

***Western Balkans and the Rule of Law:
Normative assessment of the progress of
the Judicial reform vs. Public Trust in Judiciary***

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Abstract

The creation of independent and efficient judiciary is of a crucial importance for every transitive democracy, such as the Western Balkans. By fulfilling the prescribed benchmarks and moving closer to the European standards based on the reform of their judiciaries, the WB countries are demonstrating different success, tracing their road(s) into the final EU membership. A great challenge for each of the six countries in the region is to free their judicial systems of corruption and to increase the public trust. Eventually, impartiality, integrity and a high standard of adjudication by the courts are crucial for preserving the rule of law. Judging by the comparative analysis of the normative assessment of the progress of the WB countries in the process of implementing the judicial reform and the public trust in Judiciary, conducted in this text, it can be emphasized that generally there is a low level of public trust in the judiciary, and that although all of the WB countries have some positive progress, implementing the necessary reforms, Montenegro in comparison with the other WB countries is a regional leader in implementation of Judicial reforms.

Key words:

Judicial reform, Western Balkans, Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, Serbia, EU enlargement, European Commission, Public Trust

Introduction

Towards the years the enlargement strategy has changed. After the big bang enlargement of 2004 when 10 new member states entered the European Union, and especially after the Bulgarian and Romanian entrance in 2007, EU implemented much stricter prerequisites for new, possible enlargement in the future. The whole process is contained in 35 well encompassed and binding chapters, which implementation brings closer the states to the European Union. Especially triggering are the Western Balkan countries, which after years of determination, remain backwardly stuck in the process of EU integration. The most challenging and most demanding chapters are Chapter 23, devoted on the judiciary, anti-corruption, fundamental rights and the rights of EU citizens, and Chapter 24, covering the areas, such as justice, freedom, and security. The judicial system is a crucial element in the processes of EU enlargement, and the new approach in the accession negotiations is one of the focal points for future country's entrance in the European Union. It is especially hard to adjust the internal, domestic laws of the countries with the EU prerequisites and with the EU laws.

The European model of judicial independence is introduced through negotiations with candidate countries within Chapter 23. The Western Balkan courtiers: Serbia, Montenegro, Bosnia and Herzegovina, Macedonia, Albania, and Kosovo demonstrate different preparedness and different success implementing the provided reforms in the judiciary, enabling them to accommodate their domestic laws, placing them in line with the judicial systems of the EU member states. Implementing the new formulas offered by the reforms is a challenge and difficult process for every young transitive democracy, such as the Western Balkans. The European Union introduced different measures in each of the WB countries by which the countries are expected to reform their judicial systems, increasing their independence and accountability, moving them forward to the European model. The launch of strong judicial councils was of a paramount importance for the fulfillment of the European model, guarantying the judicial independence.

The aim of this research paper is to analyze the individual preparedness of the Western Balkan countries to implement the required Judicial reforms, based on the benchmarks in the EU acquis, sustained in Chapter 23 and Chapter 24 of the process of EU enlargement, moving forward in the process of EU integration. The text is supplemented by a comparative analysis of the individual Western Balkan progress towards implementation of the necessary reforms in Judiciary and the level of trust in the Judiciary in the region, or the citizens' opinion regarding the implementation of the judicial reform. This analysis is of a crucial importance to apply pressure towards the neighboring countries in the region in order to reach better results in their mission to implement the necessary judicial reforms and to go in line with the EU practices and with the EU standards. Apparently, comparing the public trust in the Western Balkans with the actual achievements it may result into effective competition of reform implementation, where in the long run, the progress of one country may be use as a positive instigator on the reform implementation in the other countries,

taking into account the geographical, the historic, the cultural and the traditional proximity, as well as the security and the strategic challenges of the region.

From the entire text it can be concluded that judging by their commitments and implemented reforms, as well as the number of opened and closed EU chapters, in spite of the other four Western Balkan countries, Serbia and Montenegro are the frontrunners in the process of EU enlargement. On the other hand, judging by the European Commission Release for 2018 (on which is based the analysis in the text), Montenegro is the only Western Balkan country that differs from the other five Western Balkan countries, regarding the question about the *Trust in Judiciary* and the *Fight Against corruption* in comparison with the country's preparedness to implement the necessary reforms in Judiciary and the preparedness to fight against corruption. The analysis is conducted using data from the Pointpulse 2018 Release, the 2018 RCC Balkan Barometer and the newest releases of 2018, conducted by the European Commission.

Judicial reform in the Western Balkans: A challenge for their domestic judiciary

In October 2011 was established the new approach of the European Union, which is based on the criteria connected to the judiciary and fundamental rights (Chapter 23 of the EU acquis) and justice, freedom, and security (Chapter 24 of the EU acquis) are prioritized at the start of accession negotiations (European Commission, 2011). Securing judicial independence and rule of law reforms is fundamental for the country's compliance with the EU values and policies (Mendelski, 2013). Especially triggering are the post-conflict countries, such as Serbia and Bosnia and Herzegovina, with legacies of transitional justice and judicial systems compromised by allegations of war crimes and the internationalization of judicial processes (Ostojić, 2014). Regarding its content, Chapter 23 is divided into four thematic areas: judicial reform, anti-corruption policy, fundamental rights and the rights of EU citizens. Independent judiciary, with reliable capacities maintaining and protecting the rule of law is the basis of these policies (YUCOM, 2017).

In the pre-accession period, the judicial reforms have been a focal pedestal for the EU enlargement process. The necessity and the importance of independent and functional judiciary are interconnected with the fact that, at first independent judiciary is one of the core elements of the rule of law and the process of democratic transition of one country. Second, the European mandate of the national courts is of a huge importance for successful practice and implementation of the EU law, especially after the period of accession. In fact, the self-governed and independent judiciary was a crucial element of the Copenhagen criteria and the whole process of EU enlargement. These reforms, directed by the European Union were recognized as a strong emphasis on the launch of strong judicial councils as institutions for judicial self-administration and guardians of the judicial independence. The final accomplishment of the Joint venture is the European model of Judicial Councils, in which creation participated the Europe institutions like the Consultative Council of

European Judges (CCJE), advisory body of the Council of Europe on issues related to independence, impartiality and competence of judges; the European Commission for Democracy through Law (Venice Commission), advisory body on constitutional matters; and the European Committee on Legal Co-operation, intergovernmental body responsible for the standard-setting activities in the area of public and private law; in addition to international non-governmental associations such as the European Network of Councils for the Judiciary, consisted of national institutions in the EU Member States that are responsible for the support of the judiciaries in their independent delivery of justice (Preshova, Damjanovski, Nechev, 2017).

