

From Transformation to Consolidation of the State: Challenges of the Rule of Law in the Western Balkans

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Abstract

Democratic societies must adhere to the Rule of Law to ensure that every individual—including the government—responsible to the law. This research looks at the obstacles the Western Balkans encountered in defending the rule of law as they integrated into the European Union, concentrating on the discrepancy between the EU's high standards and the institutional capabilities of the area. This study examines the theoretical underpinnings of the Rule of Law as they relate to Western culture and European history, employing qualitative research methodologies. It also examines the integration processes and changes that have taken place in the Western Balkans. The qualitative analysis concludes that although the Western Balkans need the Rule of Law, existing EU policies might risk being ineffective. It recommends implementing more adaptable and encouraging systems to create the fundamentals of the Rule of Law in these countries, promoting steady advancement towards EU integration. This article offers a critical evaluation of the EU's strategy, highlighting the necessity of customized, situation-specific tactics.

Keywords: Rule of law, governance, accountability, transparency, human rights

Introduction

The Rule of Law offers a framework for citizen empowerment in developing nations where social change and inclusive development are facilitated by civic involvement. It ensures that individuals have the freedom to express their opinions, assemble peacefully, and participate in political processes without fear of repression or retaliation (Grimm 2021). Upholding the principles of legal equality and procedural fairness, the Rule of Law encourages active citizenship and promotes accountability in decision-making processes.

Lastly, the Rule of Law plays a transformative role in shaping the trajectory of development in a developing society. By promoting economic stability, protecting human rights, fostering good governance, and empowering citizens, the Rule of Law lays the groundwork for sustainable progress and social justice. While

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challenges may abound, its enduring importance as a driver of positive change cannot be overstated in the pursuit of a more prosperous, equitable, and democratic future.

Theoretical framework of the Rule of Law notion

The historical evolution and philosophical foundations of the Rule of Law trace back to ancient civilizations and have evolved over centuries to become a cornerstone of modern legal systems. Understanding its historical context and philosophical underpinnings is essential for comprehending its significance in contemporary societies. The concept of the Rule of Law has ancient roots, with early civilizations developing rudimentary legal systems to regulate behavior and resolve disputes. In ancient Mesopotamia, for example, the Code of Hammurabi established principles of justice and accountability, albeit in a hierarchical society where laws applied differently to different social classes (Kett, 1941). In ancient Greece, the concept of *nomos* (law) emerged as a fundamental aspect of civic life, with philosophers like Plato and Aristotle exploring the relationship between law, justice, and governance. The Roman Republic further refined legal principles, with the notion of "rule by law" (*imperium legum*) ensuring that even rulers were subject to legal constraints. The Magna Carta of 1215 is a landmark document in the evolution of the Rule of Law, establishing the principle that even monarchs are bound by law and subject to legal restraints (Turner). It laid the groundwork for constitutional governance and the protection of individual rights against arbitrary exercise of power (Worcester, 2010). The Enlightenment period saw significant advancements in the philosophical underpinnings of the Rule of Law. Thinkers like John Locke and Montesquieu emphasized the importance of limited government and separation of powers as essential safeguards against tyranny (Bergman, 1991). Their ideas laid the groundwork for the constitutionalism and democratic governance that emerged in the following centuries.

Legal positivism, social contract theory, and natural law are the philosophical pillars of the Rule of Law. Theorists of natural law argue that morality, justice, and fairness are universal concepts upon which laws ought to be founded. Hugo Grotius and Thomas Aquinas, among others, established the foundation for this viewpoint by arguing that laws must uphold higher moral norms in order to be legitimate. The Social Contract idea holds that people choose to be governed by voluntarily giving up some of their natural rights in exchange for safety and security. It was made popular by philosophers including Thomas Hobbes, John Locke, and Jean-Jacques Rousseau. According to this view, legitimate political authority arises from the consent of the governed, and laws must be based on the will of the people to be just and valid (Lloyd & Sreedhar,

