



Briefing

## Political Trends & Dynamics

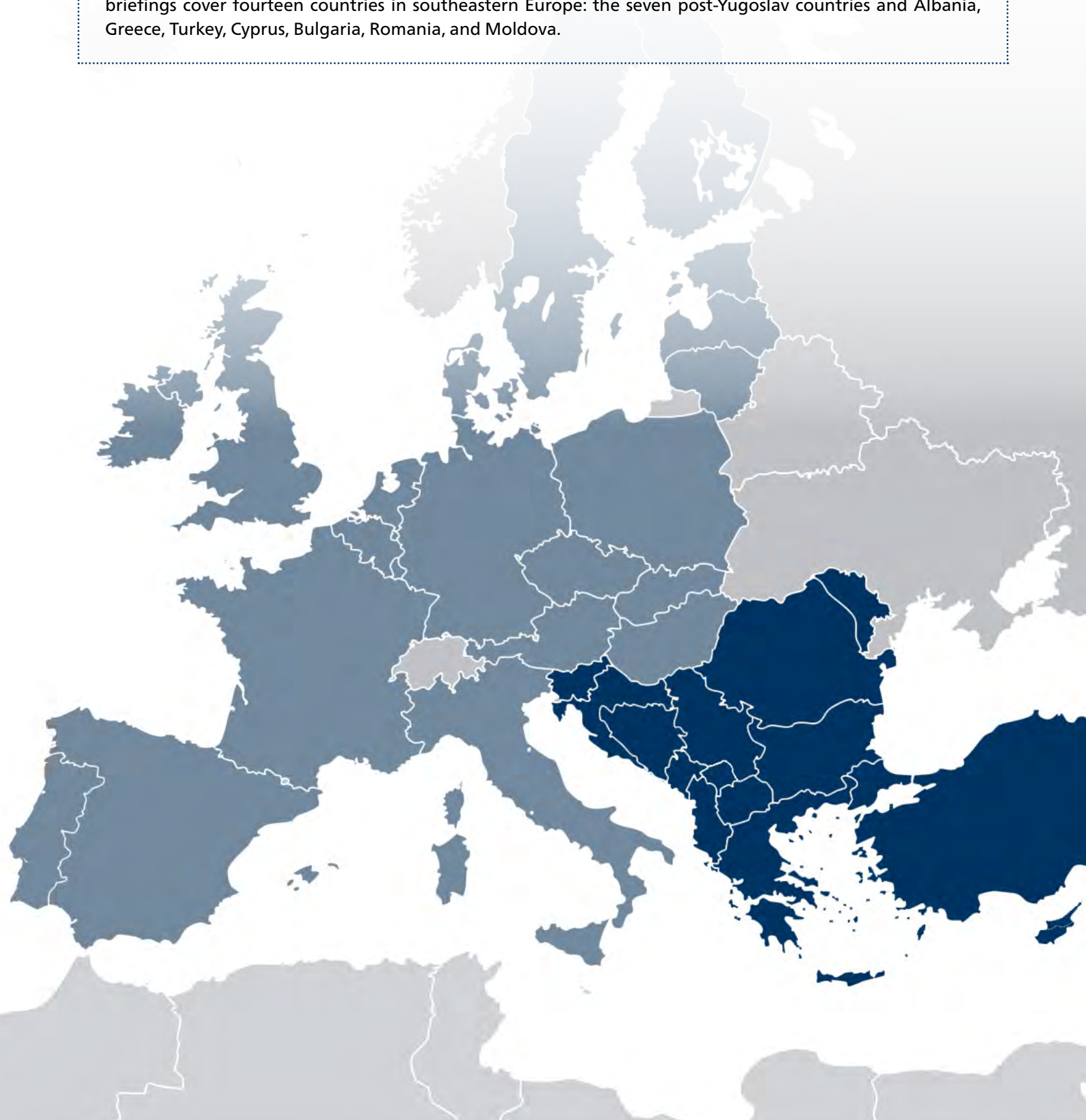
Romania and Bulgaria's Membership in the EU:  
Progress, Challenges, Prospects

Volume 1|2019

## Political Trends & Dynamics in Southeast Europe

A FES DIALOGUE SOUTHEAST EUROPE PROJECT

Peace and stability initiatives represent a decades-long cornerstone of the Friedrich-Ebert-Stiftung's work in southeastern Europe. Recent events have only reaffirmed the centrality of Southeast European stability within the broader continental security paradigm. Both democratization and socio-economic justice are intrinsic aspects of a larger progressive peace policy in the region, but so too are consistent threat assessments and efforts to prevent conflict before it erupts. Dialogue SOE aims to broaden the discourse on peace and stability in southeastern Europe and to counter the securitization of prevalent narratives by providing regular analysis that involves a comprehensive understanding of human security, including structural sources of conflict. The briefings cover fourteen countries in southeastern Europe: the seven post-Yugoslav countries and Albania, Greece, Turkey, Cyprus, Bulgaria, Romania, and Moldova.



## Editorial

*Jasmin Mujanović and Alida Vračić*

On January 1, 2019, Romania assumed the presidency of the Council of the European Union. Officially, Bucharest has pledged to make the strengthening of trade and commerce links the primacy focus of its mandate. But among a number of observers and analysts the hope is that the Romanian turn at the helm will focus attention on another set of issues: corruption and the rule of law, given its poor scores in both, and an overall democratic backsliding.

To highlight high level corruption and governments' unwillingness to address these issues, mobilizations of mass movements have increasingly become a major feature of politics in many states. In Romania, meanwhile, successive governments have risen and fallen on the back of large-scale protests, much as in Bulgaria, while citizen-led mobilizations remain locked in battle with increasingly authoritarian regimes in Budapest and Warsaw.

Each of these mobilizations might be characterized as aspects of a post-communist, second-wave of civil society-led democratization initiatives, not unlike the Color Revolutions of the mid-2000s. Only now, they're occurring within the EU, and in prospective member states like Serbia, and forcing both citizens and policymakers in Brussels to come to grips with the continuing inadequacies of the overall quality of democratic governance in the Union and its neighbourhood. In this respect, these events are not merely a matter of (South)East European backsliding; they're a fundamental question of the integrity of the EU as a whole. The essays in this volume attempt to elevate one set of these debates, which, though they are obviously not exhaustive accounts, point to the broad contours of the concerns that need addressing.

Accordingly, our first Political Trends & Dynamics issue of 2019 focuses in on these questions, and serves also as the first part of a two-part series examining the linkages between corruption, democratic backsliding, civil society mobilization and political participation in southeastern Europe. Our interest in these topics — much as with the linkages we are drawing between the respective pillars of these debates — comes from a growing recognition that existing democratic practices and institutions in much of Europe are in the midst of an existential transformation and, very likely, crisis. The restoration of institutional legitimacy in the region, and in Europe as a whole, demands a sober analysis of the roots and evolution of the current reactionary climate.

Accordingly, the perspectives you will read in the following two issues take a broad view of the post-communist period in southeastern and Eastern Europe and invite us to re-examine all that has changed, but also much that has not — and the resulting, and persistent, concerns over good, bad, and contentious governance in the region.

Importantly, some of the views expressed in this issue are often at loggerheads with one another and, indeed, with the perspectives of FES offices and partners in the region. The inclusion of such texts in this volume does not reflect this organization's endorsement of their perspectives. Instead, it reflects our deep-held commitment to (sometimes fractious) debate as intrinsic to democratic deliberation and decision-making. In this regard, this material makes for necessary reading for all the invested parties: local and European policymakers, as much as citizen-activists across the continent.

### PUBLISHER'S NOTE

Aiming to maintain the 'Political Trends & Dynamics in Southeast Europe' in full line with the changing political and social circumstances we are introducing with this issue the reshuffled editorial team. We welcome Ioannis Armakolas as the new Editor in Chief, who will, in the coming months, work together with the rest of the editorial team in revamping the publication. With the new editorial team we aim to continue offering insightful and timely analysis of the key regional and transnational issues. But also we aim to develop adequate tools for contributing fresh ideas to national, regional and European debates on emerging policy problems.



## Bulgaria and Romania after Accession: What Lessons for the EU?

*Dimitar Bechev*

*Research Fellow, University of North Carolina at Chapel Hill*

Bulgaria and Romania joined the European Union (EU) more than a decade ago. Much has happened since, but one thing has proven durable. The two countries are stuck on the Union's periphery. That is in part attributable to the EU's own evolution over the past decade. However, the deeper reason is the fact that European integration has not profoundly changed the rules of the game in either Bulgaria or Romania. Membership in the Union has not delivered on its promise, even if it has not been a failure either.