In the Strategy for each of the Western Balkan countries is elaborated that one of the major goals is to accomplish the Europeanization of the judiciary. This can be implemented by introducing European institutional standards in judiciary work (Preshova, 2018). However, judicial independence is not defined in the EU and the CoE documents and acts. In regard to Chapter 23, the European standards presented by the European Commission are not a part of the EU law. As Preshova states, *EU does not have direct competence in terms of the setup of the judiciary and judicial independence, so consequently it does not possess a single legal EU act that regulates these issues, i.e. there is no acquis* (Preshova, 2018, p. 12) However, the so-called *European model of judicial independence, is contained in a judicial council that promotes or imposes it in the enlargement process* (Preshova, 2018, p. 12).

Chapter 23 on Judiciary and Fundamental Rights is important for the outcome of the entire negotiation process, in particular with regard to the benchmarks for the opening of Chapter 23 contained in a letter of the Presidency of EU. However, rule of law and judicial sector reform remain vaguely defined concepts, due to the lack of a coherent theory of judicial independence, and the difficulty to measure the performance of the judicial system, as has been observed with regard to the monitoring activities in the Eastern enlargement process (Kmezic, 2015).

In their common work Damjanovski and Nechev state that the European Union implemented much stricter rules towards the Western Balkan countries. While from one hand the EU prompted the establishment of a strong judicial council for the CEE countries, only in a form of a recommendation, the whole procedure grew into a strict requirement and obligation for the countries of the Western Balkans. The authors are raising the question: *Is there truly a 'best practice' or a genuine 'European model' based on the actual practice in at least a majority of EU Member States? In that way, the Western Balkans countries, where, despite the centrality of judicial reforms in the new EU Enlargement strategy, there is a clear lack of both empirical and theoretical accounts of the processes of Europeanization of the judicial systems* (Preshova, Damjanovski, Nechev, 2017).

The authors continue with their criticism, stating that the EU created mechanisms of legal harmonization, which have introduced fast-track procedures of law adoption, have contributed towards a disproportional strengthening of governmental powers over the other branches of governance. The new approach requires the candidate countries to be

judged on the basis of demonstrable track records of reform implementation, but will also not be able to set closing objectives, or they cannot open other chapters unless a required progress is demonstrated. For the whole process, the Commission is required to report regularly, at all stages of the process, on progress achieved in these areas along milestones defined in the action plans with, where appropriate, the necessary corrective measures. (European Commission 2011, p. 5).

Mechanisms straightening the independence of the Judiciary in the Western Balkans

Western Balkan countries were expected to reorganize the government bodies of the justice system. In order to increase the effectiveness and the independence of decision making, following the positive example of some EU countries they were expected to split the high judicial and prosecutor councils into two separate organs- the High Judicial Council and the High Prosecutor Council. With this reform was also expected the Minister of Justice to be removed.

In accordance with the constitutional changes, in Montenegro, the Minister of Justice suppose to be responsible for judicial issues as an *ex officio* member of the High Council of Justice, but he/she cannot be its head. After the reforms, the minister of Justice in Albania is no longer a member of the High Prosecutor Council and a part of the High Council of Justice. In Serbia, the minister of justice is no longer a member of the High Council of Justice but can be a member of the High Prosecutor Council. However, this mechanism failed to fulfill the mission to fight against corporatism between judges and judiciary bodies. The reason for this trend in the transitional democratic countries, such as the Western Balkans can be found in the state politicized activities (Anastasi, 2018). In these case, lay members from outside were necessary to neutralize the corporatism of judges and prosecutors. For instance, in Montenegro, the High Judicial Council is composed of four judges elected by the Judicial Conference and four other members elected by the Parliament and by one *ex officio* member. The head cannot be a judge or an *ex officio* member. *The experience of Montenegro, where the plurality of the structure is estimated as a possibility of having a more professional and less politicized body. Thus, on the one hand, having in mind this rearrangement of the structure of the Judicial Council, it could be expected that appointments and dismissals of judges would be more professionalized and less politicized* (Anastasi, 2018, p.6). These formulas have not been implemented in Albania. In Albania, in accordance to the new amendments of the Constitution in 2016, the two government councils for judges and prosecutors are composed of 11 members. Six members are elected by judges and prosecutors of all levels of the courts, while five are elected by the Parliament from other lawyers and academics. Quite identical formula is used in Serbia, mandated in the draft constitutional amendment. In Serbia, the number of judges is equal to the number of the lay members in the two government bodies. The composition of the High Council of Justice and of the High Prosecutor Council in Kosovo represents an example of pluralism.

Thanks to the EU assistance and support, Macedonia was one of the first countries in the region that was involved in the process of judicial reforms. In 2005, the country introduced a large package of constitutional amendments related to the judiciary. One of the focal points of these reforms was the establishment of Judicial Council of Macedonia, incorporating all of the features of the European model. The composition of the Council also follows EU recommendations. A majority of eight of its fifteen members are from judicial ranks, five are appointed by the Parliament upon nomination from the respective Parliament Commission, and the President of Macedonia, the Minister of Justice, and the President of the Supreme Court are members *ex officio* (Preshova, Damjanovski, Nechev, 2017). However, ten years after the establishment of the new judicial council, it is rather evident that the judiciary was not ready for the high level of self-government. The wiretapping scandal in Macedonia disclose what was evident practice in the country-the high percentage of political pressure on the judiciary and judicial council. As a result, the EU set out a list of *urgent reform priorities* that Macedonia needs to implement to avoid further backsliding. Presented in rather undiplomatic manner, several recommendations are directly related to the judicial council and its implementation performance, such as the de-politicisation of the appointment and promotion of judges and prosecutors in practice; additional professionalism of the judicial council in practice; and finally a call for taking a more proactive role in protecting judges from interference with their independence (European Commission, 2015). Another form of political pressure, has been manifested through the disciplinary and dismissal proceedings before the judicial council (Preshova, Damjanovski, Nechev, 2017).