2002). From another perspective, legal positivists, such as Jeremy Bentham and John Austin, reject the idea of natural law and argue that the validity of laws depends solely on their source (e.g., enacted by a legitimate authority) rather than their moral content. According to this view, laws are binding irrespective of their ethical merit, and adherence to legal rules is essential for maintaining social order and stability (Schofield, 2013). The historical evolution and philosophical foundations of the Rule of Law demonstrate its enduring significance as a principle of governance and justice. Rooted in ancient legal traditions and shaped by centuries of philosophical inquiry, the Rule of Law serves as a bulwark against arbitrary power, promotes justice and accountability, and underpins democratic governance in modern societies. Understanding its historical and philosophical roots is essential for appreciating its importance and guiding its application in contemporary legal systems. The Rule of Law is grounded in the belief in the inherent dignity and equality of all individuals. Philosophers such as Thomas Hobbes, John Locke, articulated theories of natural law and social contract, which underpin the Rule of Law by positing that laws should be based on rational principles and serve the common good. Legal positivists like Jeremy Bentham and John Austin emphasized the importance of clear, ascertainable laws as essential for a functioning legal system.

The fundamental principle of the Rule of Law is legal equality, which states that every person is equal before the law regardless of status, position, or attributes (Méndez Reátegui and Sumar Albuja 2020). It represents the notion that everyone is subject to the same legal requirements and procedures and that no one is above the law. Legal equality generates social cohesion and builds trust in the legal system by ensuring justice and impartiality in the application and administration of laws.

At its core, legal equality encompasses several key aspects. Legal equality requires that laws apply uniformly to all individuals, without discrimination based on factors such as race, gender, religion, ethnicity, or socio-economic status. It ensures that everyone enjoys the same rights and freedoms under the law and is entitled to equal protection of their legal rights (Malika, 2011). Legal equality mandates that individuals be treated equally in legal proceedings, regardless of any personal characteristics or affiliations. This includes equal access to justice, fair treatment in legal proceedings, and equal opportunity to present evidence and arguments in court. Legal equality extends to accountability for one's actions. It means that everyone, regardless of their position or influence, is accountable for complying with the law and for any violations thereof (Gribnau, 2013). This principle ensures that no individual or entity is exempt from legal consequences based on their status or connections. Legal equality prohibits discriminatory

practices in all aspects of the legal system, including legislation, law enforcement, and adjudication. It requires that laws and policies be enacted and enforced in a manner that promotes equal rights and opportunities for all individuals, irrespective of their background or characteristics. Maintaining the values of justice, equity, and human dignity in society requires legal equality. It establishes a framework for safeguarding individual liberties and making sure the law treats them with decency and respect. Furthermore, by encouraging a sense of confidence and faith in the legal system, legal equality strengthens respect for the rule of law and contributes to social cohesion. But achieving and preserving legal equality can be difficult, especially in countries where widespread prejudice, bias, or discrimination exist (Gribnau, 2013). Addressing these challenges requires ongoing efforts to promote awareness, educate stakeholders, enact, and enforce anti-discrimination laws, and promote diversity and inclusion in all aspects of society. In summary up, legal equality is an essential aspect of the Rule of Law that assures accountability, impartiality, and justice in the judicial system. It is critical for preserving the rule of law in society, fostering unity within communities, and defending the rights and dignity of individuals. Societies may construct a more just, inclusive, and equitable legal framework for all people by working toward and supporting legal equality.

Legal certainty promotes stability, encourages investment, and facilitates peaceful resolution of disputes. A fundamental principle within the Rule of Law framework ensures individuals have clear, predictable, and accessible laws to govern their conduct. It provides stability and confidence in the legal system by establishing a framework in which individuals can understand their rights and obligations, make informed decisions, and resolve disputes effectively (Berteau, 2008). Legal certainty is essential for promoting fairness, facilitating economic activity, and upholding the rule of law within society.

Legal certainty requires that laws and regulations be clear, unambiguous, and easily accessible to the public. Individuals should be able to understand the content and implications of the law without the need for specialized legal expertise. Clear and accessible laws promote compliance and reduce the likelihood of legal disputes arising from misunderstandings or ambiguities. Legal certainty ensures that laws are applied consistently and predictably over time (Neuhaus, 1963).

