



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

PROGRAMME & REPORT



About the Event

This international event brought together **representatives from academia, think tanks, civil society and policy-making to take stock of where we are today and we are heading when it comes to the Rule of Law in Europe**. These questions are assessed in the fields of Rights, Security and Economy in a number of expert panels, plenary sessions and keynote lectures. Particular attention was given to the situation in Central and Eastern Europe and the Western Balkans. This Event was co-organised between the Centre for European Policy Studies (CEPS) in Brussels, the Centre for Economic Analyses (CEA) in Skopje, with the full involvement of the five selected members of the ENGAGE Fellowship.

The discussions at this event often came back to **the posited balance between security and democracy, both in the EU itself, as well as in the Western Balkans**. The conclusion was that the strategy of 'stabilocracy' does not work: the EU's tendency to put security before democracy ends up weakening both in the Western Balkans. Several of the **Rule of Law challenges** were highlighted during the discussions, in particular the capture of the State's administrative and judiciary authorities by a political and economic class and the lack of space for civil society to engage. These challenges impact on various elements of policy: it limits fiscal transparency, it hampers sound and stable economic policies needed for entrepreneurship and investment, it deteriorates the independence of the (criminal) justice system, and it decreases the opportunities for civil society to monitor State activities. It thereby essentially hampers mutual trust among the State and the citizens and among the citizens themselves.

The various debates underlined **the importance for the EU to have a clear, value-based and frank strategy in the Western Balkans**. Various participants, including high level government representatives, highlighted their willingness to make the EU accession process more concrete and political. The EU approach of technocratic reports and the experienced absence of a true involvement of local experts and civil society was found to be inadequate. Rather, a frank discussion should take place that will lead to actual transformation of society and government in accession countries.

A cross-cutting point highlighted in the various debates was **the crucial importance of bringing together academics, think tankers, civil society members, activists and educators, especially in countries where the State is captured**. They can be key actors for stimulating evidence-based discussions on legitimate Rule of Law reforms. The importance of changing narratives by such actors is important, especially in situations where divisions between groups in society have been nurtured for many years. Although many Rule of Law challenges persist throughout the EU and the Western Balkans, there are positive examples of local, national and supra-national initiatives that show that change and mutual trust are possible. The discussions concluded that such changes will always have to be achieved through a Rule of Law based approach, safeguarding the values of democratic and judicial accountability and human rights.

About the Fellowship

CEPS launched the ENGAGE Fellowship Programme with the support of the Open Society Initiative for Europe (OSIFE). This tailor-made Programme connects academic, civil society and think tank actors from Central and Eastern European and Western Balkans countries with EU-level policy debates. It consists of a one-year programme providing a set of trainings, study visits, public events and a policy brief writing exercise. It will culminate in the active participation of the selected fellows in the 2018 CEPS Ideas Lab. Please note that currently there is no open call for applications.

Selected members of the CEPS Engage Fellowship:

Ms. Petra Bard, Senior Researcher, National Institute of Criminology / Central European University, Hungary

Mr. Fisnik Korenica, Legal Expert, Legal and Political Studies Group, Kosovo

Mr. Marjan Nikolov, President, Centre for Economic Analyses, Macedonia

Ms. Małgorzata Szuleka, Advocacy Officer, Helsinki Foundation for Human Rights, Poland

Mr. Gjergji Vurmo, Programme Director and Senior Analyst, Institute for Democracy and Mediation, Albania

FULL PROGRAMME: Thursday 14 September 2017

12h30-13h30 **Registration and Welcoming Lunch**

13h30-13h45 **Opening**

Mr. Leonhard den Hertog (Research Fellow, CEPS / Coordinator, Engage Fellowship)
Mr. Marjan Nikolov (President, CEA / Member, Engage Fellowship)

This opening session provided an

13h45-14h30 **Key Note Lecture**

Mr. Dragan Tevdovski (Minister of Finance, Republic of Macedonia)
Moderator: Mr. Sergio Carrera (Senior Research Fellow, Head of Unit, CEPS)

