

## PROGRESS AND SETBACKS IN BUILDING THE RULE OF LAW IN SOUTH EAST EUROPE

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The eastward expansion of the European Union and the endeavours of South East European states to pursue European integration have generated enormous challenges for countries affected by these changes. In Moldova and in the former republics of Yugoslavia, a “three-pronged”<sup>1</sup> transformation was necessary: Beyond democratisation and the introduction of market economies which replaced a failed socialist planned economy, the process of state-building needed to be tackled. There were successful efforts to adopt democratic constitutions, to develop the institutions of democracy, and to thoroughly revise substantive and procedural law (albeit in varying scope and with varying quality). Given the conditions that prevailed at the time, all of this is *ipso facto* remarkable; the process of transformation was overshadowed by bloody wars across swathes of former Yugoslavia and Moldova. Moreover, the erstwhile elites of the region’s countries were able to establish themselves in new democratic institutions on the one hand and to exercise influence on societal developments through informal power structures on the other. For the most part, however, many of them wielded the power they retained to enrich themselves as national economies were privatised. A reckoning with the past within the framework of the rule of law never transpired. “Inter-societal reconciliation” was imagined not as a collision with truth, but as a process that would most probably materialise over time. Even the pursuit of justice for war crimes perpetrated during the “Yugoslav Wars” of the 1990s would have been neglected had the international community not become involved.



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1 | Claus Offe, “Capitalism by Democratic Design?: Democratic Theory Facing the Triple Transition in East Central Europe”, *Social Research*, 58, 4, 1991, 865-892.

**Bulgaria and Romania were admitted to the EU in 2007, but the European Commission had previously identified numerous deficiencies in their judicial systems.**

Notwithstanding all of the praise for the reforms implemented and for the progress made thus far, the inadequate development of the rule of law is patently clear. In the course of its evaluations for the accession and candidacy process the European Commission reached the same conclusion. Bulgaria and Romania, for instance, were admitted to the European Union on 1 January 2007, but the European Commission had previously identified numerous deficiencies in their judicial systems. Post-accession monitoring is still underway in both countries and an end of this mechanism is not in sight. In view of the lessons the EU has learned during past enlargements, its enlargement strategy has been modified to reflect a much more prominent role for the rule of law. According to the EU's current enlargement strategy, the rule of law must be placed "at the heart of the accession process".<sup>2</sup> The experience of watching political leaders' interest in continuing judicial reform subside after their respective countries had acquired EU membership no doubt contributed to this greater emphasis.<sup>3</sup>

## **WIDESPREAD CORRUPTION**

Widespread corruption is a central problem for the rule of law in every country in South East Europe. It enables infiltration "[...] into the public and private sector".<sup>4</sup> In Transparency International's annual Corruption Perceptions Index, Croatia earned 46 out of 100 possible points and came in 62<sup>nd</sup> place among the 174 countries that were analysed, and this was the best performance in the region. Romania and Bulgaria landed in 66<sup>th</sup> and 75<sup>th</sup> place, respectively. Kosovo (105<sup>th</sup>) and Albania (113<sup>th</sup>) rounded up the very bottom of the list in South East Europe.<sup>5</sup>

2 | European Commission, *Enlargement Strategy and Main Challenges 2012-2013*, Communication from the commission to the European Parliament and the Council, COM (2012) 600 final, Brussels, 2012, 4.

3 | Laura Ștefan and Cristian Ghinea, "The challenges of externally driven reforms", in: idem (eds.), *EU Approach to Justice Reform in Southeastern and Eastern Europe*, Centrul Român de Politici Europene, Bucharest, 2011, 9.

4 | European Commission, n. 2, 5.

5 | Transparency International, *Corruption Perceptions Index 2012*, Berlin, 2012.

There is nevertheless at least a moderately successful institutional approach to fighting corruption in the region. Romania, Croatia, Macedonia, Serbia, and Moldova among others belong to a small group of countries that have established specialised agencies.<sup>6</sup> The European Commission has repeatedly recognised the work of Romania's National Anti-Corruption Directorate.<sup>7</sup> The EU Commission's last progress report on Croatia before its accession to the EU on 1 July 2013 attested that the country possessed an adequate legal and institutional framework for combating corruption and organised crime.<sup>8</sup>



Imprisonment for Romania's former prime minister Nastase: it was a sign for the public that even politicians who were originally perceived as almighty could be held accountable for corrupt practices. | Source: ANTI.USL, flickr (CC BY).

