusions (March 2017) made reference to the fragile situation in the western Balkans in the light of internal but also external challenges the region is facing. Opinion-makers argue that Russia and Turkey are united in their efforts to reduce the influence of the EU in the Balkans. In addition to the Turkish investments which play a role especially in Bosnia and Kosovo, Turkey has successfully pushed some countries in the region to act on representatives of the Gülen movement (Albania, Macedonia). Russia on the other hand has long invested in the region’s instability or distance from the Western countries (EU and NATO). Russian intelligence was said to be implicated in a failed coup in Montenegro last year while it has been stocking discord in Macedonia since 2008.

The International Crisis Group argues “the Balkans are a part of the ongoing geopolitical contest, but local sensitivities are much stronger drivers of events and risks in the region than geopolitics: the EU therefore should concentrate on local sources of instability, which often are linked to ruling parties’ refusal to give up power despite losing elections”.

In December 2016 the European Council acknowledge that all western Balkan countries have to act more vigorously on rule of law reforms whereas Montenegro is the only membership aspirant where the legal framework in the area of the rule of law is largely complete and the institutional set-up is in place.

In light of this, the following questions are discussed in this panel: 1) How do current political reflections on the future of the EU respond to the needs and challenges the WB is facing nowadays? 2) Can a stronger EU engagement with the WB countries help the region to embark on an irreversible path of rule of law and development reforms? 3) How to revive EU’s transformative power in the western Balkans and what are the challenges ahead to ensure stability (security) and democracy (accountability and good governance) in the WB region, and 4) What will be the future of the WB “security communities” with different interests and “attitudes” towards western (EU/US/NATO) and Russian or Turkish influences?

PANEL IV: Civil society responses to Rule of Law crises and democratic backsliding

Over the last several years, the trend of democratic backsliding - the so-called reversion toward authoritarianism based on non-democratic values and lack of respect for the rule of law and basic fundamental freedoms - could be observed in countries of Eastern Europe and Western Balkans.

The governments of, among others, Poland, Hungary, Serbia and Macedonia have adopted changes posing systemic threat to the rule of law and democratic mechanisms of check-and-balances. These changes have effected not only the independence of judiciary or media freedom, but also the operational space of the civil society. This trend, followed by smear campaigns against particular civil society organizations, has created a climate of mistrust toward the sector in society that threatens the future effectiveness and fundraising capacity of these organizations. At the same time, however, the civil society organizations have shown their strength and impact on public life by mass mobilizations in protests against controversial reforms (like e.g. last protests in Poland in July 2017), carrying out strategic litigation and creating their own discourse.

The invited speakers will present their diagnosis on the role and impact of the civil society organizations and how they have responded to the challenges related to rule of law crisis. The discussion will also concentrate on the potential role of the European Union's role in supporting the civil society organizations in their efforts to response the trend of democratic backsliding.