Some of the mechanisms predicted to reform the Judiciary of the countries are the following:

- *Anti-deadlock mechanisms* are substitute measures predicted by the constitution or the law, as a solution in the cases where the relevant bodies do not act to accomplish their duties or boycott the whole process. These mechanisms can prevent the nonfunctioning of judicial bodies, outcome of political interference and corporatism.
- *Improvement in accountability mechanisms for judges and prosecutors* is one of the main characteristic of the reform of the justice system in the Western Balkan countries.
- The establishment of *specialized courts and prosecutor offices for investigating and prosecuting corruption cases* including senior state officials is also crucial mechanism in the reforms. In Albania, these bodies are provided by a constitutional amendment (no. 76/2016), while in other cases these bodies are mandated by law (Anastasi, 2018).
- *Temporary measures. Vetting process and due process of law* - This process was firstly introduced in BiH, and then in Kosovo and Serbia. However, in Kosovo and Serbia, the vetting process did not function as it was expected. Although, the vetting process failed in Serbia and was highly problematic in Kosovo does not mean that the vetting is a completely failed measure. In Kosovo, this process faced big problems, caused by

political intervention. The legal basis for the vetting process in Kosovo was adopted in 2006 founded on a similar process introduced in BiH in 2002-2004. Following the experiences in Kosovo and Serbia and, the Albanian justice reform also adopted the vetting process. In Albania, a constitutional amendment instituted a new system of procedures and independent institutions, which fulfill all the international standards for a specialized judicial system. The new bodies are related only to vetting and cannot do other activities. Thus, this institutional system is temporary and related only to vetting (Anastasi, 2018).

- The *International Monitoring Operation (IMO)* is a specialized and temporary body established in Albania based on the constitutional amendment of judicial reform. The goal for this body was declared by the European Union Delegation in Albania.

The Venice Commission is worried about the impossibility of the Albanian Constitution to guarantee the existence and well-functioning of this mechanism, because extensively relies on the international members' goodwill. The same conclusion it can be taken for the other Western Balkan countries (Anastasi, 2018).

Eventually, the progress the Western Balkan countries in their path(s) towards the European Union are pre-determined with the success of the countries to accommodate their domestic judiciaries with the EU law. However, the process of accommodation of the judiciaries with the EU standards and reforms is not an easy mission to accomplish. This complicated process is even subsequent by fragile phenomena, such as corruption and politicization of the system. Following this, the general public in the region will manifest a negative opinion and a low level of trust in the judicial system. The impossibility to comply the Western Balkans judicial systems with the EU methods is one of the reasons behind that.

Review of the progress of the Western Balkan countries towards implementation of the Chapter 23 and the judicial reform

Serbia

In the latest release of the European Commission is stated that Serbia's judicial system has some level of preparation. The 2016 recommendations were only partially fulfilled. Some progress was made, especially by reducing the backlog of old enforcement cases and implementing methods to harmonize court practice. In Serbia, enhanced rules for evaluating the professional performance of judges and prosecutors were adopted. However, the scope for political influence over the judiciary continues to be an issue of concern. A new draft of amendments to the Constitution in the domain of the judiciary was published in January 2018 and was put forward for public discussion before being sent to the Venice Commission (European Commission, 2018, p.13).

In the year next year, Serbia should focus on fulfillment of certain prerequisites, such as:

- To put effort on strengthening the independence of the judiciary and the autonomy of the prosecution through amendments to constitutional and legislative provisions related to appointment, career management and disciplinary proceedings of judges and prosecutors;
- To ensure that the High Judicial Council and the State Prosecutorial Council can entirely manage with the role they have, and should reach a coherent and efficient judicial administration in accordance with the European standards, without excluding the management of the judicial budget;
- To adopt and to implement a human resources strategy for the entire judiciary including the establishment of a uniform and functioning case management system, which will bring up to greater efficiency and effectiveness to the whole justice system (European Commission, 2018).

Montenegro

Montenegro is implementing a detailed action plan which was adopted before the opening of the accession negotiations in December 2013. The capacities of the Judicial and Prosecutorial Councils have been improved, judges and prosecutors were recruited for the first time under the new system and implementation of the new IT strategy has been launched, and has started to function. However, the recruitment, professional evaluation, and promotion system of judges have yet to be fully put into action. In addition, a track record of implementation of codes of ethics and of disciplinary responsibility is still missing. The human resources management has not been improved, either (European Commission, 2018).

In the latest report of the European Commission is stated that Montenegro's judicial system is relatively prepared and some progress has been made. Although the institutional capacity has been strengthened, the legislative framework on the judiciary should be committed to increasing its impartiality and competence. According to the release, the problem of a major importance is corruption. In addition, although Montenegro has bonded its legislation with EU standards and the work of the Ombudsman's Office, in particular, has improved, more efforts are necessary on strengthening the institutional framework and effective protection of human rights in practice (European Commission, 2018).

In the coming year, Montenegro should especially:

- Foster the efforts to increase the use of financial investigations in accordance with Financial Action Task Force (FATF) standards, and should create a track record of seizure and confiscation of criminal assets;
- strengthen the independence, accountability, professionalism and overall efficiency of the judicial system;

- strengthen media freedom, including by clearly stepping up efforts to investigate cases of violence against journalists and by shielding public broadcaster RTCG and all other media from undue influence and political pressure;
- To foster the work on the rationalization of the judicial network simultaneously by ensuring better human resources management (European Commission, 2018)

Albania

As it is the case with the above-mentioned countries, Albania has some level of preparation to implement the acquis and European standards towards fulfilling Chapter 23. Good progress was reached, especially through the continuation of the justice reform and the adoption of the full legal package. According to the new legislation, there are many drawbacks with the justice system, such as lack of independence, efficiency, and professionalism. An issue of a particular concern is the corruption which is widespread throughout the country. In that regard, a couple of measures should be implemented. Moreover, in order to defend the rights of the children, to bear with the gender-based and domestic violence and to protect vulnerable groups, additional progress in enforcing human rights, especially at the local level, and on strengthening the institutional mechanisms should be implemented. Following the establishment of the vetting institutions, the first set of priority cases is being reviewed. The backup institutions supporting the process have completed their first reports on the proficiency assessments, background checks, and asset declarations. Appeals against the vetting law and the related underlying legislation of the judicial reform have been adjudicated by the Constitutional Court. A Vetting Law's constitutionality was confirmed by the Constitutional Court. A number of provisions in the laws on the governance of the judiciary and on the status of judges and prosecutors have been declared unconstitutional and were invalidated, and the following legislative was required. Also, there has been no progress in carrying out the recommendations on making more effective use of the case management system, on issuing reasoned adjudications in due time and on allocating cases randomly to judges and prosecutors.