Legal certainty requires that laws be applied consistently and uniformly across similar cases and circumstances. Consistency in legal interpretation and application helps prevent arbitrary or discriminatory treatment and promotes confidence in the fairness and impartiality of the legal system. It also facilitates the resolution of disputes by providing clear precedents and standards for

decision-making. Legal certainty promotes stability in legal frameworks by limiting frequent changes or retroactive application of laws. Stability in legal rules and procedures allows individuals and businesses to plan and make long-term investments with confidence, knowing that the legal landscape will remain relatively constant over time. Legal stability contributes for fostering economic growth, attracting investment, and promoting social development. Legal certainty requires that judicial decisions be reasoned, transparent, and based on established legal principles (Neuhaus, 1963). Clear and well-reasoned judgments help individuals understand the legal reasoning behind court decisions and ensure consistency in judicial interpretation. Judicial clarity enhances public confidence in the legal system and promotes respect for the rule of law.

Legal certainty is essential for upholding the rule of law and ensuring that societies operate in a fair, predictable, and just manner. By providing clear, accessible, and predictable laws, legal certainty promotes compliance, reduces uncertainty, and fosters confidence in the legal system. It is a foundational principle that underpins the effectiveness and legitimacy of legal systems worldwide (Berteau, 2008).

Adherence to fair and transparent procedures in legal processes guarantees that justice is not only done but seen to be done. This includes the right to a fair trial, due process, and access to legal representation. Procedural fairness, also known as procedural justice, is a fundamental principle within the Rule of Law framework that ensures the fairness, transparency, and integrity of legal processes.

Legal procedures must be coordinated by independent decision-makers who are free from partiality and conflicts of interest to ensure procedural fairness. To guarantee that all parties to a legal issue are treated equally and get a fair hearing, judges, magistrates, and other adjudicators have to enforce the law objectively and without favoritism (Lemons & Jones, 2001). According to Cremer and Blader (2006), procedural justice ensures that people are given sufficient notice of court proceedings, the chance to defend themselves, and the chance to address any accusations made against them. This involves having access to legal guidance, being made aware of the accusations or declarations, and having the chance to provide evidence and arguments in favor of their stance. Procedural fairness requires that legal procedures be fair, transparent, and consistent with established legal principles and standards. This includes adherence to due process requirements, such as the right to a fair trial, the presumption of innocence, the right to confront witnesses, and the prohibition of coerced confessions or evidence obtained through torture or ill-treatment. Procedural fairness mandates that decisions made by judicial authorities be reasoned, transparent, and based on relevant evidence and legal principles. Judges and adjudicators must provide clear

and well-reasoned judgments that explain the legal basis for their decisions and demonstrate impartiality and adherence to procedural rules. The concept of procedural justice includes guarantees that people have appropriate access to the courts and other conflict resolution processes. This entails the provision of legal aid for individuals who cannot afford representation, the availability of inexpensive legal services, and the presence of alternative dispute resolution procedures. In broad terms, procedural justice serves protection of the rule of law and guarantees that court cases are handled fairly, openly, and in accordance with basic justice and human rights standards (Vidmar, 1990). Procedural fairness supports public trust in the legal system and aids in the upholding of individual rights and freedoms by guaranteeing people's rights to a fair trial and due process.