In many countries in South East Europe, however, criminal prosecutions of corruption cases are inadequate, and there are frequent indications that public prosecutors remain at least partially exposed to political pressure. Nevertheless, the convictions and imprisonments of former prime ministers Adrian Nastase (Romania) and Ivo Sanader (Croatia) have sent a remarkable signal to the public that even politicians who once seemed omnipotent could be brought before a judge to account for corrupt behaviour.

6 | Ştefan and Ghinea, n. 3.

7 | Cf. European Commission, *Report from the Commission to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism*, COM (2013) 47 final, Brussels, 30 Jan 2013, 12, 5, [http://ec.europa.eu/cvm/docs/com\\_2013\\_47\\_en.pdf](http://ec.europa.eu/cvm/docs/com_2013_47_en.pdf) (accessed 19 Jul 2013).

8 | European Commission, *Monitoring Report on Croatia*, Communication from the Commission to the European Parliament and the Council, COM (2013) 171 final, Brussels, 26 Mar 2013, 7.

It is no surprise that measures to strengthen anti-corruption efforts encounter resistance from segments of the political establishment. Case in point: Romania founded the National Integrity Agency at the insistence of the European Commission in 2007 in order to uncover potential conflicts of interest, reveal incompatibilities of elected representatives or other elected officials and to review their financial disclosure statements. In 2010, sections of the law that govern the work of this agency were declared unconstitutional by the Constitutional Court of Romania. The decision was hailed by the parliamentary majority, which had been looking for an opportunity to restrict the agency's authority. Upon reviewing the new version of the law that had subsequently been passed by parliament, the European Commission arrived at the conclusion that it would complicate the examination, sanctioning, and confiscation of unlawfully acquired wealth and that it would prevent the use of deterrent sanctions in the fight against corruption.<sup>9</sup> Only the refusal of the president to sign the bill and a subsequent tug-of-war between the head of state, parliament, and constitutional court was enough to derail the attempt to undermine the authority of the integrity agency.<sup>10</sup>

**During the accession process, the European Commission urged the Croatian Commission for Conflicts of Interests to more faithfully execute its duties.**

In Croatia, a commission for conflicts of interest was established in 2003, but it handled very few cases in the first few years of its existence.<sup>11</sup> In the course of the accession process, the European Commission urged the Croatian Commission for Conflicts of Interests to more faithfully execute its duties. A newly elected commission assumed its responsibilities in February 2013 – whether it will work successfully remains to be seen. The commission is elected by parliament, as it would be in an established democracy, and yet in South East Europe there is a prevailing custom that office holders who occupy new posts remain loyal to those who elected them.

9 | European Commission, *Bericht der Kommission an das Europäische Parlament und den Rat über Rumäniens Fortschritte im Rahmen des Kooperations- und Kontrollverfahrens*, KOM (2010) 401 final, Brussels, 20 Jul 2010, 3 et seq.

10 | Laura Ștefan et al., *Conflicts of interest and incompatibilities in Eastern Europe. Romania, Croatia, Moldova*, Expert Forum, Bucharest, 2012, 7.

11 | *Ibid.*, 64.

In May 2012, a law was passed in Moldova that turned the government-controlled “Centre for Fighting Economic Crimes and Corruption” into a “National Anti-Corruption Centre” controlled by parliament. In order to fill the director’s position in the new agency, the judiciary committee in parliament organised a competitive application procedure. Although there were 22 applications, the man ultimately nominated for the job was the director of the predecessor agency. The chairman of the parliamentary group of one of the three coalition parties admitted publicly that the entire process had been a pro forma exercise – a political agreement had effectively decided who would occupy the post in advance.<sup>12</sup> Parliamentary control was abolished in May earlier this year, and control of the National Anti-Corruption Center has since reverted back to the government.