In the coming year, Albania should in particular:

- Advance the implementation of justice reform. This should include completing the set-up of the new judicial structures (the High Council of Justice, the High Prosecutorial Council, the High Justice Inspector, and the Justice Appointment Council) and achieving first results in the process of re-evaluating judges and prosecutors;
- Progress in establishing a solid track record of investigations, prosecutions, and convictions in combating corruption at all levels, including asset recovery;
- Achieve further results in the process of re-evaluating judges and prosecutors;
- Finalize the creation of the new independent judicial institutions, namely the High Council of Justice, the High Prosecutorial Council, the High Justice Inspector, and the Justice Appointment Council;

- Continue to pursue a sector approach to the justice reform under the cross-cutting strategy for 2017-2020 and ensure reliable governance (European Commission, 2018).

Macedonia

Almost 10 years have passed after in the country were implemented the judicial reforms. Despite the establishment of a strong judicial council, it has not been shown any particular advancement of judicial independence. If the domestic authors do not take a greater responsibility regarding this situation, there will not be any particular progress regarding the judicial independence (Preshova, Damjanovski, Nechev, 2017).

Following the consultations that included outreach across party lines, the Macedonian government adopted a strategy for judicial reform (2017-2022) and action plan in November 2017. Macedonia is a particular case, considering the fact that the strategy addresses the *Urgent Reform Priorities* and pending recommendations by the Venice Commission and the Senior Experts' Group on systemic Rule of Law issues. The process of amending key pieces of legislation, as envisaged by the strategy is underway. Compliance with outstanding Venice Commission recommendations is expected to increase with further changes to the Law on Courts and to the Law on the Judicial Council envisaged in the judicial reform strategy. Moreover, timely allocation of financial resources is the key for the successful implementation of all reforms.

In Macedonia, the obstruction faced by the Special Prosecutor Office (SPO) has diminished because of the change in the political environment and the dismissal of the former State Public Prosecutor. Subsequently, the offices successfully file several indictments and have a first judgment handed down in one of its cases. On the other hand, other relevant institutions are required to demonstrate a more proactive approach in the fight against corruption. Fundamental rights continue to be largely enshrined in law, but as in all other areas, implementation will require a sustained commitment to reforms. Competent independent and regulatory bodies need to be further strengthened, with adequate budget and skilled staff.

In the coming year, the country should in particular: ☐

- Adopt and implement measures included in the judicial reform strategy on appointment and promotion systems in the judiciary, and shield the judiciary from political interference;
- Adopt and implement reforms to the Judicial Council and Council of Public Prosecutors, ensuring that they fulfill their respective roles in protecting the independence of judges and prosecutors;
- Ensure that all reforms, notably those concerning institutions, are based on robust analyses of gaps and needs, that they are properly planned, sequenced, budgeted and follow an inclusive process of consultation with all relevant stakeholders (European Commission, 2018).

Bosnia and Herzegovina

The Council of Ministers in March 2017, adopted the action plan of the 2014-2018 justice sector reform strategy. The document was followed by a newly adjusted timeline for implementation. For the process implementation of the strategy is supervised by the ministerial conference composed of ministers of justice at all levels and presidents of the Brčko District Judicial Commission and the HJPC). The rules of procedure were adopted in June 2017 and were also established the technical structures for monitoring the implementation of the strategy. These structures are now fully operational and produced a first activities' implementation report adopted at the session of the ministerial conference held in March 2018. The ministerial conference supported the extension of the strategy's timeframe beyond 2018, to be approved by the Council of Ministers, and the signing a memorandum of understanding with CSO representatives. The political authorities should also take conclusive measures to implement the strategy, by providing relevant budgetary allocations for each activity.

Under the leadership of the Ministry of Justice should be finalized the draft Law on Bosnia and Herzegovina. In addition, the Courts in the country need to be finalised, in line with the standards related to criminal jurisdiction set in the Treaty on the Functioning of the European Union. The adoption of this law is needed to reinforce legal certainty and functioning of the judiciary, notably in the fight against serious crime (European Commission, 2018).

In the following period BiH should:

- Implement the action plan of the 2014-2018 justice sector reform strategy, allocate a realistic budget and ensure that the monitoring and reporting system is effectively functioning;
- implement the action plan adopted by the HJPC notably with a view of strengthening disciplinary sanctions and integrity in the judiciary, including through improved assets declarations; develop more qualitative criteria for appointment and appraisal of judges and prosecutors; upgrade training, including through the establishment of an effective mentorship system; revise the HJPC Law on the basis of the European Commission's recommendations and the relevant Venice Commission Opinion;
- Improve impartiality and efficiency by upgrading the existing case management system within the HJPC in order to monitor random allocation of cases effectively and provide more accurate statistical data in line with CEPEJ methodology; reform the execution procedure laws to reduce effectively the utility-cases backlog in courts and improve the enforcement procedure throughout BiH (European Commission, 2018, p. 8).

Kosovo

In the latest report of the European Commission is stated that there is not a great progress in implementing the Kosovo Judicial Council's (KJC) 2014-2019 strategic plan, the 2014-2019 communication strategy and the strategy for reducing the backlog of cases. Apparently, in comparison with the other WB countries, Kosovo is significantly lagging behind in the process of implementation of the envisaged reforms. The Kosovo Prosecutorial Council (KPC) has demonstrated more progress in the implementation of its strategic plan for 2016-2018, but the progress continues to be low. Kosovo lacks a comprehensive strategy for the justice sector reforms and a proper mechanism for inter-institutional coordination. Kosovo authorities do not provide sufficient coordination of the donors. The whole process leads to inefficiencies, incoherence, and duplication of efforts. In November 2016, the government adopted a decision to conduct a functional review of the rule of law sector, but there have not been significant further developments since its start (European Commission, 2018).