### Political Challenges

A cursory glance over the politics in the two countries proves this point.

Let us start with Romania. The president of the Chamber of Deputies is a convicted felon with a suspended sentence for election rigging and a second sentence for abuse of office, which he is currently appealing. Had it not been for his problems with the law, Liviu Dragnea would have been the prime minister. But for now, he should settle for the second best: run the governing Social Democratic Party (PSD) and change the heads of government. He has been pushing for a wholesale overhaul of the judiciary in order to have his conviction overturned and make sure high-level graft, including the embezzlement of EU money, goes unpunished. Dragnea twisted President Klaus Iohannis' arms and had Laura Codruța Kövesi, the chief prosecutor at the National Anticorruption Directorate, fired.<sup>1</sup> As a result, Bucharest and other large cities witnessed in August 2018 the mass demonstrations. They follow in the footsteps of another protest wave in January-February 2017, the largest since the end of communism, which also spread to the Romanian diaspora across the EU.

The PSD's power grab has put Romania on a collision course with the European Commission. In the worst case, Bucharest may have its voting rights in the Council suspended. In the meantime, Romania is holding the rotating presidency of the Council in the first half of 2019. Bulgaria looks stable by comparison. Prime Minister Boyko Borisov, leader of the Citizens for European Development of Bulgaria (GERB, or coat of arms), is on good terms with the European Commission and virtually all European leaders, from Angela Merkel to Viktor Orbán. Bulgaria's presidency of the EU Council overall went well. Borisov is rarely criticized for having the far right as partners in his cabinet. And media beholden to tycoon Delian Peevski, an opposition politician who once briefly headed the National Agency for State Security and even vowed to throw Borisov in jail, are happily providing positive coverage.

After a period of polarization and mass protest in 2013–2014, the Bulgarian political scene settled down. Parties do compete but also engage in cartel-like behaviour, as is the case with GERB and the Movement of Rights and Freedom, which is formally in opposition but often backs Borisov. Unlike its northern neighbour, Bulgaria has never seen a top politician or official serve time in jail.<sup>2</sup> This doesn't mean that the almighty Office of the Prosecutor General, a veritable state within the state, doesn't do investigations or even take opposition politicians to court now and then. But reports by journalists and watchdogs about large-scale fraud and misappropriation of EU funds by politically connected individuals and groups have thus far failed to result in sentences. The touchy subject of the 2014 bankruptcy of the Corporate Commercial Bank (KTB), Bulgaria's fourth largest lender, has slipped away from the spotlight too. Prosecutors have not looked into the behind-the-scenes redistribution of its assets to crony capitalists including Peevski. If Romania's problem is that the political class seeks to subdue magistrates, in Bulgaria it is about the prosecution being unaccountable and in cahoots with shady interests.

<sup>1</sup> Kövesi is now a frontrunner for the position of the head of the newly created European Public Prosecutor's Office (EPPO). The government in Bucharest is vowing to block her candidature.

<sup>2</sup> Between 2013–2017, Romania put on trial 68 senior officials of whom 37 were convicted, including former Prime Minister Adrian Năstase, nine ministers and 27 members of parliament.

## Society as a Roadblock

However, democratic deficiency is not just a top-down phenomenon. The sad fact is that it is nurtured from below and resonates with popular attitudes. The PSD has been successful in the polls thanks to its captive electorate in rural areas. Alina Mungiu-Pippidi has put it in very rough terms: “seven million peasants, who barely reach subsistence levels, have no idea of the difference between the political right and left.”<sup>3</sup> As elitist and condescending such a pronouncement might sound, it does contain a grain of truth. The government in Bucharest is exploiting their grievances with a mixture of economic populism and social conservatism: tax hikes for the urban middle classes, a smear campaign against the anti-corruption protesters as stooges of George Soros, even a referendum on banning same-sex marriage. Even if GERB in Bulgaria wins a fair amount of votes in the big cities and prides itself on pro-business policies, its media allies peddle the same messages. News outlets, politicians, and opinion makers rushed to condemn the Council of Europe’s Istanbul Convention on Preventing Violence against Women on the grounds it was a Western plot to promote same-sex marriage by smuggling the notion of gender as a social construct into domestic legislation. One of the most vocal critics was the Bulgarian Socialist Party (BSP), the chief opposition force and, like Romania’s PSD, member of the Party of the European Socialists (PES). As a result, in July 2018, the Constitutional Court ruled the Convention unconstitutional.

The entrenchment of socially conservative and outright authoritarian attitudes should therefore come to no one’s surprise. A recent survey by the Pew Research Centre provides ample detail about the divergence in values setting “old Europe” from the East, including Romania and Bulgaria.<sup>4</sup> In sum, wholesale institutional transformation remains an uphill battle.

## Does the EU (Still) Make a Difference?

The EU’s record in addressing the democratic challenges in Romania and Bulgaria is far from stellar. Since entering the Union in 2007, the two countries have indulged in what U.S.-based political scientist Venelin Ganev has famously termed post-accession hooliganism, which he defines as elite behaviour contributing to “a worsening corruption problem, the destabilization of previously coherent normative frameworks, and the reversal of processes of state building.”<sup>5</sup> The EU’s underperformance, or rather the mismatch between expectations and delivery, is conditioned by a variety of factors.

Part of the problem is that Brussels has bigger fish to fry in Central and Eastern Europe (CEE). The unfettered reign of self-described illiberal democrat Viktor Orbán in Hungary and the crusade the governing Law and Justice (PiS) has embarked upon against Poland’s judiciary have diverted attention away from the Balkan laggards. Liberal ideals such as the rule of law, free media, government accountability, and tolerance are in retreat across Eastern Europe and, in all honesty, in the West too. Bulgaria and Romania are no longer an aberration but, one can safely argue, the very norm. In addition, the authoritarian turn in Poland and Hungary poses a challenge to the cohesion of the EU as a whole. Poland is a large member state. Orbán has become the flagbearer of a nativist wave spreading across Europe. The issues Bulgaria and Romania are confronted with, by contrast, are largely contained within their borders.

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3 Alina Mungiu-Pippidi quoted in Dennis Deletant, “Romania’s protests and the PSD: Understanding the deep malaise that now exists in Romanian society,” LSE European Politics and Policy (EUROPP) Blog, 31 August 2018. <http://blogs.lse.ac.uk/europpblog/2018/08/31/romanas-protests-and-the-psd-understanding-the-deep-malaise-that-now-exists-in-romanian-society/>.

4 For instance, the survey found that 74 % in Romania and 66 % in Bulgaria consider religion as important or very important in the definition of national identity. By comparison, the percentage in the Netherlands is 22 %, and even in the Czech Republic 21 %. Close to half of Romanians think that the state should promote religious values and beliefs. Furthermore, 79 % of Bulgarians and 74 % of Romanians are opposed to same-sex marriage, a proxy for social conservatism, as compared to 73 % in France and 75 % in Germany who are in support. 40 % of Romanians believe abortion should be illegal whereas 84 % in Belgium and the Czech Republic think it should remain legal. 80 % of Bulgarians support the same view, a divergence with Romania. On the whole, Eastern Europeans are much more likely than Western Europeans to believe in notions such as fate and evil eye. They are also less open to the prospect of Muslims and Jews marrying into their family. See, “Eastern and Western Europeans Differ on Importance of Religion, Views of Minorities, and Key Social Issues,” *Pew Research Forum*, 29 October 2018. <http://www.pewforum.org/2018/10/29/eastern-and-western-europeans-differ-on-importance-of-religion-views-of-minorities-and-key-social-issues/>

5 Venelin Ganev, Post-Accession Hooliganism: Democratic Governance in Bulgaria and Romania after 2007, *East European Politics and Societies*, Vol. 27, No. 1, November 2013, pp. 26–44.

It is not as if the EU was caught unawares about goings-on in Bulgaria and Romania. The sense that there is unfinished business dates back to the very moment they entered the Union. In 2007, the accession treaties signed with the two countries introduced the so-called Cooperation and Verification Mechanism (CVM). Essentially, the European Commission made sure that it would continue monitoring the reforms, or lack thereof, in the areas of the judiciary. But as of today, it is clear that this instrument, at the very best, has limited impact on the target countries. Unlike the progress reports prior to 2007, recommendations in the CVM reports are either overlooked or cited selectively when it suits power holders in Bucharest and Sofia. Worse still, civil society seems to have given up on the CVM process as a credible means to discipline predatory elites.