The argument that specialised institutions are no panaceas in the fight against corruption is for instance corroborated by the case of Kosovo, whose Anti-Corruption Council has yet to achieve any success since its founding in February 2012. Nevertheless, the director of the country’s Anti-Corruption Task Force was arrested on charges that he abused the powers of his office.<sup>13</sup> The European Union’s engagement in the fight against corruption has also failed to produce tangible results; the conclusion of the EU Court of Auditors’ assessment of the EULEX mission is sobering.<sup>14</sup>

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## UNDUE GOVERNMENTAL INFLUENCE

One important marker of the rule of law is the limitation of government power by the constitution, statutory law, parliamentary and judicial oversight, and by independent supervisory bodies. In the Rule of Law Index compiled by

12 | Cristina Buzovschi, “Înțelegeri politice înainte de numirea lui Chetraru. Streleț: ‘L-am votat cu sânge’” (Political agreement before the appointment of Chetraru. Streleț: “I voted with blood”), Unimedia, 19 Feb 2013, <http://uni.md/noXo> (accessed 19 Jul 2013).

13 | Freedom House, *Freedom in the World Report 2013. Kosovo*, <http://freedomhouse.org/report/freedom-world/2013/kosovo> (accessed 4 Jul 2013).

14 | European Court of Auditors (ECA), *European Union Assistance to Kosovo related to the Rule of Law*, Special Report No. 18/2012, Publications Office of the European Union, Luxembourg, 2012, 15-20.

the World Justice Project,<sup>15</sup> 97 countries were evaluated: Croatia landed in 36<sup>th</sup> place, scoring 0.61 on a 1.00 scale; Romania came in 39<sup>th</sup> (0.58); Bosnia and Herzegovina came in 54<sup>th</sup> (0.55); Macedonia, 59<sup>th</sup> (0.52); Bulgaria, 60<sup>th</sup> (0.51), Serbia, 67<sup>th</sup> (0.48), Albania, 71<sup>st</sup> (0.46), and Moldova in 77<sup>th</sup> (0.43). The numbers demonstrate on the one hand that there is considerable room for growth in the region; on the other hand, there are also vast differences within the region. Weakly developed parliamentary oversight of the government characterises all of the region's countries. Political parties are often led by a single person or by a small group of people, nonconformity often results in exclusion from the party, and movement between parties occurs frequently. In some cases, the government possesses legislative powers; in Romania, for instance, the government can push through a law by using its power to issue emergency ordinances (*ordonanta de urgenta*).

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That such powers can lead to a *de facto* evisceration of the rule of law was made clear in the summer of 2012, when the Romanian government used emergency ordinances in an effort to restrict the power of the constitutional court and to change the law governing

referendums in order to make it easier to remove the president from office by eliminating the need for a minimum turnout at the requisite referendum on the dismissal of the president. Moreover, another emergency ordinance was issued to shift control of the official journal from the parliament to the government, apparently in an attempt to prevent unwanted decisions emanating from other constitutional bodies from going into effect – laws are technically invalid until they are published in the official journal. Because the powers of the constitutional court had been restricted – a decision that was declared unconstitutional only later – there was no way to challenge the constitutionality of parliamentary resolutions to dismiss the ombudsman or presidents of the Senate and of the Chamber of Deputies.

15 | Mark Agrast, Juan Carlos Botero, Joel Martinez, Alejandro Ponce and Christine S. Pratt, *WPJ Rule of Law Index 2012-2013*, The World Justice Project, Washington D.C., 2012-2013, [http://worldjusticeproject.org/sites/default/files/WPJ\\_Index\\_Report\\_2012.pdf](http://worldjusticeproject.org/sites/default/files/WPJ_Index_Report_2012.pdf) (accessed 19 Jul 2013).