In spite of everything, Kosovo is on early stage/has some level of preparation to apply the *acquis* and European standards in this area. Some progress has been made, particularly with the integration of Kosovo Serb judges and prosecutors and their support staff across Kosovo in the unified Kosovo judicial system, with the investigation and prosecution of some high-level corruption cases and the launch of the application process for recognition and verification of the status of victims of sexual violence during the conflict (European Commission, 2018). As regards fundamental rights, implementation of the relevant laws and strategies is undermined by insufficient financial and other resources, weak political priorities and lack of coordination. The judiciary is still vulnerable to undue political influence and rule of law institutions need sustained efforts to build up their capacities. The administration of justice remains slow and inefficient.

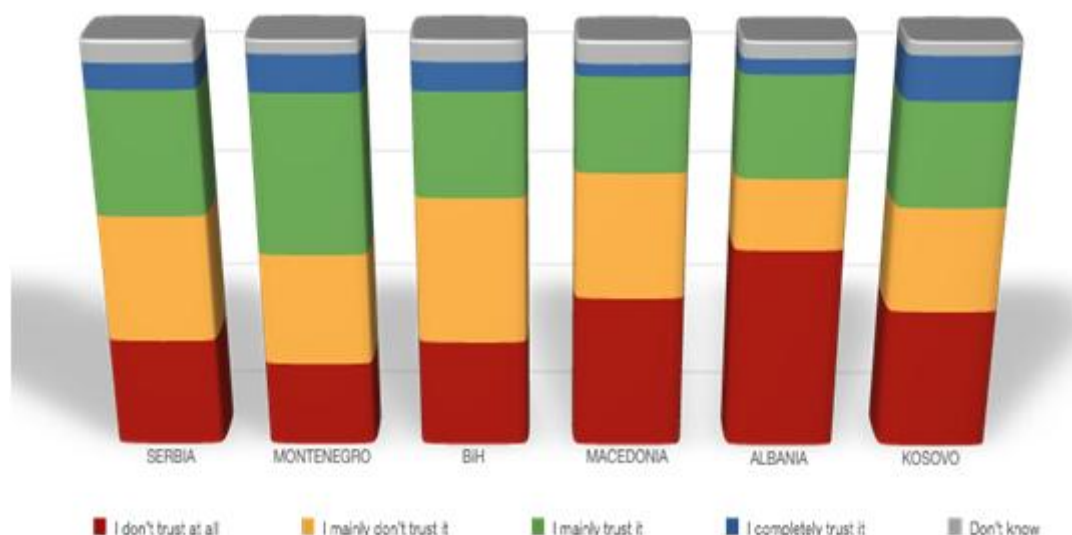
The European Commission release is stated that in the coming year, Kosovo should in particular:

- Take concrete measures to maximize the independence, accountability, professionalism, and efficiency of the judiciary;
- Should continue to strengthened the track record on the fight against corruption, including final judgments and confiscations, and amend the relevant criminal legislation;
- It should expand the existing IT tracking system to all high-level corruption cases; give higher political priority to the protection of human and fundamental rights and ensure adequate capacity and budgetary resources for their implementation, enforcement, and promotion, including for key services and assistance to vulnerable groups.

Public opinion of the Western Balkan countries regarding Judiciary

| Country | I don't trust at all | I mainly don't trust it | I mainly trust it | I completely trust it | Don't know |
|------------|----------------------|-------------------------|-------------------|-----------------------|------------|
| SERBIA | 27.1 | 31.3 | 30.1 | 6.2 | 5.3 |
| MONTENEGRO | 21.2 | 27.8 | 38.9 | 8.9 | 3.3 |
| BIH | 26.9 | 36.1 | 25.3 | 6.8 | 5.0 |
| MACEDONIA | 38.2 | 30.9 | 22.7 | 2.9 | 5.3 |
| ALBANIA | 50.3 | 17.5 | 24.5 | 3.6 | 4.1 |
| KOSOVO | 35.0 | 25.8 | 25.4 | 10.5 | 3.3 |

Table 1: *Trust in Judiciary*



Graph 1: *Trust in Judiciary*

According to the data measured on public opinion of the six Western Balkan countries, as a part of a regional four years project delivered by seven NGOs in the region in a common network Pointpulse, regarding the trust in the Political institutions in the region, delivered by each country individually, and in particular case the *Trust in Judiciary*, as a point of interest in this analysis, it can be delivered the following conclusions:

Predictably, and in accordance with the Judicial reform and the progress towards the implementation of Chapter 23 of the EU acquis, Montenegro is the only country in the region where the respondents share mainly positive attitude regarding the Judiciary and according to the data elaborated for 2018, (38.9%) of population *mainly trusts* in the Judiciary. The situation is not that bright in Serbia and Bosnia and Herzegovina where (31.3%), and (36.1%) of the respondents expressed their opinion that they *mainly do not*

trust in the Judiciary. The respondents of Macedonia and Kosovo stated with (38.2%) and (35.0%) they *do not trust in the Judiciary at all*. Especially negative towards this issue is the opinion in Albania where (50.3%) from the respondents stated that they *don't trust at all* in the domestic Judiciary.