The European Commission and the other member states struggle to address the challenge because they lack proper enforcement tools. What they can resort to is the cumbersome infringement procedures reserved for areas where EU law is directly violated at the national level, say if environmental legislation is at odds with the standards set in the *acquis communautaire*. Then again, if the EU's core political values are under attack, there is the nuclear option for a procedure under Article 7 of the TEU (Treaty on European Union). Importantly, Article 7 can only be activated by a unanimous vote in the Council, and for now, the rest of the Union feels that Romania and Bulgaria, for all their flaws, have not crossed the line.

Around 2010–2011, member states in the core of Europe came up with a creative idea of how to exert pressure on the authorities in Bucharest and Sofia. In the Council, France, Germany, and the Netherlands blocked Bulgaria and Romania's accession to Schengen, demanding progress on CVM conditions in addition to the technical criteria related to passport-free travel. However, in the years that followed, we found out that Schengen membership does not work as a sufficient incentive. Border checks do not hinder intra-EU free movement to such a large extent. The incumbent governments therefore do not see a direct reward at the ballot box nor do they fear being punished by their constituents whose choices are driven by altogether different issues. The so-called migration crisis of 2015–2016 shifted the conversation from abolishing the EU's internal borders to the reinforcement of its external borders. Prime Minister Borisov cashed in, both domestically and at the European level, by projecting himself as a trustworthy guardian of the frontier with Turkey. Thus, the transitional phase exclusion from Schengen turned into a permanent status of sorts.

## The Economic Dimension

This is not to suggest that EU membership has been an utter failure. That is clearly not the case. Progress is visible, especially in the economic field.

Romania and Bulgaria are still the EU's poorest members. Their GDP per capita (at purchasing parity) are at 63 % and 49 % of the EU-28 average, according to Eurostat.<sup>6</sup> Yet the two countries' economies have benefited a great deal from integration in the Single Market. Having absorbed the shock of the post-2008 global and European crisis, both countries have now rebounded. The export sector is expanding as demand in core Europe rises, even if domestic consumption remains the main growth motor. There are new manufacturing jobs created thanks to FDI. EU funds, while feeding corruption and clientelism, are improving the infrastructure and bolstering growth. In 2017, the Romanian economy expanded by 6.9 % of GDP, the highest level since 2008, while Bulgaria recorded a 3.6 % rise. However, the trend is going downwards in Romania: from 4 % GDP in 2018 to projected 3.8 % this year. Bulgaria stays stable at 3.2–3.3 % GDP. The government in Sofia has recently recommitted to entering the so-called European Rate Mechanism II, the waiting room of the Eurozone, with a view of adopting the single currency in the early 2020s. Such a step would bring considerable political but also economic gains. As the lev is anyhow pegged to the euro, the path to Eurozone membership is not linked to major adjustments of fiscal policy in Bulgaria.

<sup>6</sup> Eurostat, GDP per capita, consumption per capita and price level indices, December 2018. Available at [https://ec.europa.eu/eurostat/statistics-explained/index.php/GDP\\_per\\_capita,\\_consumption\\_per\\_capita\\_and\\_price\\_level\\_indices](https://ec.europa.eu/eurostat/statistics-explained/index.php/GDP_per_capita,_consumption_per_capita_and_price_level_indices).

The long-term obstacles to development and growth are linked to two factors. First, the deficit of good governance, which deters domestic and foreign investment, limits the effectiveness of government-driven development projects and social policies. The second factor is the negative demographic projections due to aging populations and mass emigration.

However, open borders cannot be faulted for Bulgaria and Romania's ills. Even though labour migration exacerbates the demographic predicament, it compensates for the absent or inadequate social safety nets. Remittances provide an essential lifeline to impoverished communities and vulnerable groups including the Roma. That is why free movement is popular in Romania and Bulgaria. It is one of the reasons the EU continues to enjoy majority support in both countries.<sup>7</sup>

### Lessons Learned

The main takeaway from Bulgaria and Romania's experience is that the much lauded transformative power of the EU, subject of many academic and policy studies during the golden era of enlargement in the 2000s, is seriously constrained by realities on the ground in a given country. In addition, there is no golden bullet to tackle the inevitable backslide once an unconsolidated democracy makes its way into the EU. That is a cautionary tale for the next wave of enlargement in the Western Balkans. Should Montenegro, Serbia, North Macedonia and Albania join by the end of the 2020s they are likely to back-track on whatever commitments and institutional reforms they will have embarked upon in the pre-accession period. Given that the bulk of those countries have to deal with the legacy of ethnic conflict and war in addition to state capture and governance deficit, the task EU shoulders becomes even more formidable.

The EU must develop ways to discipline predatory elites. Experience shows that the most effective tool it has at its disposal are the financial transfers through the structural and cohesion funds. They play an essential role both in economic development but also in oiling the wheels of political clientelism. Bulgaria proves that withdrawing money has an immediate effect on policy. In 2014, the Commission froze funds over the government non-compliance with EU energy legislation, which forced the government to abandon the South Stream natural gas pipeline, a project proposed by Russia. Tying financial assistance to the rule of law may not fully fix deep-rooted deficits in governance and public life but will go a long way in disciplining states. But such a reconfiguration of the EU's cohesion policy, which requires legislative change, would run into opposition by many member states. Another disadvantage is that the institutionalization of intra-EU conditionality would formalize hierarchical relations between states, similar to Eurozone bailouts. That in turn raises a whole series of normative questions.

Another lesson, which also applies to Poland and Hungary, clearly is that the EU does have allies on the ground. The anti-corruption protests in Bulgaria in 2013–2014 and in Romania 2017–2018 demonstrate that there is a constituency for change, which is capable of mobilizing at critical junctures. But it is a long way to the point where this constituency, largely urban, better educated, middle class and liberal leaning, exercises real leverage through political representation. Parties and politicians catering to its message, e.g. President Iohannis in Romania or the Reformist Bloc in Bulgaria (part of Borisov's coalition in 2014–2017), are finding hard to compete against the political establishment which have multiple advantages – from the TV screen all the way to the ballot box. To succeed, champions of the rule of law should first succeed in making inroads into wider strata, which are supportive and actually profit from European integration. In the final analysis, EU membership is not a sufficient condition for consolidating democracy and the rule of law. Bulgaria and Romania suggest that domestic politics holds the key.

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<sup>7</sup> According Eurobarometer, 53 % of Bulgarians and 50 % of Romanians trust the EU. 56 % in Bulgaria and 52 % in Romania hold a positive image, while the percentage of those with neutral perspective is respectively 23 % and 37 %. European Commission. Standard Eurobarometer 90. Public Opinion in the European Union, Autumn 2018. Available at <http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/survey/getsurveydetail/instruments/standard/surveyky/2215>.

## Interview with Stephan Meuser

*Head, FES Romania in Bucharest*

**FES:** *With Romania taking over the presidency of the EU Council for the first time, the country is receiving renewed attention. Romania's domestic politics, however, are beset by issues, particularly surrounding the rule of law. How do you gauge the situation on the ground?*

**Meuser:** Ever since the social-liberal government took office in January 2017, the domestic political discourse has mostly centred on the justice reforms driven by this government. This included changes to the criminal law as well as the criminal procedural law. These changes were implemented via a hurried fast-track legislation, which was met by mass protests in all major cities in 2017. Ultimately, the procedure was abandoned. In 2018, the debate shifted to the reform proposals launched through the parliamentary-legislative process.

Generally spoken, both the lack of transparency of the reform process and the fact that it is being propagated by delinquent politicians surrounding the chief of the Social Democratic Party, Liviu Dragnea, are somewhat irritating. To be clear, it is suspected that the people involved are interested in altering the existing corruption law merely in their own favour, although this very sector has been under special EU scrutiny for years.

But the parliamentary opposition, many judges and prosecutors, as well as President Iohannis categorically oppose any changes, so the judiciary is currently at the heart of domestic political contestation. I am convinced that any government aiming at inducting Romania into the Schengen Area and completing a successful presidency of the EU council in 2019 needs to invest more political capital to justify and explain the desired reforms.