Moreover, after the referendum on 29 July 2012 on the question of whether to remove the president from office, there were attempts to “correct” the number of eligible voters in order to prove that the required turnout of at least 50 per cent plus one had been met. In spite of enormous pressure – and in no small part because of pointed words from Brussels, Washington, and Berlin – the constitutional court was able to defend its role and protect the constitutional order from the assaults. And yet these events indicate that the sustainability of reforms to the rule of law in terms of institutional stability has not yet been secured. Moreover, it also became clear that the lack of loyal cooperation among various constitutional bodies represents a key issue in Romania’s institutional arrangement – a criticism that has also been voiced by the Venice Commission.<sup>16</sup>

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### **URGENTLY REQUIRED JUDICIAL REFORMS**

The implementation of initiated judicial reforms remains imperative for the entire region, including countries that have already obtained EU membership. In its 2012-2013 enlargement strategy, the European Union maintained that candidate countries “must ensure that it [the judiciary] is independent, impartial [...] and capable of ensuring fair trials”.<sup>17</sup> With respect to these objectives, the results of the World Economic Forum’s *Global Competitiveness Report 2012-2013* are sobering.<sup>18</sup> In the report, representative entrepreneurs were asked, *inter alia*, about their perceptions of judicial independence in their own countries. Even the EU member countries Bulgaria and Romania only reached rank 102 and 114 for this indicator, respectively, out of 144 evaluated countries. Croatia arrived in 106<sup>th</sup>

16 | European Commission for Democracy through Law, “Opinion on the Compatibility with Constitutional Principles and the Rule of Law Actions taken by the Government and the Parliament of Romania in Respect of other State Institutions and on the Government Emergency Ordinance on Amendment to the Law No. 47/1992 Regarding the Organisation and Functioning of the Constitutional Court and on the Government Emergency Ordinance on Amending and Completing the Law No.3/2000 Regarding the Organisation of a Referendum of Romania”, CDL-AD (2012) 026, 18 Dec 2012, 15.

17 | European Commission, n. 2, 4.

18 | Klaus Schwab (ed.), *The Global Competitiveness Report 2012-2013*, World Economic Forum (WEF), Geneva, 2012.

place; the regional underperformers were Moldova (138<sup>th</sup>) and Albania (121<sup>st</sup>). Surprisingly, Bosnia and Herzegovina arrived in 78<sup>th</sup> place, but at the time of the research, there were many Western European, Central European, and American judges working in the country who (presumably) were unlikely to be subjected to political pressures.

In order to preserve the independence of the judiciary in the post-communist era, judges and public prosecutors in South East European countries formed self-governing bodies, some either as a single institution or as separate

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bodies. The existence of these bodies was tied to the fear that executive or legislative branches would wield institutional influence to compromise the neutrality of the judiciary.<sup>19</sup> The contributions that helped bolster the independence of these institutions and the wider judicial system were duly recognised by the European Commission in 2012.<sup>20</sup> The Supreme Council of the Magistracy in Romania deserves special attention for its role in the political crisis in 2012, when it publicly and vehemently denounced attempts to exercise control over judges and public prosecutors. Nevertheless, experiences with self-governing bodies were not uniformly positive. The Supreme Council of the Magistracy in Moldova opposed measures that were designed to consolidate efforts to fight corruption and to preserve the professional integrity of the judiciary, even though experts from the Council of Europe both favorably reviewed the relevant Ministry of Justice bills and deemed them to generally be in conformity with European standards.<sup>21</sup>

The opacity and dearth of details concerning personnel decisions in such committees makes them vulnerable to recurrent criticism. In 2009, accusations of preferential

19 | Ștefan and Ghinea, n. 3, 15; Marko Kmezić, "Europeanization by Rule of Law Implementation in the Western Balkans: Adoption of International Legal Standards", contribution, Tag der Politikwissenschaft, Graz, 30 Nov 2012, [http://www.uni-graz.at/tpw\\_kmezic\\_paper.pdf](http://www.uni-graz.at/tpw_kmezic_paper.pdf) (accessed 20 May 2013).

20 | European Commission, n. 4.

21 | Ministerul Justiției al Republicii Moldova, "Consiliul Superior al Magistraturii se opune vehement adoptării inițiativelor anticorupție ale Ministerului Justiției", press release, 31 Jan 2013, <http://justice.gov.md/libview.php?id=1201> (accessed 4 Jul 2013).



treatment and corruption shook Bulgaria's Supreme Judicial Council. Citing two instances in which personnel decisions had been politically calculated, two of its members stepped down in 2011.<sup>22</sup> And in early 2013, the Supreme Judicial Council in Romania launched procedures to remove two members from office on highly dubious grounds; these procedures were later declared unconstitutional by the constitutional court.