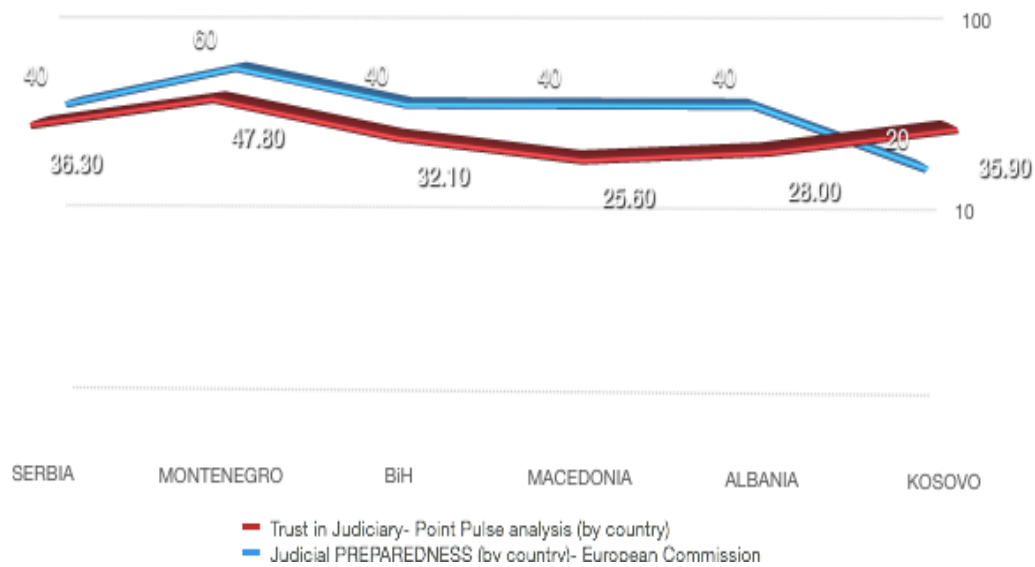
In the end, the overall result is that respondents from Serbia *mainly distrust the Judiciary* (58.4%), rather than trust (36.3%). This result is quite different than in Montenegro where the respondents are almost equally divided regarding the question about the trust of the Judiciary where (48.9%) distrusts and (47.8%) trust the system of Judiciary. On the other hand, the respondents in Bosnia and Herzegovina generally expressed their opinion that they do not trust the Judiciary (63.0%), rather than trust in the system (32.1%). The distrust in the Judiciary is even higher in Macedonia, (69.2% distrust in comparison to 25.6% trust). The results about Albania and Kosovo state that (67.9%) of respondents in Albania distrust Judiciary, while (28.0) trust the Judiciary. (60.8%) of the respondents in Kosovo distrust the Judiciary, in comparison with (35.9%) that trust the Judiciary (Pointpulse, 2018).

Regarding the data elaborated in the RCC Balkan Barometer for 2018 and delivered by the Regional Cooperation Council it can be seen modestly different results than the results elaborated in the previous survey, conducted by the Pointpulse Network, regarding the Trust in Judiciary. The results are following:

The respondents from Montenegro tend to trust in the Judiciary with (46%) and according to this survey Montenegro is the only country that presents a positive trend. Regarding the trust in Judiciary in Macedonia, in the RCC Balkan Barometer are presented quite similar results as in the previous data, and Macedonians with (36%) tend not to trust in the Judiciary. In accordance with the RCC Barometer, (38%) the respondents from Serbia and Albania tend not to trust in the Judiciary, while (41%) of respondents in Bosnia and Herzegovina, and (30%) of respondents in Kosovo, totally distrust in the Judiciary (RCCBalkan Barometer, 2018).

| Country | TRUST in Judiciary- Pointpulse analysis (by country) | Judicial PREPAREDNESS (by country)- European Commission |
|-------------------|--|---|
| SERBIA | 36.3 | 40 |
| MONTENEGRO | 47.8 | 60 |
| BIH | 32.1 | 40 |
| MACEDONIA | 25.6 | 40 |
| ALBANIA | 28.0 | 40 |
| KOSOVO | 35.9 | 20 |

Table 2: *Trust in Judiciary in correlation with WB (6) preparedness of the Judiciary*



Graph 2: Trust in Judiciary in correlation with WB (6) preparedness of the Judiciary

In the graph above is analyzed the correlation among the Trust in the Judiciary in the Western Balkan countries, conducted by Pointpulse for 2018 and the progress towards implementing Chapter 23, with a special regard to the country's preparedness to implement the necessary reforms in the Judiciary in accordance with the individual country progress, presented in the releases of the European Commission for 2018.

From the data presented in the graph it can be concluded that according to the release of the European Commission, and in accordance with the Montenegrin progress successfully to fulfill the necessary benchmarks of the Chapter 23, the Montenegrin preparedness is rated with 60%. According to the European Commission Release for 2018, Serbia, Bosnia and Herzegovina, Macedonia and Albania are 40% prepared, while Kosovo is 20% prepared to implement the necessary reforms in Judiciary. The parameters of the EC releases are compatible with the European Policy Institute, Skopje Comparative infographic on EC reports for Western Balkan countries (EPI, 2018).

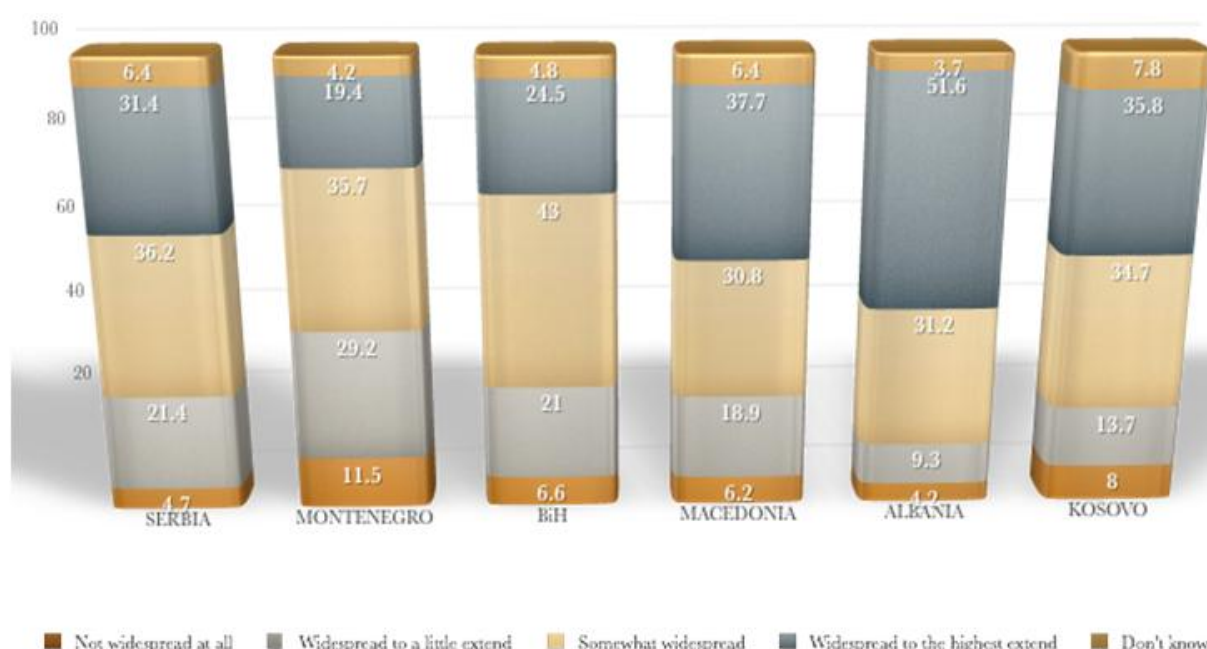
From the data presented it can be concluded the public opinion trust in Judiciary in Montenegro, (47.8%) is not entirely compatible the Montenegrin preparedness in Judiciary in accordance with the EC releases (60%). According to this analysis, Serbia is the only example in the region where the results of the public opinion trust almost overlap with the preparedness of the Serbian Judiciary in the EC release. In addition, although Macedonian and Albanian preparedness of Judiciary in the EC 2018 Releases is (40%), the public opinion trust in Judiciary is quite low- (25,6%), and (28,0%.) Similar data is presented in the case of Bosnia and Herzegovina where although according to the EC release for 2018, Bosnia and Herzegovina, as to its peer countries the Preparedness of the Judiciary is (40%), the public