14h30-15h00 **Coffee break**

15h00-16h30 **Parallel Panels I & II**

<p>Panel I: Transparency and the Rule of Law</p> <p><i>Moderator:</i> Mr. Marjan Nikolov (Member, Engage Fellowship)</p> <p><i>Speakers:</i> Ms. Natasha Gaber-Damjanovska (Judge, Constitutional Court of the Republic of Macedonia) Ms. Uranija Pirovska (Executive Director, Helsinki Committee of the Republic of Macedonia) Mr. Massimo Bordignon (Member, European Fiscal Board) Mr. Giorgio Brosio (Emeritus Professor, University of Turin)</p>	<p>Panel II: Criminal justice and mutual trust in the Western Balkans and the EU</p> <p><i>Moderator:</i> Mr. Sergio Carrera (CEPS)</p> <p><i>Speakers:</i> Ms. Gordana Siljanovska Davkova (Professor, Constitutional Law and Political System, University of "Ss. Cyril and Methodius") Ms. Eszter Kirs (Professor, Corvinus University of Budapest / Legal Officer, Law Enforcement Programme, Hungarian Helsinki Committee) Mr. Marton Varju (Researcher, Hungarian Academy of Sciences, Centre for Social Sciences, Institute for Legal Studies) Mr. Fisnik Korenica (Member, Engage Fellowship) Faculty, University of Ss. Cyril and Methodius)</p>
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16h30-17h00 **Coffee break**

17h00 -18h00 **Plenary Session I**

Moderator: Mr. Gjergji Vurmo (Member, Engage Fellowship)
Rapporteur Panel I: Mr. Marjan Nikolov (Member, Engage Fellowship)
Rapporteur Panel II: Mr. Fisnik Korenica (Member, Engage Fellowship)
Speaker: Mr. Nikola Dimitrov (Minister of Foreign Affairs, Republic of Macedonia)

18h00-20h30 **Drinks, Networking and Conference Dinner**

FULL PROGRAMME: Friday 15 September 2017

08h30-09h00 **Registration – Breakfast and Coffee**

09h00-10h00 **Key Note Lecture**

Ms. Margarita Tsatsa Nikolovska (Judge, Constitutional Court, Bosnia and Herzegovina)

Moderator: Mr. Sergio Carrera (Senior Research Fellow, Head of Unit, CEPS)

10h00-10h15 **Coffee break**

10h15-11h45 **Parallel Panels III & IV**

<p>Panel III: Balkan Spring – Can the EU end the Rule of Law Stalemate?</p> <p><i>Moderator:</i> Mr. Gjergji Vurmo (Member, Engage Fellowship)</p> <p><i>Speakers:</i> Mr. Blerim Reka (SEE University, Tetovo) Mr. Ljubomir Danailov Frckoski (Ss. Cyril and Methodius University of Skopje) Ms. Besa Arifi (SEE University, Tetovo) Mr. Vladyslav Galushko (Open Society, Budapest)</p>	<p>Panel IV: Civil society responses to Rule of Law crisis and democratic backsliding</p> <p><i>Moderator:</i> Ms. Małgorzata Szuleka (Member, Engage Fellowship)</p> <p><i>Speakers:</i> Mr. Israel Butler (Head of Advocacy, Civil Liberties Union for Europe) Mr. Emil Atanasovski (WFD Regional program, Belgrade) Mr. Aleksandar Jovanoski (European Policy Institute, Skopje) Mr. Marko Trosanovski (Institute for Democracy “Societas Civilis”, Skopje) Ms. Petra Bard (Member, Engage Fellowship)</p>
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11h45-12h00 **Coffee break**

12h00 -13h00 **Plenary Session II**

Moderator: Mr. Leonhard den Hertog (Research Fellow, CEPS)

Rapporteur Panel IV: Ms. Małgorzata Szuleka (Member, Engage Fellowship)

Rapporteur Panel III: Mr. Gjergji Vurmo (Member, Engage Fellowship)