Due to the poor organisation of courts, the defective code of procedure, and the lack of a tradition of out-of-court dispute settlements, courts in most of the region's countries are overwhelmed – this leads to excessively long proceedings. In Croatia, for instance, there is a backlog of civil cases, trade disputes, and enforcement proceedings. In its progress report in the fall of 2012, the European Commission alluded to the large backlog in Bosnia and Herzegovina.<sup>23</sup> A sizable share of the pending cases – 1.5 million in April 2012 (!) – are related to unpaid public utility bills, according to numbers provided by Freedom House.<sup>24</sup> Albania, too, was criticised by the European Commission for the extremely heavy workload of its courts, especially of at the supreme court and the constitutional court.<sup>25</sup> Of course, these realities are by no means confined to South East Europe. The European Commission for the Efficiency of Justice of the Council of Europe carried out a study for the European Commission which indicated that the average duration of civil, trade, administrative, and enforcement proceedings was shorter in Bulgaria than the EU average and in Romania it is still shorter than in consolidated democracies like France or Spain. And the ratios of pending cases per 100 inhabitants in Bulgaria and Romania is lower than the EU average.<sup>26</sup>

22 | Antoinette Primaratova, "Bulgaria Country Report", in: Ștefan and Ghinea (eds.), n. 3, 55.

23 | European Commission, *Bosnia and Herzegovina 2012 Progress Report*, Staff Working Document (2012) 335 final, 14.

24 | Freedom House, *Freedom in the World Report 2013. Bosnia and Herzegovina*, <http://freedomhouse.org/report/freedom-world/2013/bosnia-and-herzegovina> (accessed 4 Jul 2013).

25 | European Commission, *Albania 2012 Progress Report*, Staff Working Document (2012) 334 final, 13.

26 | European Commission for the Efficiency of Justice, *The functioning of judicial systems and the situation of the economy in the European Union Member States*, CEPEJ, Strasbourg, 15 Jan 2013.

## PROTECTION OF BASIC RIGHTS: THEORY AND PRACTICE

**Discriminatory attitudes towards disadvantaged groups are more pervasive than elsewhere in Europe. Political leaders often show scant willingness to stand up for minorities.**

Even though comprehensive sets of basic rights were enshrined in regional countries' constitutions, these rights are not always comprehensively respected, according to the European Union and human rights organisations. The European Commission has highlighted the recurrent persecution of ethnic and social minorities as a particular point of concern.<sup>27</sup> Indeed, discriminatory attitudes towards disadvantaged groups are not only much more pervasive than elsewhere in Europe, but political leaders themselves often show scant willingness to stand up for minorities. This mentality arises out of mistrust towards population groups who do not belong to the titular nation; the latter often question the loyalty of the former.<sup>28</sup>

The discrimination of ethnic minorities is a serious problem, particularly in parts of the former Yugoslavia. The European Commission has not found evidence of discrimination based on ethnic background in Bosnia or Herzegovina, but it has pointed out very significant problems pertaining to returnees.<sup>29</sup> Moreover, Freedom House has also found that members of certain ethnic groups who live outside of areas in which they comprise a majority group are disadvantaged when they look for work, search for an apartment, or seek to obtain welfare services provided by the government.<sup>30</sup> These observations concur with those made by the U.S. State Department,<sup>31</sup> the Committee on the Elimination of Racial Discrimination of the Council of Europe,<sup>32</sup> and the NGO Human Rights Watch.<sup>33</sup> Bosnia and Herzegovina's constitution, which is based on the Dayton

27 | European Commission, n. 4, 6.

28 | Will Kymlicka, "Western Political Theory and Ethnic Relations in Eastern Europe", in: idem and Magda Opalski (eds.), *Can Liberal Pluralism be Exported? Western Political Theory and Ethnic Relations in Eastern Europe*, 65 et seq.