**FES:** *Would it be an exaggeration to say that Romania's democratic system is jeopardized?*

**Meuser:** Compared with Romania's Eastern European neighbours, Poland and Hungary – both of which are currently subject to trials for the infringement of European fundamental values regarding Article 7 of the EU treaty – I would say that in Romania this is not yet the case.

The two cases differ systematically. In Poland and Hungary, the governments are deliberately restricting the composition of courts, narrowing the space for NGOs while increasing the governmental sway over previously independent media. In Romania on the other hand, some members of the political class simply do not want to go to jail. So far, their ambition is not to remodel the country's institutional setup or infringe upon the freedom of opinion. What is more, with the constitutional court and the state president, "checks and balances" continue to exist within the Romanian system, whereas this is not the case in the other two countries.

In any case, it would be politically unwise to subject yet another large Eastern European member state to the Article 7 procedure at this point, especially since both Romania's population and political elites are decidedly pro-European.

**FES:** *What stance should Germany and the European Union take in this context?*

**Meuser:** On one hand, they should continue to exert political pressure, for example through critical reporting by the European Commission and the European Parliament. On the other hand, it is possible to imagine some sort of "peer-reviewed" monitoring mechanism within the EU member states, which would also include that countries such as Germany or the Netherlands could be subjected to monitoring.

This would render obsolete the argument that the Central and Eastern European countries are second-class members of the Union. Moreover, the debate around the new multiannual financial framework should be used to firmly tie future payments to conditions regarding the rule of law.<sup>8</sup>

<sup>8</sup> The Friedrich-Ebert-Foundation has elaborated some concrete suggestions in this context: <http://library.fes.de/pdf-files/id-moe/14371-20180622.pdf>.



The background of the entire page is a blue-tinted photograph. It shows a rough, textured concrete wall. In the upper left, a white dove is captured in flight, its wings spread. In the lower right, a colorful kite with a yellow body and red, green, and blue patterns is visible, partially obscured by the wall's texture. The kite has a long tail with yellow and red segments. The overall mood is one of peace and hope, contrasting with the title's focus on political trends and dynamics.

# POLITICAL TRENDS & DYNAMICS

## OVERVIEW

THE AIM OF THIS SECTION IS TO BROADEN THE DISCOURSE ON PEACE AND STABILITY IN SOUTHEAST EUROPE AND TO PROVIDE ANALYSIS THAT INVOLVES A COMPREHENSIVE UNDERSTANDING OF HUMAN SECURITY, INCLUDING STRUCTURAL SOURCES OF CONFLICT. THE BRIEFINGS COVER FOURTEEN COUNTRIES IN SOUTHEASTERN EUROPE: THE SEVEN POST-YUGOSLAV COUNTRIES AND ALBANIA, GREECE, TURKEY, CYPRUS, BULGARIA, ROMANIA, AND MOLDOVA.



## A REVOLTING MOOD

Southeast Europe is in a protesting mood. The countries and causes may be different and have their own specific dynamics, but it is hard to miss the common underlying current of dissatisfaction making ordinary people willing to take to the streets.

In Bosnia, after months of protests in Banja Luka over the suspicious death of David Dragičević, the free movement of citizens and the right to assembly have been limited in Banja Luka since December of last year, with a heavy police presence in the whole town. The youth's family and many ordinary citizens had gathered daily since the youth's death in March to demand that the authorities carry out a proper investigation into his death and identify his killers. That the protests were a thorn in the side of the RS leadership was evident. With elections out of the way and most foreign observers distracted with (Western) Christmas celebrations, RS police moved in to forcefully clear the improvised shrine erected to the teenager by his parents and protesters on Banja Luka's main square, attempting to clear demonstrators from the streets. However, this turned out to be neither a simple nor discreet exercise. Scenes of street scuffles and violent arrests of demonstrators caught not just local but regional and international attention, as did the arrest of Dragičević's parents. After the arrest of Davor Dragičević, David's father, on the December 25, 2018, citizens of Banja Luka gathered every evening in the city center. Several thousand people would walk "David's path," the route the young man took at the evening of his disappearance. For days and nights on end, a game of cat and mouse ensued as demonstrators continued to gather and police sought to disperse them. Amid this tense atmosphere, Banja Luka authorities even cancelled public New Year's Eve concerts in the city. After the protests on December 30, all types of gatherings by the group "Justice for David" were forbidden. Groups of more than three had their IDs checked by police. The police called many of the activists and protest participants in for "informative briefings", and some had to pay fines. The only place where protesters could still gather was the courtyard of the Orthodox Cathedral, where they lit candles for the young man every evening. The group "Free Citizens of Banja Luka" has been unsuccessfully

trying to get permission for a walk through the town for a month. Davor Dragičević appears to have left the country.

Meanwhile, neighbouring Serbia has seen more political protests. Following a physical assault on opposition politician Borko Stefanović and two of his associates in the central Serbian town of Kruševac on November 23, 2018, which left them bloodied, Belgraders took to the streets to demand an end to political violence under the slogan "Stop to bloody shirts". The first protests in Belgrade took place on December 8. After Serbian President Aleksandar Vučić declared that 5 million people could demonstrate for all he cared but that he would not give in to them, the protests grew in size, numbering in the tens of thousands. Indeed, they have become a regular Saturday night fixture in Belgrade, spreading to tens of other towns. For now, the protests are officially civic, but they appear to have the organizational support of opposition groups and parties and are clearly directed against the current government. Aside from an end to political violence, the list of demands has grown to include media freedoms and free and fair electoral conditions among other things.

Anti-government protest in Serbia on December 22, 2018



Albania has also seen a rather unexpected bout of popular protests. At the beginning of December, students took to the streets of Tirana and other towns in protests at a rise in tuition costs approved by the government. Similarly to Serbia, attempts by Prime Minister Edi Rama to dismiss the protests – referring to demonstrating students as 'grade failers' – only stoked an-

ger and swelled the number of demonstrators. By the time that Rama sought to go back on his words and called for talks, he found himself being rebuffed, with many students suggesting that he, in fact, had become part of the problem. For the Rama government, the protests are a problem in part because they have made it clear just how unpopular the government is in many quarters. In response, Rama has tried re-shuffling his Cabinet. Sporadic student protests have taken place since the New Year, but have now been superseded by protests organized by the opposition Democratic Party. The first of these, organized in Tirana on February 16, drew thousands behind the demand for the Rama government to resign and call early Parliamentary elections. With local elections due at the end of June, more protests are certain to happen, the next one scheduled for February 21. The opposition Democratic Party and Socialist Movement for Integration said their MPs would resign their Parliamentary mandates, pushing the country into deeper crisis.

Meanwhile, there was nothing unexpected about the latest round of protests held first in Skopje and then Athens against the approval of the Prespa Agreement between Greece and North Macedonia. Ahead of a final vote in the North Macedonian Parliament on the constitutional amendments that would see the country's name changed to the Republic of North Macedonia, which took place on January 11; thousands of opponents of the new name took to the streets outside in protest. As the vote in the Greek Parliament on approving the Prespa Agreement also neared, around 60,000 demonstrators gathered outside the Parliament building in Athens to oppose the agreement. Violent clashes with the police took place.

Since February of this year Montenegro is witnessing thousands of its citizens taking to the streets demanding the resignation of the country's government. The protests were triggered by the uncovering of shady business dealings of Duško Knežević an entrepreneur who has close political ties with the current government. After being accused, Knežević fled to London and published a video of a large cash transaction between Podgorica's mayor and one of President Milo Đukanović's confidants. Appalled by this act of blatant corruption among other simi-

lar instances, Montenegro's citizens took to the streets where on the first day more than 7000 people were demanding the governments resignation. Meanwhile, Đukanović's position remains to "wait it out" in the hope that the protests will disperse, as was his stance towards previous protests. It remains to be seen what the protests will bring, but as was the case in the past, these protests have not formulated clear political demands besides the resignation of not only President Đukanović but also Prime Minister Duško Marković as well as some state prosecutors and others from Montenegro's political elite. The next protest is scheduled for March 16, should the demands not be met.

The mood of protest in Southeast Europe is also being felt in Brussels. On January 10, Bulgarian and Romanian truck drivers joined their colleagues from countries such as Poland and Hungary in opposing the new EU Mobility Package, which will affect haulage.