The Rule of Law necessitates that those in authority are answerable for their actions. This includes government officials, institutions, and private entities. Accountability helps prevent abuse of power and fosters trust in public institutions. Accountability is a fundamental principle within the Rule of Law framework that ensures individuals, organizations, and institutions are held responsible for their actions, decisions, and conduct. It embodies the idea that those in positions of authority, whether in government, private sector, or civil society, are answerable for their actions and are subject to oversight, scrutiny, and consequences for any wrongdoing or failures to meet their obligations (Stapenhurst, n.d.). Accountability requires transparency in decision-making processes, actions, and outcomes. This includes the disclosure of information to the public, stakeholders, or oversight bodies to ensure that decisions are made openly and with proper consideration of relevant factors. Transparency promotes public trust and confidence in the integrity of institutions and fosters accountability by enabling scrutiny and oversight of decision-makers. Accountability entails holding individuals, organizations, or institutions responsible for their actions and decisions. This involves clearly defining roles, duties, and obligations, and establishing mechanisms to ensure that those entrusted with authority are accountable for fulfilling their responsibilities (Grant & Keohane, 2005). Responsibility may be enforced through legal mandates, ethical codes of conduct, or professional standards that govern behavior and conduct. Accountability requires individuals and institutions to answer for their actions, decisions, and performance. This may involve providing explanations, justifications, or evidence to demonstrate compliance with legal, ethical, or organizational standards. Answerability ensures that decision-makers are held to account for their conduct and that there are mechanisms in place to address concerns, grievances, or violations of rights or regulations. Accountability involves oversight and monitoring mechanisms to evaluate performance, detect

wrongdoing, and ensure compliance with legal and ethical standards (Galindo, 2010). This may include internal mechanisms such as audits, reviews, or performance evaluations, as well as external oversight bodies, such as regulatory agencies, ombudsmen, or independent commissions. Oversight and monitoring help identify weaknesses or areas for improvement and hold decision-makers accountable for their actions. Accountability requires that there are consequences for failures to meet obligations or for misconduct (Smyth, 2007). This may include disciplinary action, legal sanctions, or other remedial measures to address wrongdoing, prevent recurrence, and restore trust and confidence in the affected institution or individual. The consequences serve as a deterrent to misconduct and promote compliance with legal and ethical standards. Overall, accountability is essential for upholding the rule of law, promoting good governance, and ensuring that individuals and institutions are held to account for their actions and decisions. By fostering transparency, responsibility, answerability, oversight, and consequences, accountability strengthens democratic institutions, promotes integrity and trust in public service, and protects the rights and interests of individuals and society.

Transparency enables citizens to understand and participate in the legal system, fostering a culture of informed citizenship. Legal transparency is a crucial aspect of the Rule of Law that emphasizes openness, accessibility, and clarity in legal systems and processes. It ensures that laws, regulations, and governmental actions are easily understandable, readily accessible, and available to the public. Legal transparency promotes accountability, fosters trust in institutions and empowers individuals to understand and participate in the legal system effectively (Fox, 2007). Legal transparency requires that laws, regulations, and legal procedures be easily accessible to the public. This includes making statutes, regulations, court decisions, and other legal documents available in a format that is understandable and easily accessible to all individuals, regardless of their level of education or expertise in law. Legal transparency entails openness and public scrutiny in government decision-making processes. This includes transparency in legislative proceedings, administrative rule-making, and judicial proceedings, ensuring that decisions are made openly and with proper consideration of relevant factors. Openness promotes public trust and confidence in the integrity of government institutions and fosters accountability by allowing for public scrutiny and oversight (Carothers & Brechenmacher, 2014). Transparency and oversight help prevent corruption, abuse of power, and violations of rights, thereby strengthening the rule of law and promoting good governance (Carothers & Brechenmacher, 2014).

Challenges of the Rule of Law in the Western Balkan countries

As requirements for membership, the European Union (EU) has set rigorous requirements for economic stability, rule of law, and governance. It has proven to be an immense challenge for the Western Balkans—Albania, Bosnia & Herzegovina, Kosovo, Montenegro, North Macedonia, and Serbia—to comply with these requirements. This study looks at whether the EU's demands are achievable given these nations' current capabilities and considers how these demands may affect their progress toward EU membership. All the countries are under the status of partly free until 2024, reflecting the challenges of implementation of the rule of law as a societal part of WB countries. The Freedom House index is used as referenced source by European Union Reports. As well is used in this research as part of the methodology.