trust in the Judiciary in the Pointpulse analysis is (32,2%). The data for Kosovo presents a disparity. Although according to the EC 2018 Release the Kosovo Judiciary is only (20%), prepared, the public opinion trust is (35.9%). This is not the case with the other five Western Balkan countries.

From the analysis it can be concluded that the Western Balkan countries impact a bad performance of the judiciary system, similar to the low public trust in the judiciary. Kosovo is the only country in the region that is not a part of this trend. An open question is whether in the years that follow the public opinion trust in the Judiciary will potentially grow with the preparedness of the countries to implement the necessary reforms in the Judiciary.

| Country | Not widespread at all | Widespread to a little extend | Somewhat widespread | Widespread to the highest extend | Don't know |
|------------|-----------------------|-------------------------------|---------------------|----------------------------------|------------|
| SERBIA | 4.7 | 21.4 | 36.2 | 31.4 | 6.4 |
| MONTENEGRO | 11.5 | 29.2 | 35.7 | 19.4 | 4.2 |
| BiH | 6.6 | 21.0 | 43.0 | 24.5 | 4.8 |
| MACEDONIA | 6.2 | 18.9 | 30.8 | 37.7 | 6.4 |
| ALBANIA | 4.2 | 9.3 | 31.2 | 51.6 | 3.7 |
| KOSOVO | 8.0 | 13.7 | 34.7 | 35.8 | 7.8 |

Table 3: Corruption in Judiciary (Pointpulse Analysis)



Graph 3: Corruption in Judiciary (Pointpulse Analysis)

In the table and in the graph above is presented the public opinion of the region and the corruption in Judiciary. Undeniably, the low progress in the judicial systems of the Western Balkans is connected with multiple crises, such as corruption, corporatism and politicization (Anastasi, 2018).

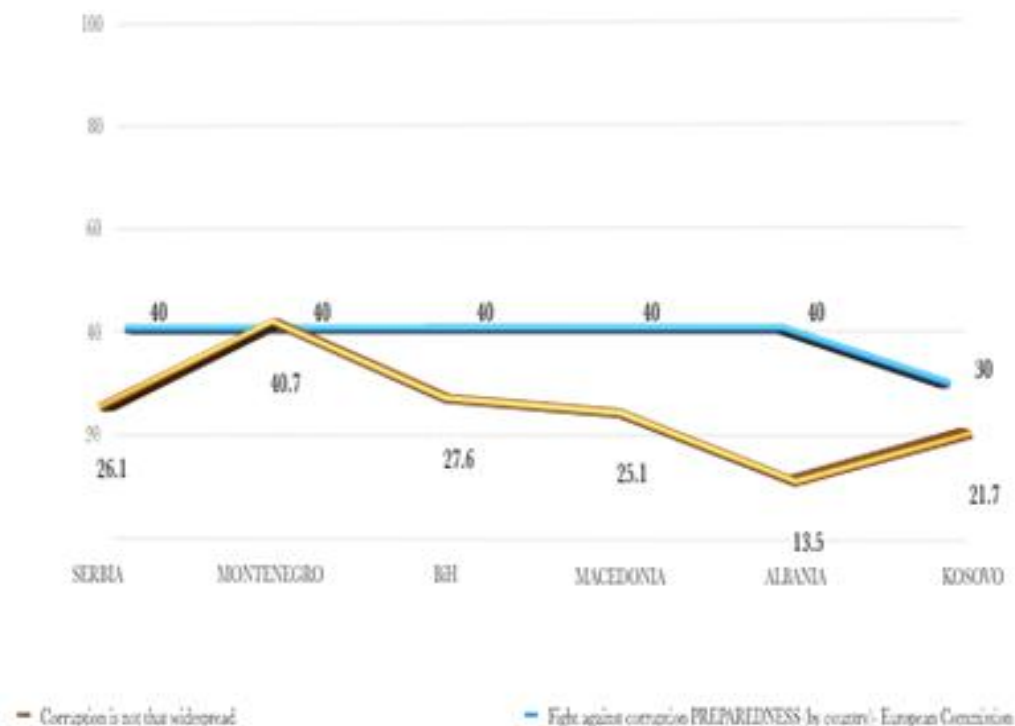
The data elaborated in the Pointpulse release for 2018, taking into account the perception of the population about the corruption in the Judiciary regarding the percentage of prevalence of corruption it can be concluded that in Albania the corruption in Judiciary is widespread to the highest extend of (51.6%). Other countries in which the population perceive that the Corruption in the Judiciary is *widespread to the highest extend* are Macedonia (37.7%), and Kosovo (35.8%). The highest percentage of people living in Serbia, Montenegro, and Bosnia and Herzegovina determine that corruption in judiciary is *somewhat widespread* with (36.2%), (35.7%), and (43.0%) successively. The overall result of each Western Balkan country individually is that (67.5%) of the population in Serbia, (55.1%) in Montenegro, (67.6%) in Bosnia and Herzegovina, (68.5%) in Macedonia, (82.8%) in Albania, and (70.5%) in Kosovo.