## INTO THE DRIVING SEAT

As **Romania** took over the six-month presidency of the European Council, enthusiasm about its leadership was hard to find even in the darkest corners. While European dignitaries gathered in Bucharest for the opening ceremony on January 10, on the streets of the Romanian capital protesters gathered to demonstrate against the government. Aside from the usual anti-corruption slogans, some held up banners such as "EU, sorry for this government." At the opening ceremony, EU leaders underlined that freedom, integrity and the rule of law, together with the fight against corruption, were key building blocks on which the EU was built – building blocks which the current Romanian government had done much to dismantle from Romania's own foundations.

For **EU hopefuls** in the region, a neighbouring country taking the helm of the EU might, in other circumstances, be cause for optimism and hope of speeding up accession. Yet for most of them, the Romanian case is an uncomfortable case in point of the need to truly ensure that candidate countries are reformed and ready to take on EU membership, a spotlight that they would rather avoid if at all possible.



During the December European Council, **Serbia** and **Montenegro** both opened new negotiating chapters. Serbia opened chapters 17 (Economic and Monetary Policy) and 18 (Statistics), although officials in Belgrade had been hoping more would be opened. Observers in Belgrade warned that, with only 16 of 34 negotiating chapters opened at present, membership remained a distant hope. Meanwhile, Montenegro opened the challenging Chapter 27 (Environment and Climate Change), bringing its total opened chapters to 32 out of 33.

Romanian Presidency of the Council of the European Union



## (UN)STABLE GOVERNMENTS

Across the region, governments faced more or less direct challenges which threatened to undermine their stability.

With **Greek** parliamentary elections due in 2019 and the ratification of the Prespa Agreement

looming, the right-wing Independent Greeks took the opportunity to quit their ruling coalition with the left-wing Syriza party of Prime Minister Alexis Tsipras on January 13. With the government plunged into crisis, Tsipras called a vote of confidence, which he won by just one vote on January 16. The government will now limp on for a few more months, likely passing the Prespa Agreement by the end of January. Elections, due in October, may be brought forward to May in the hope that, in doing so, Syriza will limit its losses in the election.

In neighbouring **Albania**, the seemingly unsailable Prime Minister Edi Rama was attempting to regain his balance after a month of student protests rocked his government – as well as personal leadership – in December. Student protests were triggered by new university fees, but it appeared clear that students were dissatisfied with much more than just the state of higher education. His repeated calls for dialogue were spurned, with many students vocally stating that he was the problem. Attempting to placate protesters and shift the focus away from himself, Rama sacked half the ministers in his Cabinet on December 28, appointing more junior replacements. Yet even this did not go smoothly – President Ilir Meta refused Rama's nominee for Foreign Minister, Gent Cakaj, arguing that he was not up to the job. As the battle of wills between Rama and Meta dragged on, Rama declared that he would act as temporary Foreign Minister.

**Kosovo's** government remained dangerously close to the brink of collapse without yet going over the brink. While the Haradinaj government has not commanded a clear majority in the Kosovo Assembly ever since the Srpska Lista withdrew its support in the spring, the opposition (Vetevendosje! and LDK) also does not appear to have the numbers to overthrow the government. A tense stalemate continues, but there have been signs that the smaller opposition party PSD might lend their support to Haradinaj. On December 15, they joined the Kosovo negotiating team, albeit as representatives of the opposition. In a sign of their willingness to prop up the Haradinaj government in key votes, the PSD voted in favour of the 2019 budget on February 3; in return, they extracted the dismissal of Kosovo Serb Minister of Agriculture Nenad Rikalo.



One 'good' piece of news from **Bosnia** is that on December 18 the country's Central Election Commission adopted a decision addressing the country's dysfunctional election law and enabling the formation of the Federation entity's upper House of Peoples. By extension, the move also enables the eventual formation of the Federation government. Yet while the decision, reached under heavy local and international pressure, broadly satisfied ethnic Croat and Serb politicians, Bosniak leaders, as well as leaders from multi-ethnic parties disputed it, vowing to appeal to the Constitutional Court. Despite the decision, and the fact that national elections were held at the beginning of October, only the RS entity has formed its government. The Federation entity took an important step towards being able to elect a government when it finally formed its Parliament in mid-February. Coalition negotiations are still under way in the Federation, while the formation of the central government seems more like a far-off dream at the moment – Zeljko Komšić, the Bosnian Croat member of the country's Presidency, has said he will not consider any nominee for Chairman of the Council of Ministers until Bosnia enacts its NATO Membership Action Plan (MAP). His Bosniak counterpart, Šefik Džaferović, quickly moved to support him. Yet Bosnian Serb politicians from across the board refused to countenance any such moves, insisting on the country's neutrality. Stalemate, with no sight of resolution any time soon. Perhaps most disturbingly, no one seems particularly concerned that a new central government will not be formed any time soon.

## ELECTION OUTLOOK

While there were no major elections across the region over the last couple of months, several countries are gearing up for electoral contests in the coming months.

In **Moldova**, voters will go to the polls on February 24 to elect a new Parliament and, by extension, government. The build-up to the election has been marred by the adoption of a controversial new election law likely to favour larger, established parties. Amid fears of irregularities that could be orchestrated to favour the ruling party, some critics have also accused it of stacking the judiciary with loyalists to quash any legal challenges.

**Turkish** voters will head to the polls in nation-wide local elections to be held on March 31. Pundits expect the share of the ruling AKP's votes to decline somewhat, with the contests for the capital, Ankara, and Istanbul being most keenly watched. The opposition has a fighting chance of unseating the AKP in both of these cities, although the odds are still in favour of the AKP clinging on to power. There is also a risk of the electoral process being marred by violence, particularly if the ruling AKP senses that its support is declining and resorts to heavy-handed electoral manipulations.

Meanwhile, rumours abound that the ruling parties in **North Macedonia** and **Serbia** are mulling early Parliamentary elections. In both countries, they seem to be considering the opportunity to capitalise on strong popular support before it has the chance to decline. In Serbia, a March Parliamentary election has been mooted, although most of the opposition threatens to boycott it under current conditions.

## BILATERAL UPS AND DOWNS

Relations between **Belgrade** and **Prishtina** remained deeply stuck in the mud, at least when it came to the public domain. Attempts by EU Foreign Policy chief Federica Mogherini to maintain the EU-mediated dialogue between Kosovo and Serbia on life support did not deliver any tangible results. Belgrade remained angry over Prishtina's decision to impose a 10 % tariff on Serbian and Bosnian goods entering Kosovo at the beginning of November, followed by a 100 % tariff at the end of the same month. The Serbian side was then incensed by the decision of the Kosovo government and Assembly to transform the Kosovo Security Force into an army. Yet speculation abounded in both Kosovo and Serbia that behind the smokescreen of publicly sour relations some kind of secretive negotiations were being conducted between Belgrade and Prishtina with international mediation.

**Greece** and **North Macedonia** finally put an end to their bilateral dispute over the latter's name. The North Macedonian Parliament completing the final round of voting on constitutional amendments to change the country's name to the Republic of North Macedonia on January 11, with the Greek government ratifying the Prespa Agree-

ment. Even as nationalists on both sides continue to bristle over the name issue, this should draw a line under the long-running dispute on a bilateral level. Media reported that the Prime Ministers of the two countries, Alexis Tsipras and Zoran Zaev, would be nominated for the Nobel Peace Prize.

Demonstration in Athens on January 20, 2019



The visit of Russian President Vladimir Putin to Serbia on January 17 was testimony to the good relations between the governments of **Russia** and **Serbia**, as well as the personal popularity enjoyed by Putin in Serbia. The ruling party organized a welcome rally for the Russian President, attended by more than 100,000 party loyalists. Serbia's President Aleksandar Vučić did not miss any opportunity to roll out the red carpet for Putin throughout the visit, hoping that the Russian President's popularity in Serbia would rub off on him as well. Putin responded by awarding Vučić with the Order of Alexander Nevsky. Aside from expressions of brotherly love, the visit also had its more tangible moments. At least 20 bilateral agreements and memorandums were signed, ranging from more down to earth agreements in the energy sector to more lofty ones regarding space exploration and cooperation.

## GHOSTS OF THE PAST

After several years of preparation, the **Kosovo Specialist Chambers in The Hague** – tasked with investigating and trying those suspected of committing war crimes during and immediately after the Kosovo war – shifted its activities into a higher gear. In December and January, the Spe-

cial Prosecutor's Office summoned several former Kosovo Liberation Army (KLA) commanders to be interviewed. They included Rustem Mustafa, Sami Lushtaku, Remzi Shala, Sokol Dobruna, and Raimonda Rreci, a female former KLA guerrilla. According one of the questioned KLA commanders, Rustem Mustafa, he had been questioned as a 'suspect witness'. It is expected that the first indictments may be issued in the near future. If and when this happens, Kosovo's society will find itself challenged to confront an unwelcome segment of its recent history.

