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Lost in Europeanisation: The Western Balkans and Turkey

GERGANA NOUTCHEVA and SENEM AYDIN-DÜZGİT

The article analyses the EU's impact on the rule of law in the Western Balkans and Turkey. It enquires into the reasons behind the patchy record of rule-of-law reforms in Turkey, Croatia and Albania by examining judicial reforms in response to the EU accession requirements. It argues that a credible EU accession perspective and an adequate degree of state capacity are necessary but not sufficient conditions for explaining the fluctuations in the rule-of-law standards in EU accession countries. The genuine, partial or non-alignment of the ruling elites' domestic incentives with the EU incentives is a key determinant of rule-of-law trends in the Western Balkans and Turkey.

The Europeanisation literature explains the EU's impact on the political governance of accession candidates with the sizeable and credible incentives offered by the EU in the form of a membership prospect (Schimmelfenning and Sedelmeier 2004). The EU incentives formed the basis of a strong conditionality policy which the EU used to press for democratic reforms and to monitor compliance with its core political values (Grabbe 2006; Schimmelfenning and Sedelmeier 2004; Vachudova 2005). The reward was big enough and tangible enough to compensate the incumbents for perceived losses of power or popularity after introducing unpopular reforms. The disincentives were indirect but powerful too, and manifested themselves in the form of exclusion from the group of countries advancing towards accession, i.e. costs related to delaying the benefits of accession.

The EU membership perspective is also a formidable driver of democratic institutional change in the Western Balkans and Turkey but the rule-of-law standards in the current accession countries have not improved in a way the external-incentive model would anticipate. Not only have we seen reversals in rule-of-law performance (Turkey and Croatia) but we have also witnessed insufficient progress in the rule of law where incentives have been credible (Croatia), while we have observed an improving trend in the rule of law in

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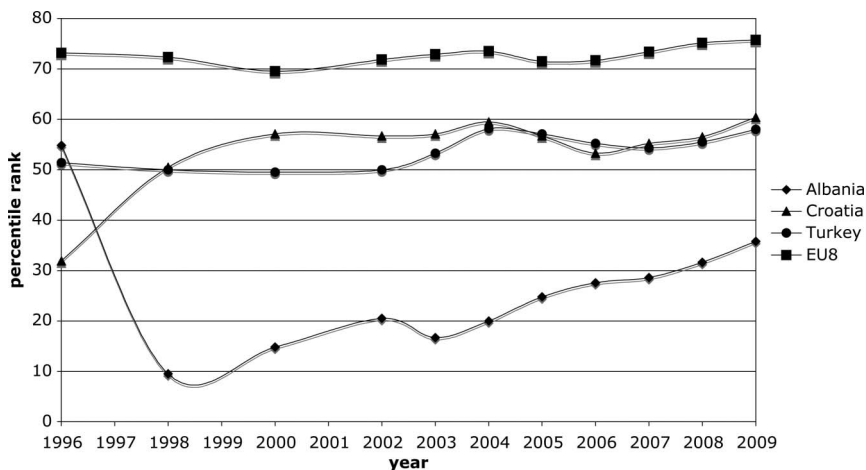
least likely cases (Albania). We enquire into the reasons behind the patchy record of rule-of-law reforms in Turkey, Croatia and Albania by examining judicial reforms in response to the EU accession requirements.

We argue that the differential empowerment of elites through the EU accession incentives can account for the upward and downward movements in rule-of-law standards in Croatia, Turkey and Albania. Where and when domestic political actors have seized the opportunities arising from the EU's conditional offer of membership in line with the predictions of rational choice institutionalism (Schimmelfenning and Sedelmeier 2004; Vachudova 2005), democratic institutional change has occurred (Croatia; Turkey between 2000 and 2005). Domestic empowerment, however, has not worked evenly in all political environments and its effects have been counteracted by the ruling elites' domestic incentives for partial reform or non-reform (Turkey after 2005; Albania).