29 | European Commission, n. 23, 20.

30 | Freedom House, n. 24.

31 | U.S. Department of State, "Bosnia and Herzegovina 2012 Human Rights Report", <http://www.state.gov/documents/organization/204478.pdf> (accessed 4 Jul 2013).

32 | European Commission against Racism and Intolerance, *ECRI Report on Bosnia and Herzegovina*, CRI (2011) 2, Council of Europe, Strasbourg, 2011.

33 | Human Rights Watch, *Second Class Citizens. Discrimination Against Roma, Jews, and Other Minorities in Bosnia and Herzegovina*, s.l., 2012.

Agreement, restricts access to (and the distribution of) offices and elected positions in the three-member presidency and in the House of Peoples to Bosniaks, Serbs, and Croats. This represents a violation of the European Convention on Human Rights, according to a verdict of the European Court of Human Rights. Yet, a redistribution of power relationships between Bosniaks, Serbs, and Croats would entail political risk. For this reason, the reality that there is no political will to change the current constitutional arrangement cannot implicitly be construed as discrimination.<sup>34</sup> However, in order to remain on the path towards Europe, the country will have to implement the verdict of the court in Strasbourg.

In Macedonia, where large-scale inter-ethnic conflicts were largely absent in the wake of the Ohrid Agreement of 2001, the relationships between the slavic majority population and the Albanian minority remain tense. In March 2012, inter-ethnic unrest in Skopje and Tetovo left 14 injured.<sup>35</sup>

The state of the Roma population in many countries of the region is precarious. Examples of social discrimination abound. Amnesty International's *Amnesty Report 2013* on Serbia indicated that about 1,000 Roma were – on orders from the city government – expelled from their settlement in Belgrade in April 2012. When the European Commission offered to financially support the construction of new homes for the expelled Roma, Belgrade authorities proposed to build the homes in a remote part of town in order de facto to segregate the community along ethnic lines.<sup>36</sup> In Romania, the country with the largest number of Roma, the mayor of the northwestern town Baia Mare had already made headlines in 2011 when he ordered that a wall be built around an entire Roma community. In 2012, the same mayor decreed that 150 Roma be forcibly relocated to a contaminated area near a closed chemical

34 | International Crisis Group, *Bosnia's Gordian Knot: Constitutional Reform*, Europe Briefing No. 68, Sarajevo, Istanbul and Brussels, 12 Jul 2012, 1.

35 | Freedom House, *Freedom in the World Report 2013. Macedonia*, <http://freedomhouse.org/report/freedom-world/2013/macedonia> (accessed 4 Jul 2013).

36 | Amnesty International, *Amnesty Report 2013. The State of the World's Human Rights*, London, 2013, 228, [http://files.amnesty.org/air13/AmnestyInternational\\_AnnualReport2013\\_complete\\_en.pdf](http://files.amnesty.org/air13/AmnestyInternational_AnnualReport2013_complete_en.pdf) (accessed 19 Jul 2013).

factory.<sup>37</sup> The social discrimination also results in an under-representation of Roma in constitutional bodies in South East Europe. In Romania, for instance, only two Roma are members of parliament.

Anti-Semitic attitudes are also widespread in South East Europe. Hostile remarks about Jews by politicians are tolerated and rarely have political consequences. When a leading Romanian politician denied the Holocaust, his party's chairman – far from asking him to resign – merely sent him to the Holocaust Museum in Washington, DC. Many Jewish communities lament the spread of anti-Semitic stereotypes and the ignoring of the Second World War era persecution of Jews by certain some segments of the local population.

Homophobia is also wide-spread in South East Europe, and LGTB individuals remain disadvantaged even in countries where comprehensive anti-discrimination laws have been passed. The European Commission has repeatedly

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condemned the ban on "Gay Pride Parades" in Serbia; the parades are forbidden by law in the autonomous Gagauzia region in Moldova. Homophobic slurs made by politicians continue to go unpunished; *Amnesty Report 2013* report cites examples for instance in

Albania and Macedonia.<sup>38</sup> In Moldova, the ban on discrimination based on sexual orientation was restricted to the workplace – and even this was rejected by the communists and the Orthodox Church; the latter has called for the repeal of the anti-discrimination law.<sup>39</sup>

37 | Freedom House, *Freedom in the World Report 2013. Romania*, <http://freedomhouse.org/report/freedom-world/2013/romania> (accessed 4 Jul 2013).