The **United States** government decided to bar a former **Serbian** police commander – and active ruling Serbian Progressive Party official – Goran Radosavljević from entering the US due to his alleged involvement in gross human rights violations. The US State Department stated that he was 'credibly implicated' in the 1999 execution of the Bytyqi brothers, killed in Serbia after the end of the war.

Amidst a growing culture of denial of the crimes committed by the Ustaša regime during the Second World War in **Croatia**, in January the Simon Wiesenthal Centre, a prominent Jewish human rights organization, called on the Croatian government to ban an increasing number of books purporting to challenge established facts regarding Ustaša atrocities against Serbs, Jews, and Roma. The timeliness of the message was underscored when a member of the ruling Croatian Democratic Union (HDZ) and son of a sitting MP posted a Christmas greeting addressed to all Serbs with the picture of an Ustaša soldier holding the severed head of a Serb.

Amidst these developments, the **Balkan Investigative Reporting Network (BIRN)** published a major new report on efforts at post-conflict justice in the former Yugoslav space. The report highlights some of the regional challenges when it comes to prosecuting war crimes, locating missing persons and the participation of victims in judicial processes. Two decades after the conflicts in the region ended and a year after the closure of International Criminal Tribunal for the Former Yugoslavia (ICTY) in The Hague, ensuring accountability and justice still seem more like ideals than a reality in the region. Problems with regional cooperation in investigating and prosecuting war crimes were singled out as particularly concerning.



## SECURITY

On December 14, the **Kosovo** Assembly voted to transform the Kosovo Security Force into an army, to the consternation of Serbia. Although the vote itself will change little immediately, it generated a great deal of attention in both Kosovo and Serbia, as well as the international community. In reality, the decision only initiates a rather long process which will result in the creation of a light army in Kosovo. Along the way, Kosovo will, at some point, need to amend its constitution, which will require the support of Kosovo's ethnic Serb representatives. The international community sent mixed messages over the decision, in effect giving the decision an amber light to proceed. NATO Secretary General Jens Stoltenberg warned that the move was ill-timed, going against the advice of many NATO allies. While some European countries also echoed concerns, the US appeared to have given its tacit support to the move. Kosovo's political leaders did not seem in the least bit perturbed by the critical voices coming from the international community.

**Bulgaria** and **Croatia** both sought to beef up their air forces with additional fighter jets, although with varying degrees of success. The Bulgarian government initiated the process of acquiring US made F-16 fighter jets to replace its aging Russian-made MIGs. Meanwhile, Croatia's own efforts seemed to have come to a dead end. Having reached a tentative deal with Israel on the purchase of upgraded US F-16 jets, the Israeli side failed to secure US approval for the transfer of the planes, leaving the deal dead in the water.

North Macedonia reaped the first concrete benefits of the resolution of its name dispute with Greece. On February 6, North Macedonia signed an accession protocol with NATO, paving the way for it to become the 30<sup>th</sup> member of the military alliance. Its accession will now need to be ratified by all 29 NATO member states.

## The Bulgarian and Romanian Presidencies of the Council of the European Union: A Journalistic Sketch

*Georgi Gotev*

*Senior Editor, EurActiv*

In a nutshell, the Bulgarian Presidency was Boyko Borisov's Presidency: it was the personal project of the long-serving Bulgarian Prime Minister. He was always centre stage, in the same way he occupies the political space domestically. The entire administration kept a low profile, to make sure that he was the only protagonist, the focus of attention. The best thing about the Bulgarian Presidency was its thematic focus on the Western Balkans. Although officially nothing concrete was decided at the Sofia Western Balkans summit, its momentum helped finalise what became the Prespa agreement (a UN-led process), opening the door not only to the NATO accession of North Macedonia, but to the stabilization of the entire region.

As for the rest of the issues, Bulgaria left the Commission in the driver's seat. Its president, Jean-Claude Juncker, actually thanked Borisov for that at the final presser on 28 June 2018. However, it would be a mistake to assume that the Romanian Presidency would be the same, something many are doing by assuming that Bulgaria and Romania are like twins and can be handled in the same way. The two countries are actually very different and do not even know each other well. The Romanian Presidency lacks a clear focus, comparable with Bulgaria's. But the biggest difference is the political bias of the Juncker Commission. Unlike Borisov, who is immune from criticism thanks to his EPP (European Peoples' Party) affiliation, the government of Prime Minister Viorica Dăncilă is under fire from the EU executive over the rule of law.

Indeed, Juncker's Commission keeps its eyes closed on the rule of law situation in Bulgaria. This is because Borisov's GERB party, which has a ten year history of power, is affiliated to the powerful EPP, although in essence it is a populist force and a one-man-show starring Boyko Borisov. It cannot be denied that Borisov, who lacks sophisticated education, has good political instincts and exceptional communication talents (at least for his home audience). On an international scene, Borisov, who speaks no foreign languages, for many years seemed rather uncomfortable, but eventually became a leader with the third longest experience of EU summits, after Merkel and Orbán.

In both countries the President and the Prime Minister are political foes, but in Romania the constitution grants bigger powers to the President, so Klaus Iohannis plays a big international role and represents the country at EU summits. He is a personal friend of Juncker and was the successful mayor of Sibiu, the city in Transylvania where the 9 May summit will be held. In Bulgaria, Borisov made sure Rumen Radev would play no role at all in the Presidency program.

Juncker's term ends in the autumn of this year and the Romanian Presidency is the time when he hopes to be able to leave his political legacy. It's not by chance that on his Twitter page, the president of the "Last Chance Commission" has chosen as a banner the Sibiu summit, on 9 May 2019, to illustrate what he hopes to be his big moment. On the day of the inauguration of the Romanian Presidency in Bucharest, there were two pressers with Juncker – one with Iohannis, and another one with Dăncilă. Clearly, Juncker showed which of the two he preferred: he was bold at the presser with Iohannis and pretended to be sick while he was standing next to Dăncilă.

In reality, corruption, mismanagement, and disrespect for justice are not drastically different in the two countries. The biggest difference is that Romania's political life is vibrant, with new political forces grabbing the attention of society. Also, the European elections will take place during the Romanian Presidency, which will further galvanise the country's political life.

Unfortunately, during the Bulgarian presidency, domestic life completely halted, not speaking of reform. The promised reform in education ended with a slight increase in teachers' salaries. There was no prospect of healthcare reform except for the minister to be replaced again. The reform of the judiciary demanded by the EU, the public, and business was not even mentioned. His former justice minister Hristo Ivanov said about Borisov that he doesn't understand what reform means. While he was telling the



Bulgarian Prime Minister what kind of deep reform is needed to modernize the country and put an end to decades of bad governance, Borisov showed him an aerial photo of a highway and said: "This is my constitutional reform".<sup>9</sup>

Borisov doesn't like strikes or social unrest, unless they position him as the almighty arbiter. Indeed, he has concentrated all the power, which has led to paralysis of all institutions. Nobody does anything – all are waiting for the prime minister's instructions. During the Presidency, the Prime Minister was too busy with the international agenda, many domestic problems accumulated, and Borisov's ratings went down.

The bill of the Bulgarian Presidency could turn out to be expensive for Borisov. If the opposition Bulgarian Socialist Party (BSP) came first at the European elections, all pundits agree that this would trigger early parliamentary elections. According to recent opinion polls, GERB and BSP are neck and neck. Unlike Bulgaria, Romanian civil society is strong, with tens of thousands of people protesting in defence of the achievements in reforming the judiciary, which the social-democrat Dăncilă government seeks to dismantle. In comparison, protests in neighbouring Bulgaria have been in the hundreds.

The Presidency was to some extent useful for civil society to express its desiderata to the wider audience of the many thousands of visiting officials and guests. On the day of the inauguration of the Bulgarian Presidency in Sofia, on January 11, 2018, billboards in the centre of Sofia commissioned by policeman complained about the low wages they are getting. They said the basic monthly salary for a Bulgarian policeman is only €340.