13h00-13h30 **Closing Address**

Mr. Sergio Carrera (Senior Research Fellow, Head of Unit, CEPS)

13h30-14h30 **Lunch**

REPORT

Key Note Lecture by Mr Dragan Tevdovski (Minister of Finance, Republic of Macedonia)

The Minister of Finance Mr Tevdovski gave the opening speech, highlighting the crucial importance of the Rule of Law for the economic governance. Any sound and sustainable economy needs to be founded on stable and predictable laws, not be changed abruptly whenever new interests emerge. Also, these laws should be applied equally across the board, creating an environment where everyone feels he or she can make a contribution to the economic life of a country. It is important to offer such an environment, not in the last place to attract investment. This is particularly important for the Republic of Macedonia and its relations with the EU and the US. Furthermore, the Republic of Macedonia continues to strive for harmonization with the EU rules and standards (the EU 'acquis'). One of the further priorities of the current government of the Republic of Macedonia is its push to ensure more transparency. Certainly, this is a key value under the Rule of Law. More reporting will be undertaken, also on the fiscal state of affairs, to ensure that monitoring can take place. There is furthermore collaboration with the EU on finalizing a strategy for public financial management. A concrete example is a twinning project with Finland, related to amending the laws on the budget. The Fiscal Council will of course also have its place in this architecture, it is an important independent controlling entity, therefore linking neatly to the Rule of Law. In the current strategizing and amending of laws, the government is engaging the active civil society sector and the various experts.

Panel I: Transparency and the Rule of Law

This Panel assessed the rule of law and the good governance state of affairs by taking the perspective of transparency.

The Constitutional judge Ms Gabe-Damjanovska presented few cases where transparency matters in preserving the Rule of Law. One case was about the lack of transparency in the urban plans when the regulatory quality is missing. Namely, the law on urban planning was amended by introducing an article that provided the space for the government with a decision to provide for constructing objects with "special interests" but the "special interests" were never defined on a transparent and clear criteria. This was widely used and abused by the government. Another case illustrates the direct breaking of Rule of Law principles by introducing market discrimination with the financial discipline law from 2014 and introducing exemptions of legal actions against the public sector if the public sector have arrears longer than 60 days toward the creditors.

The Executive Director Ms. Pirovska presented the experience of the work of the Helsinki committee of human rights in Macedonia. She presented the difficult environment in which the Helsinki committee operates in Macedonia especially how the courts and government and its institutions lack transparency in providing information and in providing access to institutions in general. For example she presented the case when information and reporting about the prisons in Macedonia was mainly based on information gathered from the prisoners. Ms. Pirovska presented the principle of going out of the offices and be active more on the terrain and second on how to use media to make public pressure to the institutions.

The member of the European fiscal board Mr. Bordignon presented the case of the fiscal councils as instruments for increasing the transparency and accountability of the executive power in a parliamentary democracy. The main principle that could be introduced to strengthen the role of fiscal council is the principle

of “comply or explain”. Namely, the government will have a choice to comply with the fiscal council or to explain to the public why it will not comply with the fiscal council. Answering the question of if the fiscal councils really work gets us into the reverse causality problem. Namely, the choice of introducing a fiscal council is endogenous; a country that decides to introduce a fiscal council might already be more prone to fiscal discipline, and its better results might depend by this fact, rather than by the fiscal council itself.

Professor Brosio gave a lecture on the Fiscal Councils and Commitment to Institutions to ensure the Rule of Law. Prof. Brosio sees fiscal councils as institutions promoting limited government through increased transparency and independent advice but in this case limited governments are strong rather than weak governments. The point is how to foster commitment. Commitment to respect of rules by all organizations and individuals is essential for making institutions work and rule of law effective.

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

This Panel assessed the development from criminal justice and mutual trust from various viewpoints, providing an insight into dynamics in this field from both within and outside the EU.