The results presented are modestly different with a similar survey conducted by the Regional Cooperation Council in the RCC Balkan Barometer 2018, examining the question- *To what extent do you agree or not agree that the following categories in your economy are affected by corruption?*

Following that, (87%) of the respondents in Albania, (81%) of the respondents in Bosnia and Herzegovina, (63%) of the respondents in Kosovo, (74%) of the respondents in Macedonia, (65%) of the respondents in Montenegro, and (72%) of the respondents in Serbia determine that the Judiciary is affected by corruption (RCC Balkan Barometer, 2018).

| Country | Corruption is not that widespread | Fight against corruption PREPAREDNESS (by country)- European Commission |
|------------|-----------------------------------|---|
| SERBIA | 26.1 | 40 |
| MONTENEGRO | 40.7 | 40 |
| BiH | 27.6 | 40 |
| MACEDONIA | 25.1 | 40 |
| ALBANIA | 13.5 | 40 |
| KOSOVO | 21.7 | 30 |

Table 4: Public opinion about corruption and fight against corruption preparedness (European Comission Release 2018)



Graph 4: Public opinion about corruption and fight against corruption preparedness (European Comission Release 2018)

In the table and in the graph above is presented an analysis among the negative sum of the public opinion about the prevalence of corruption in the Western Balkans with the countries' preparedness to implement certain measures to tackle with it. The parameters of the EC releases are compatible with the European Policy Institute, Skopje Comparative infographic on EC reports for Western Balkan countries (EPI, 2018). According to the Release of the European Commission for 2018, Serbia, Montenegro, Bosnia and Herzegovina, Macedonia and Albania are (40%) prepared to fight against corruption. This percentage is lower in Kosovo (30%.) From the data it can be concluded that Montenegro is the only country in the region that shows negative sum regarding the percentage of corruption (40.7%). This is not a case with the other countries where the negative sum of the presence of corruption where the corruption *is widespread to a little extend, or somewhere widespread* (Pointpulse analysis, 2018), where the public opinion of Serbia, BiH, Macedonia, and Kosovo is (26.1%), (27.6%), (25.1%), and (21.7%) successively. Albania is a particular example this percentage in the country is extremely low (13.5%).

Conclusion

The Western Balkan countries, as a part of the process of EU enlargement, almost two decades, are striving to become members of the European Union. Their final goal is followed by a complex procedure, taking into account the prescribed and expected prerequisites and benchmarks that expected to be accomplished. The most requiring chapters of the transitive democracies of the Western Balkans in their(s) process of EU integration are Chapter 23 and Chapter 24. Chapter 23 of the EU aquis of the EU enlargement encompasses areas, such as judiciary, anti-corruption, fundamental rights and the rights of EU citizens, and Chapter 24, covering the areas, such as justice, freedom, and security. Securing judicial independence and rule of law reforms is fundamental for the country's accountability with the EU values and policies. The European model, guarantying the judicial independence is sustained in the creation of strong judicial councils, which is a crucial element in the enlargement process. Many experts in the field express their opinion that there is a clear lack of both empirical and theoretical accounts of the processes of Europeanization of the judicial systems. The whole process of accommodation of the regions' judiciaries with the EU laws is a complicated mission to fulfill, due to fragile phenomena, such as corruption and the deep political interference in the process of decision making. Eventually, the Western Balkan countries must fight corruption effectively, because corruption is a major threat to the stability of democratic institutions and the rule of law. Reliable institutions and a sound legal framework are needed to establish a coherent policy of prevention and deterrence of corruption.

The analysis in the text, based on the comparative approach provides a general outlook of the individual countries' progress towards implementation of the relevant reforms in Judiciary, presented in the newest 2018 European Commission release. The research is subsequent by analysis of the Pointpulse Network, comparing the European Commission 2018 report. From the entire analyses can be emphasized that the Western Balkan countries impact a bad performance of the judiciary system, similar to the low public trust in the judiciary. More precisely, Macedonian and Albanian public opinion trust in Judiciary is quite low- (25,6%), and (28,0%.) Similar data is presented in the case of Bosnia and Herzegovina where the public trust in the Judiciary in the Pointpulse analysis is (32,2%). Apparently, the public trust of Macedonia, Albania and Bosnia and Herzegovina is lower than the preparedness of Judiciary, presented in the EC 2018 Releases is (40%). On the other hand, Kosovo is a particular case, taking into account that although according to the EC 2018 Release the Kosovo Judiciary is only (20%), prepared; the public opinion trust is (35.9%). Public trust in Montenegro, according to the elaborated data, shows that Montenegro, (47.8%) is not entirely compatible the Montenegrin preparedness in Judiciary in accordance with the EC releases (60%). According to the analyses, Serbia is the only example in the region where the results of the public opinion are quite compatible with the preparedness of the Serbian Judiciary in the EC release.

In addition, following the second comparative analysis in the text, regarding the negative sum of the public opinion about the prevalence of corruption in the Western Balkans with the countries' preparedness to implement certain measures in order to handle it, can be emphasized that in accordance with the EC 2018 Release, Serbia, Montenegro, Bosnia and Herzegovina, Macedonia and Albania are (40%) prepared to fight against corruption. This percentage is lower in Kosovo's preparedness is (30%.) From the Pointpulse analyses can be concluded that Montenegro is the only country in the region that shows negative sum regarding the percentage of corruption (40.7%). This is not a case with the other countries where the negative sum of the presence of corruption where the corruption is widespread to a little extend, or somewhere widespread, where the public opinion of Serbia, BiH, Macedonia, and Kosovo is (26.1%), (27.6%), (25.1%), and (21.7%) successively. Albania is a particular example this percentage in the country is extremely low (13.5%).

In the end, the Western Balkan countries need to have a more clear understanding the benchmarks imposed by the European Union in order to achieve desirable results in terms of best practice and European standards. Unfortunately, the European Commission does not use the data to exert peer pressure by comparing and ranking them, such as the analysis in Table 2 and Graph 2: *Trust in Judiciary in correlation with WB (6) preparedness of the Judiciary*, and Table 4 and Graph 4: *Public opinion about corruption and fight against corruption preparedness* presented in the text. In opposite, using the positive example and the individual progress of the neighboring countries towards implementing the relevant reforms, the WB may demonstrate greater progress regarding implementation of Chapter 23 and 24, particularly about the Trust in Judiciary and the Fight against corruption. Apparently, the public opinion being more deeply involved in the whole process will potentially be prone to provide more positive opinion regarding these issues.

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