But it was not only the policemen: many other strata of the population realised they had, for the first time, the chance to have their voice heard internationally. Protests in defence of the Pirin National Park, as well as against a controversial highway, got international prominence, thanks to the participation of Ska Keller, co-President of the Green/EFA group in the European Parliament. She got even more publicity when she became victim of the most vulgar and misogynist hate speech, by one of the three leaders of the United Patriots, Valeri Simeonov. Keller, who was still in Sofia, called the leaders of the three EU institutions by phone to alert them of these violent threats. Her life was in danger, because after the verbal attacks by their leader, some of the United Patriots' supporters were capable of physically attacking her.

Later, after the Presidency ended, Simeonov offended the public again, publicly insulting the mothers of children with disabilities, who were protesting for months in front of the Bulgarian Parliament. The outrage was such that Simeonov, who held the post of Deputy Prime Minister, was forced to resign. I cannot remember anything similar in the past; civil society became stronger during the Bulgarian Presidency.

Having said this, the Bulgarian Green Party is still very small, without any chances of electing a single MEP at the European elections. Major political forces kept a low profile during the Presidency.

Last but not least, the Bulgarian Presidency didn't contribute to the better coverage of the country's media of European affairs in general. The Bulgarian press is considered among the less free in the EU, and Borisov's government had made big efforts to avoid critical reporting. Part of the Presidency budget was spent for media coverage, but in fact this was hush money.

As a journalist who has seen all the presidencies of the new member states, I will follow the upcoming Croatian presidency. I have noticed that the general public in new member states becomes better aware of the functioning of the Union, when ministers from the respective country chair Council meetings and speak more often to the press, including the international media. Even the national press improves and stops confusing the names of the institutions, such as the European Council or the Council of Europe.

Ultimately, I haven't seen a big improvement in Bulgaria, and I don't expect it in Romania's case. In the European Commission pressroom, the world's largest and the most free, I don't even notice the presence of Romanian journalists. This is a lost opportunity.

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<sup>9</sup> <https://www.mediapool.bg/az-go-pridumvah-za-reformi-toi-mi-pokazvashe-snimki-na-magistrali-news286079.html>.

## PTD INTRODUCES

*Even before it started, Romania's six-month rotating presidency has been a very contentious matter in the EU. A growing row between the EU Commission and the Romanian government over alleged corruption, unconvincing judicial reforms, and growing nationalistic rhetoric has in fact become so real, that in discussions by some observers and analysts, the country is often placed in the same club with Poland, Hungary, and Slovakia as an actor pushing back against further reforms and the next in line for a procedure that may lead to the triggering of Article 7, an instrument devised to prevent member states from further developing policies that put democratic institutions under threat, including the rule of law. Having said that, many also view Romania's potential inclusion in the same group with Poland and Hungary as unfair to Bucharest since the country's democracy is not really endangered in the ways that this is manifested in its Central European neighbours. One thing that has since the very beginning been a critical feature of the Romania's changing relations with the EU is the rule of law. The idea of the Cooperation and Verification mechanism (CVM), stemming from the very moment when Romania joined the EU, was to achieve specific standards in the field of judicial reform and the fight against corruption, but the opinions on its necessity as well as success are very much divided. How contested the question of corruption in Romania is has been demonstrated on the streets of Romania, when the series of controversial decisions regarding the justice system led to massive street protests in 2017, on which we have written in one of the issues of Political Trends and Dynamics.<sup>10</sup>*

*While the EU commission issues the CVM reports regularly, their substance is subject to many disagreements. Since the very beginning, Romanian Ministers of Justice pointed at differences in opinion, but also at some problematic technical aspects, in particular related to the methodology used for the reporting. The European Commission also adopted and released a similar reporting system for Bulgaria. In 2018, Bulgaria's overall assessment was for the first time different from the Romanian one. In fact, for the first time since the beginning of reporting, the 2018 assessment evidenced a growing trust in Bulgaria to follow the CVM recommendations. The following contribution by Judge Dana Girbovan, the President of the National Union of Romanian Judges, is a detailed and critical review of the EU Commission monitoring mechanism in Romania. It elaborates on all aspects of this exercise, following the genesis of the reporting, its effects and its outcomes in the process of judicial reform in Romania.*

*Alida Vračić*

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## The Cooperation and Verification Mechanism Report on the Romanian Justice System – A Critical Review

**Dana Girbovan**

*Judge, President of the National Union of Romanian Judges*

This article will provide a critical analysis of the functioning of the Cooperation and Verification Mechanism (CVM) report, instituted by the European Commission in Romania in 2007 in order to strengthen the judiciary. I will further elaborate on the transformation and implementation of the CVM and explain how the instrument has been perceived by the Romanian judicial authorities. The politicization of the CVM report has been highlighted by several Romanian ministers of justice since 2009, regardless of their political party affiliation. At the same time, over 85 % of Romanian courts adopted a Memorandum in 2016 in which they pointed out the report's lack of objectivity and urged the European Commission to publish the methodology, which has yet to happen. Unfortunately, this trend of politicization has become more and more pronounced, while the technical quality of reports has become weaker. The last report, released in the fall of 2018, is the clearest proof of the subjective character of the instrument, which contains, as I will demonstrate, unacceptable errors, inaccuracies, and misjudgements.

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<sup>10</sup> <http://library.fes.de/pdf-files/bueros/sarajevo/12902/2017-02-03.pdf>

## The Establishment of the CVM

The European Commission, through its decision of 13 December 2006, established a Cooperation and Verification Mechanism to assess Romania's progress in achieving specific benchmarks in the field of judicial reform and the fight against corruption. The decision originally contained 4 objectives, which were clearly defined as follows:

- "1. Ensure a more transparent, and efficient judicial process notably by enhancing the capacity and accountability of the Superior Council of Magistracy. Report and monitor the impact of the new civil and penal procedures codes.*
- 2. Establish, as foreseen, an integrity agency with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken.*
- 3. Building on progress already made, continue to conduct professional, non-partisan investigations into allegations of high-level corruption.*
- 4. Take further measures to prevent and fight against corruption, in particular within the local government."*<sup>11</sup>

The 2007 CVM report states that the Mechanism would improve the functioning of Romanian institutions and bring "administrative and judicial decisions, legislation and practices" in line with the EU.

## First Signs of Politicization?

However, only two years after the CVM reporting scheme was established, the first signs that this would be more political than technical began to show when Romania was denied access to the Schengen zone due to alleged issues raised in the CVM report.

In 2009, Catalin Predoiu, the Minister of Justice at the time, responded that, "We will strongly defend in front of the experts every progress made by the magistrates and the system as a whole. The cooperation and verification mechanism should not be transformed into anything other than what it is. The benchmarks must not be extended, nor correlated with external elements of the mechanism itself."

One year later, the same Justice Minister again warned of this problem, calling the link between the CVM report and the acceptance of Romania into the Schengen Area an 'artificial' one.

## The Derailment of CVM Report from Its Objectives and Scope

By 2012, the issue worsened, and the CVM report had moved even further away from its initial objectives, purposes, and scope, claiming "the objective of the mechanism is to help Romania reach standards comparable to those in other Member States." So the European Commission suddenly went from simply bringing Romania "in line" with the basic requirements of the rest of the EU (the initial aim of the CVM 2007) to the much broader goal of "reaching standards of other member states," failing to mention which member states were specifically meant by this.

In addition, to even consider such a new defined objective, the European Commission would have to have a similar mechanism of equally assessing the justice systems of all EU member states, and a mandate to do so, which the Commission does not, to date, have. In reality, such a system would even be impossible to create, due to the variety of justice systems in Europe. As such, the above statement from

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<sup>11</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32006D0928>

the CVM report is simply a slogan, which is nevertheless increasingly used in the latest reports. The Romanian Minister of Justice Mona Pivniceru and the Vice President of the Superior Council of Magistracy (CSM) complained publically about this assessment of the report at the time.<sup>12</sup>

## Reactions against the CVM Report from within the Justice System

Reactions were rife not just from politicians or the justice ministers, but also from Romanian judges. In 2016, in a Memorandum about the situation of the Romanian justice system, adopted by over 85 % of the general assemblies of the courts across the country, Romanian judges drew attention to “the reductive vision of justice, seen only through the perspective the ‘fight against corruption’, an error which was also assumed by the CVM report [at that time].”<sup>13</sup>

The judges urged, therefore, for “the full disclosure by the European Commission of the methodology it follows in writing the CVM report, the name of the experts consulted and of all the NGOs and institutions consulted on the justice system in Romania.”<sup>14</sup>

As of February 2019, the European Commission has not yet disclosed the methodology or the name of the experts and NGOs consulted in writing the latest reports.