Ms. Gordana Siljanovska Davkova highlighted the importance of the Rule of Law and in particular of a functioning and independent justice system. This is even more so the case in a situation in which a State is captured. Where a ‘Partyocracy’ arises in which the government administration becomes the ‘broken bone’ of the State, it is crucial to restore mutual trust between the citizens and the State through a reform of the justice system. Clearly then, the levels of corruption have to be addressed both at the ballot box – leading to new governments that can change laws – as well as through the justice system that is supposed to uphold such new laws. The situation of the Republic of Macedonia is a peculiar one, with the current political context providing perhaps a ‘last chance’ for the EU. The EU should face the reality and act frankly, and help any forces in society ready to move towards such mutual trust and a functioning and independent justice system. The Western Balkans in general should be given a chance to develop such systems. This is not only key for the citizens of those countries, but also for the EU’s stability itself.

Ms. Eszter Kirs provided a very interesting insight into another element of criminal justice in the Western Balkans, and with strong links to the EU and its Member States: the International Criminal Tribunal for the former Yugoslavia (ICTY). She highlighted the challenges and opportunities of such a UN-based international criminal law institution. Clearly, there have been a lot of good developments, such as a transfer and exchange of legal concepts from international law into national systems in the region, an impressive amount evidence gathered and a number of high profile cases and judgments. The challenge is however that it remains the case that the ICTY is seen as a political institution by some in the Western Balkans. This hampers mutual trust between the international and the local level. There is a level of non-acceptance and a continued question of the ICTY’s legitimacy as an actor in the regional criminal justice architecture.

Mr. Marton Varju presented his take on some of the underlying objectives of a European criminal justice system. The Member States are seen to primarily push the regulatory objectives of this policy field, namely the advancement of ‘security’. On the other hand, there a number of values and Rule of Law constraints in this field. Often, these are perceived as needed to be weighed against the ‘efficiency gains’ that a European criminal justice approach can provide to Member States. Mr Marton Varju however highlighted that the values themselves can also be seen as in the interest of the Member States. This would ensure mutual trust

that is the very basis of mutual recognition in the EU criminal justice system. Models of conceptualizing these relationships were presented, namely seeing a historical shift from a classical State-centered form of intergovernmentalism between Member States to the existence of a proper 'new legal order' in the EU.

Mr. Fisnik Korenica underlined the importance of a most recent development in the EU criminal justice architecture: the European Public Prosecutor's Office (EPPO). This new body, with the material scope of the 'financial interests' of the EU (although proposals to widen this are suggested by the Commission), will be crucial in the construction of mutual trust between Member States. However, first of all, this mutual trust is from the outset apparently weak, as the EPPO has been set up under 'enhanced cooperation', meaning that not all Member States want to participate. This means that there will not be a uniform application across the Union. The EPPO fundamentally impacts on the relationship between national and EU criminal law, as the EPPO will cooperate with national justice systems when prosecuting and bringing cases. The role of the CJEU will be important as it can ensure the primacy of EU law. The specific workings of the EPPO in the future will be absolutely key in determining whether this new body can foster the mutual trust among the Member States.

Keynote Lecture by Ms Margarita Tsatsa Nikolovska (Judge, Constitutional Court, Bosnia and Herzegovina)

Ms Tsatsa Nikolovska held an inspiring speech about the need to ensure more transparency and accountability in the (criminal) justice system, with a special focus on the Republic of Macedonia. She highlighted a number of particular cases of different courts reaching different conclusions on the same matter, of attacks on property, of individuals not able to obtain an effective remedy and of the absence of taking into account international legal principles. It was stressed that the practical implementation of the formal law is now a priority, where accountability also applies to State officials and can have real consequences for them. She highlighted the importance of taking international law and its leading principles more into account, such as the right to fair trial. The case law of the European Court of Human Rights on this is extensive and provides specific attention to the independence of the judiciary, something that should be taken seriously. These principles and this case law should also be leading the strategy for any reform of the judiciary, including in a country like the Republic of Macedonia.