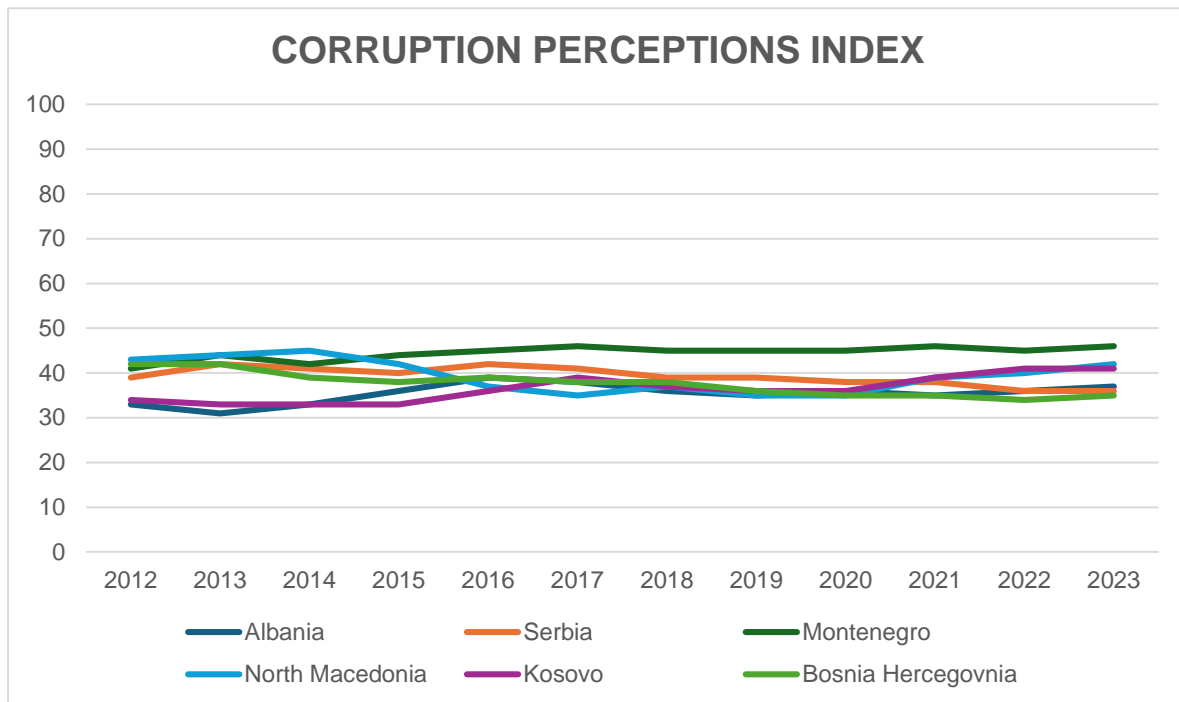
Countries	2017	2018	2019	2020	2021	2022	2023
Serbia	76/100	73/100	67/100	66/100	64/100	62/100	60/100
Montenegro							
North Macedonia	57/100	58/100	59/100	63/100	66/100	67/100	67/100
Albania	68/100	68/100	68/100	67/100	66/100	67/100	68/100
Bosnia and Herzegovina	55/100	55/100	53/100	53/100	53/100	53/100	52/100
Kosovo	52/100	52/100	54/100	56/100	54/100	57/100	60/100

Source: Freedom House, WB countries, <https://freedomhouse.org/>

The primary requirements for membership have been established in the EU's Copenhagen Criteria, which centers on three key areas. First and foremost, it is critical to have strong institutions that uphold democracy, the rule of law, human rights, and minority protection (Hoxha, 2013). These institutions serve as a foundation of a democratic state and guarantee the fair and open governance of justice. Second, there needs to be a functioning market economy that can withstand pressure from competition within the EU (Veebel, 2011). This guarantees the ability of newly joined states to economically integrate and enhance the economy of the Union as a whole. Thirdly, it is imperative to embrace the *acquis Communautaire*, which entails embracing the complete set of EU laws and regulations. Coherence and consistency within the Union are guaranteed by this legal alignment.