The 2017 CVM report did not bring any further clarification to the issues expressed in the Memorandum, but, to the contrary, it increased uncertainties by vaguely referring to the contribution of “other stakeholders, including Member States” to the respective report.<sup>15</sup> Thus a new factor was added to the equation, which further diluted the technicality, objectivity, and specificity of the methodology of the mechanism.

## 2018 CVM Report and the Loss of Touch with the Reality of the Romanian Judiciary

The technical quality of the CVM reports has continuously deteriorated, culminating with the 2018 report, which consists of serious factual errors, in addition to inexcusable judgmental errors. In the following section, I will address some of the most flagrant errors, inaccuracies, and judgmental errors that were included in the 2018 CVM report. I will first cite specific points of the CVM report and then offer my own assessment.

➔ *“One of such broader factors has been publicly-debated claims that cooperation agreements between the judicial institutions, notably the prosecution, and the Romanian Intelligence Services were the source of systemic abuse, in particular in corruption cases.”<sup>16</sup>*

The problem of protocols is not a “claim” but a fact that has generated a constitutional conflict of unprecedented gravity. Practically, as the Romanian Constitutional Court has ruled, these protocols had prevented the courts from judging within the constitutional boundaries, something unimaginable in any state ruled by law. The other secret protocols, signed by the Romanian Information Service (SRI) with the Superior Council of Magistracy (SCM), Judicial Inspection (IJ) and the High Court of Cassation and Justice (ICCJ), are not even mentioned in the report.

➔ *“The amended Justice laws are now in force. They contain a number of measures weakening the legal guarantees for judicial independence.”*

12 <https://www.digi24.ro/stiri/actualitate/justitie/robert-cazanciuc-dupa-opt-ani-de-zile-mcv-risca-sa-devina-un-mecanism-mai-degraba-politic-381871>.

13 <https://www.unjr.ro/2016/09/08/memoriu-privind-situatia-justitiei-din-2016-votat-in-adunatile-generale/>.

14 <https://www.unjr.ro/2016/09/08/memoriu-privind-situatia-justitiei-din-2016-votat-in-adunatile-generale/>.

15 [https://ec.europa.eu/info/sites/info/files/comm-2017-751\\_en.pdf](https://ec.europa.eu/info/sites/info/files/comm-2017-751_en.pdf).

16 [https://ec.europa.eu/info/sites/info/files/progress-report-romania-2018-com-2018-com-2018-851\\_en.pdf](https://ec.europa.eu/info/sites/info/files/progress-report-romania-2018-com-2018-com-2018-851_en.pdf) page 3.



On the contrary, the new laws reinforce and strengthen both the independence of the judges and the prosecutors. For example, according to the new laws the judges' careers are separated from those of the prosecutors, who both must be and seem to be independent of each other; the justice minister is no longer the holder of the disciplinary action; new evaluation criteria as well as the mandatory periodical psychological checking for judges and prosecutors was introduced; the verification if a judge or prosecutor is undercover agent of a secret service is done now individually, and the result is subject to the censorship of the court; it has instituted the public character of all the acts related to the administration of justice, etc.

*The following are comments related to the key points highlighted by the author of this article.*

- ➔ *“Extended grounds for revoking members of the Superior Council of Magistracy”, which do not “correspond to CVM recommendations”.*
- ➔ *“These assessments also underline that constitutionality checks are important but not the only issue at stake: they do not replace the necessity for a debate on the policy choices underlying major changes.*
- ➔ *“The Government adopted several Emergency Ordinances which accentuated some of the problems identified, for example by consolidating the authority of the Minister of Justice over prosecutors in particular through the triggering of disciplinary proceedings.”*

The Minister of Justice can no longer initiate disciplinary proceedings against the judges or prosecutors. The Minister of Justice was able to initiate disciplinary proceedings after a change to the justice laws passed in 2012, and now, by the current changes the justice laws, that provision has been removed. At that time, in 2012, however, the Commission did not have a serious problem with this issue, despite the vehement criticism of the magistrates.

The Ordinance in discussion here just states that the Minister of Justice can only refer the issue of disciplinary investigation to the Judiciary Inspection, exactly like any other person can do.

- ➔ *“At the same time as the legal amendments, specific decisions have underlined the consequences of the concentration of power in the hands of the Minister of Justice. This was the case first with the dismissal of the Chief Prosecutor of the National Anti-Corruption Directorate (DNA) at the request of the Minister of Justice.”*

The dismissal of the DNA Chief Prosecutor was an action generated by a series of violations of the Constitution, systematic violations of procedural rights by DNA prosecutors, increasing the number of acquittals, etc. The CVM report did not speak at all about these accusations.

- ➔ *“The Government also took the decision to refer the High Court of Cassation and Justice to the Constitutional Court. The convergence of action against these key judicial institutions has clear implications for judicial independence.”*

It is mindboggling that the CVM report qualify the referral to the Constitutional Court as an action against the judiciary. In this case, the Romanian Constitutional Court ruled that there was a constitutional conflict generated by the High Court of Cassation and Justice, which has violated the Constitution and the law since 2014 in the way it formed the five judges' panels. The action that actually was directed against the judiciary was that of the High Court, but this fact was ignored by the CVM report.

- ➔ *“Even when the Council has come forward with a unanimous opinion, it has been ignored in significant cases.” In the footnote, the report offered, for example, the “negative opinions on the legislative amendments on the Justice laws in September and November 2017.”*

This is a gross factual error. The Superior Council of Magistracy had not given unanimous opinion on any of the amendments to the justice laws. On the contrary, the vote was always very tight.

➔ *“The National Anti-Corruption Directorate (DNA) has been a particular target in terms of pressure likely to damage its independence.”*

Regarding the DNA, it is not the external criticism, but the failure of the anti-corruption criminal investigations done under the former Chief Prosecutor Laura Codruta Kövesi’s leadership at the DNA that discredited and undermined that institution. Periodically more and more definitive acquittals are ruled by the courts, which speak louder about the lack of professionalism in the way those investigations were conducted than any criticism from outside the institution can.

In fact, if the European Commission, through the CVM report, had not ignored the abuses and the lack of professionalism in the criminal investigations done by the DNA under former Chief Prosecutor Kövesi’s leadership, the current situation may have been avoided.

➔ *“In October, the Government adopted a new Emergency Ordinance which would modify the seniority requirements for DNA prosecutors, which could have further negative impacts on the operational capacity of the DNA.”*

The DNA is a specialized Directorate within the General Prosecutor’s office, which is at the top of the prosecutorial system. The reason why the DNA was placed there is because it investigates high ranking officials, which according to the Constitution can be investigated only by the prosecutors who are part of the General Prosecutor’s office. In other words, it is contrary to the spirit of the law to staff this specialized structure at the top of the system with prosecutors with minimum years of experience, from the bottom of the system. This was the practice at large employed by Laura Codruta Kövesi, while she was the DNA chief prosecutor, which is one of the reasons why important anti-corruption investigations, including the ones related to the former Prime Minister and the former General Prosecutor had failed. For such investigations to hold in courts it requires that they be done by experienced prosecutors, with years of proven records, which is exactly the kind of prosecutors that Kövesi had not brought in the DNA.

Thus, contrary to the above-mentioned statement in the CVM report, staffing the DNA with more experienced prosecutors, would actually increase its operational capacity, not undermine it.

➔ *“The establishment of the new section for investigation of offences committed by magistrates in the amended Justice laws creates a specific concern with regard to the fight against corruption, as a new structure could be more vulnerable in terms of independence than has been the case so far with the DNA, as it could be used as an additional instrument to intimidate and put pressure on magistrates.”*

This conclusion does not explain why the new section “could be more vulnerable in terms of independence than has been the case so far with the DNA.” In fact, the organization and operation of the new section arguably ensures real independence of the judges and prosecutors and a real, efficient, and prompt criminal investigation for infractions committed by magistrates.

## Conclusion

As detailed in my analysis, the Cooperation and Verification Mechanism has been transformed over time. Initially set as a technical tool designed to support the real efforts to reform and improve the Romanian justice system, in the view of Romanian authorities it has gradually converted into a political, rather than technical instrument. Thus, Romanian judicial experts call for the full and objective revision of the entire mechanism.

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