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

The Rule of Law is a fundamental value on which the EU is founded and which is at heart of the Enlargement Policy and of the Stabilization and Association Process. While EU membership has served for long as a strong incentive for western Balkan countries in the first decade of the new millennium, over the past few years their reform and rule of law progress is at crossroad. Speaking at the closing plenary session of day 1 of the Conference,¹ the Macedonian Minister of Foreign Affairs underlined the need for a change in EU's approach towards WBs' accession. He highlighted that the western Balkans over the past period have progressed on paper, but in reality we have witnessed serious decline of democracy. Due to several internal crises the EU

¹ This report includes also few comments made in the closing plenary session of Day 1 by the Minister of Foreign Affairs (Nikola Dimitrov) on the topic of this panel.

member states have been uninterested to push Western Balkans countries, and on the other hand, aspirant countries have shown resistance to reform in practice.

The panel discussion examined the Rule of law stalemate in the Western Balkans countries, the lessons learnt from the “*stabilocracy*” and how to revive the EU’s transformative power to ensure democracy, stability and progress in the region. Besa Arifi elaborated on the Macedonian crisis as an illustrative example of the risks “*stabilocracy*” bears for both, the EU’s transformative power and aspirant countries. Arifi argues that the benefits of giving priority to democracy over stability outweigh ‘*stabilocracy*’. “The lack of democracy is much more threatening and riskier than the status quo of *stabilocracy*. We need EU as a partner with us and not as a distant supervisor.” Blerim Reka suggested that “EU must move from ‘*stabilization and association*’ towards ‘*democratisation and accession*’ for the western Balkan countries.” To ensure the shift from the ‘*post-conflict transformation towards the post-corruption transformation*’ he suggested the establishment of an International Anticorruption Tribunal for the region as a necessity. Mr. Galushko’s presentation elaborated on the challenges and concerns of EU’s image and transformative power currently which is currently under the attack of three major threats – the backsliding of democracy in Hungary or Poland; the EU’s image in the WB region; and the global democratic slump and the crisis of democracy. His recommendations include: The EU integration needs to go beyond the technicalities of the process; EU needs to defeat the narratives of an “*alternative way*” in the region; and other concrete measures such as IPA funding, opening of accession negotiations with all WB countries etc. Ljubomir Frckoski argued that EU’s priority and emphasis in the WB region has always been ‘*security before democracy*’ and not ‘*security through democracy*’. He further suggested that EU has tolerated the stalemate in the region and that in order to reform the systems the support and involvement of all societal actors and citizens is needed.

Panel IV: Civil society responses to Rule of Law crisis and democratic backsliding

The democratic backsliding (which is perceived as a process in which elected public authorities deliberately undermine the safeguards of rule of law, separation of powers and fundamental rights) accelerated also the process of shrinking civil society space.

In countries of EU and Western Balkans numerous symptoms of limiting the operational space for civil society could be observed. The common symptom for both regions is closing the space for social consultation and dialogue with the civil society. For example, in Macedonia almost 70% of crucial acts concerning the system of the state were adopted without any social consultations. A similar scenario was repeated in Poland and Hungary during the most hectic periods of the constitutional crisis when the crucial acts were submitted as private bills of MPs, bypassing the obligation to organise public consultations.

Additionally, in the countries of both EU and Western Balkans were several developments hampering the work of civil society organisations such as smear campaigns, cuts in funding or limiting the access to funds and overregulation of the work of civil society organisations.

The democratic backsliding involves also certain risks for the operation of civil society organisations. In such a context, the NGOs are more prone to personal attacks, limiting their work and potential overburnt of the employees which may lead to undermining the scope and effectiveness of their work.

In this context the reaction of the civil society of to this process seems to be of crucial importance. There are two ways in which civil society organisations try to cope with the detrimental effects of these changes. Firstly,

civil society organisations enhance and develop the traditional methods of their operation such as monitoring, advocacy and coalition building. Secondly, civil society organisation try to come up with the ideas of potential solutions of the crisis and rebuilding the democratic fundamentals of the state (e.g. the Macedonian "Blueprint for urgent democratic reforms").