38 | Amnesty International, n. 36, 20 and 165, [http://files.amnesty.org/air13/AmnestyInternational\\_AnnualReport2013\\_complete\\_en.pdf](http://files.amnesty.org/air13/AmnestyInternational_AnnualReport2013_complete_en.pdf) (accessed 19 Jul 2013).

39 | Sinodul Bisericii Ortodoxe din Moldova (synod of the orthodox church in the Republic of Moldova), "Adresarea Sinodului Bisericii Ortodoxe din Moldova către autoritățile de vârf ale țării, pentru modificarea Legii anti-discriminare", open letter to Nicolae Timofti, President of the Republic of Moldova, and others, Chișinău, 19 May 2013, <http://mitropolia.md/adresarea-sinodului-bisericii-ortodoxe-din-moldova> (accessed 4 Jul 2013).

Individuals with disabilities also experience discrimination, although the discrimination manifests itself not as much in specific instances as in the broader lack of infrastructure that would facilitate greater participation in public life. The problematic state of guarantees for the protection of human rights and minority rights necessitates robust institutions that are capable of wielding state power to demand and ensure the protection of these rights. Accordingly, the European Commission has stated that “[n]ational human rights institutions such as Ombudspersons often require significant strengthening, as does the law enforcement bodies’ handling of issues such as hate crimes and gender based violence”.<sup>40</sup> In this context, vacancies in these offices are particularly problematic. In Albania, the office of Ombudsman was vacant between March 2010 and December 2011 because the parties in parliament could not agree among themselves which candidate to nominate.<sup>41</sup> A similar position also remained vacant for some time in Bosnia and Herzegovina. In Romania, the ombudsman was dismissed by parliament in the summer of 2012, but his dismissal was not related to his work defending human and basic rights. Clearly, his dismissal was calculated to prevent him from contesting emergency ordinances issued by the government before the Constitutional Court in connection with the recall effort against President Basescu. The Venice Commission nevertheless recommended that the independence of the ombudsman in Romania be enhanced given his role regarding the protection of human rights.<sup>42</sup>

## **CONCLUSION: LENDING SUPPORT THROUGH MONITORING**

The present article only discusses a selection of issues and does not purport to be comprehensive. It depicts advances that would have been unimaginable without membership (or aspiration towards membership) in the European Union. At the same time, it demonstrates that the journey towards robust Western-style rule of law is nowhere near completion. One thing that must be kept in

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40 | European Commission, n. 2, 5.

41 | U.S. Department of State, “Albania 2012 Human Rights Report”, <http://www.state.gov/documents/organization/204464.pdf> (accessed 4 Jul 2013).

42 | European Commission for Democracy through Law, n. 16, 17.

mind is that one-size-fits-all solutions are not possible, as South East European countries for historical reasons do not share a common legal culture. The question is whether there is sufficient political will in South East Europe to determinedly address the existing key problems.

As a result, support for the rule of law in this region should never confine itself to mere technical assistance. The region requires a commitment from the Western community of nations to support the initiated judicial reforms, inter alia through regular monitorings. To this end, it would be helpful to expand the use of the EU Justice Scoreboard, which was introduced this year, to candidate countries, as this first attempt to create a common standard for evaluating the performance of European legal systems is based on the fact that “[s]hortcomings in the national justice systems are [...] not only a problem for a particular Member State, but can affect the functioning of the Single Market and, more generally, the whole EU”.<sup>43</sup> However, because the scoreboard is confined to questions of a technical nature, an extensive legal monitoring programme including European Commission reports will be indispensable to efforts to produce sustainable reforms.

43 | European Commission, *The EU Justice Scoreboard. A Tool to Promote Effective Justice and Growth* (= Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of Regions), COM (2013) 160 final, Brussels, Mar 2013, 2.