These requirements indicate the EU's dedication to upholding rigorous standards among its constituents, guaranteeing that newcomers can both contribute

to and profit from the Union. The demanding nature of these requirements, however, raises the question of how prepared and able the Western Balkan nations are to meet them (Antczak, Antczak, Paczynski, Kostrzewa, & Markus, 2007). There may be serious obstacles arising from the discrepancy between the EU's expectations and the actual conditions in these nations. The institutional discrepancies that afflict many Western Balkan countries make it extremely difficult for them to carry out extensive legal and economic changes. The region's judicial institutions are frequently delayed, politicized, and underfunded, which jeopardizes their impartiality and effectiveness. The absence of fair and efficient legal systems erodes public confidence and fosters an atmosphere in which the rule of law is not regularly enforced (Zhillia, 2011). An additional significant obstacle is political instability. Reform initiatives are hampered by the region's history of recurrent political upheavals and government transition (Bexheti, 2019)s. The formation of inclusive and stable governing systems is further complicated by ethnic tensions and unresolved conflicts (Bexheti, 2019). It is challenging to accomplish sustainable success in a climate where short-term political gains are valued more highly than long-term institutional growth due to political instability. Economic underdevelopment exacerbates these challenges. High unemployment rates, poverty, and economic instability hinder the ability of Western Balkan countries to create functioning market economies that meet EU standards. Economic hardships often lead individuals to engage in illegal activities and undermine the state's capacity to enforce laws effectively (Stafaj, 2014). The reliance on international financial assistance can also create a dependency that reduces the incentive for domestic actors to undertake necessary but politically challenging reforms. In various aspects of the Western Balkans' governance, corruption is prevalent. It undermines public confidence in government and obstructs legal procedures (Radinovic-Lukic, 2016). Strong power structures and an absence of political will make it difficult to fight corruption (İçener & Phinnemore, 2014). Corruption hinders economic growth and discourages foreign investment in addition to impairing state operations (Bajrami & Mustafai, 2017).



Source: Transparency International, <https://www.transparency.org/en/about>

As a result, a significant part of corruption and incompetence remains, the public's opinion of and trust in legal institutions is largely negative. People are discouraged from interacting with and supporting the judicial system because of this mistrust. The promotion of the rule of law is greatly aided by civil society organizations, although they frequently encounter formidable challenges, such as inadequate finance, governmental regulations, and low public support. To improve accountability and openness, civil society must be strengthened.

Considering these challenges, it is logical to consider if the EU has unrealistic expectations given the Western Balkans' current capabilities (Halili, 2019). These nations' institutional weaknesses and unstable politics frequently make it difficult for them to carry out the necessary reforms. Strong institutions and a working market economy require time, money, and persistent political will, all of which are usually lacking. It might be more successful to integrate the EU expectations more steadily, with achievable deadlines and staged milestones. Using this strategy, nations might demonstrate progress in small, controllable measures and progressively increase their capability. The aspirations of the EU must be met with sufficient backing and help, such as financial assistance,

technical know-how, and capacity-building programs customized to each nation's unique requirements.

Conclusions

Ambitious goals can result in reform fatigue, a condition in which ongoing pressure to fulfill external standards saps motivation and results in a haphazardly implemented reform program. Instead of real advancements in governance and the rule of law, this weariness may lead to a flimsy compliance with EU regulations. Citizens should have clear, accessible, sustainable and predictable laws that govern their conduct, which by time creates legal certainty in the society. Laws, regulations, and governmental actions should be transparent and accessible to the public. Countries in the Western Balkans are going through the integration process, which is lead by outside factors, bringing obstacles in the implementation process. Mechanisms created by external actors need time to adapt to the country's domestic factors. Political leaders and the general people may get frustrated and disappointed with the lengthy and unpredictable process towards EU membership. This lack of fulfillment might make people less supportive of important reforms and make them lose hope for the future of EU unity. In order to keep reforms moving forward and garner support, the EU may continue to offer an achievable and visible road to membership.

The EU can combine its rigorous membership requirements with the realities of the Western Balkans to ensure that new members can both contribute to and benefit from the Union. Sincere and long-lasting success can be facilitated by a more individualized and supportive strategy that considers the capabilities and problems faced by each nation. The EU can assist the Western Balkans in overcoming their challenges and achieving their integration objectives by offering sufficient funding, using a flexible and progressive approach, and upholding a clear and credible road to membership.

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