The first part of the article sets the scene by comparing how Croatia, Turkey and Albania performed on rule of law and state capacity in the 2000s after the EU accession perspective became a factor in their domestic politics. The following three parts examine the three cases consecutively, looking at judicial reforms induced by the EU (the dependent variable), analysing the credibility of the EU incentives as a main mechanism of influencing democratic institutional change, and considering the degree of state capacity and the domestic empowerment of political elites as scope conditions for successful EU impact on the rule of law.

Rule of Law and State Capacity in the Western Balkans and Turkey

Rule-of-law standards in the Western Balkans and Turkey vary substantially. The World Bank rule-of-law indicator (Figure 1) shows the enormous gap between Croatia and Turkey on the one hand, and Albania on the other. Croatia and Turkey, in turn, lag considerably behind the Central European countries and the Baltic states (EU-8). Interestingly, both Croatia and Turkey experienced setbacks in their rule-of-law scores after 2004/5 and improved their performance after 2006 and 2008, respectively. While Croatia's EU candidacy has always appeared more credible than that of Turkey from the point of view of the EU's readiness to accept them as full members, the reversal in the rule-of-law ratings of both countries suggests that the EU incentives may not be sufficient to explain the observable trends and raises questions about the real drivers behind the reform process in the countries. Croatia's rule-of-law score deteriorates between 2004 and 2006 against the backdrop of its promotion to EU candidacy status in 2004 and the opening of EU accession talks in late 2005. In addition, Turkey's rule-of-law score picks up unexpectedly after 2008 notwithstanding the lukewarm messages it has been receiving from various European capitals regarding its real accession chances. The steady improvement of the rule of law in Albania appears in line with the expectations of the external-incentives

FIGURE 1
RULE OF LAW

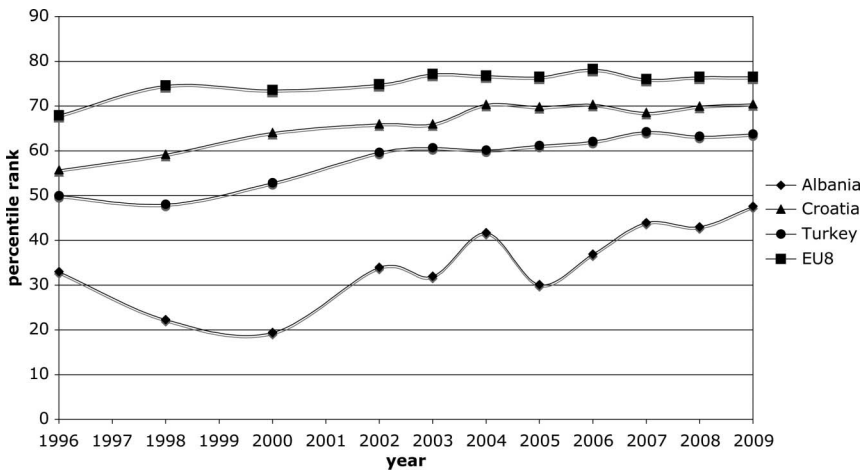
Source: The World Bank Governance Indicators, available at <http://info.worldbank.org/governance/wgi/index.asp> (accessed 31 March 2011).

model (Schimmelfenning and Sedelmeier 2004). Yet Albania's long distance from EU accession raises doubts as to whether the EU incentives are the true cause of the reforms. In short, the external incentives model seems unable to explain some of the variation in the rule-of law fluctuation that we observe in the Western Balkans and Turkey throughout the 2000s.

With regard to state capacity, there is a similarly stark difference between Croatia and Turkey, on the one hand, and Albania on the other, as shown by the World Bank Government Effectiveness indicator in Figure 2. What is puzzling, however, is that the setback in rule of law in Croatia and in Turkey, demonstrated above, occurred against the backdrop of a constant degree of state capacity which remained virtually unchanged between 2004 and 2009 in both countries. If the capacity of states to formulate and enforce laws was alone able to explain reform progress, we should not have observed the reversal in the rule-of-law trend in Croatia and Turkey. At the same time, the rule-of-law score of Albania improved gradually against an uneven evolution of its state capacity (see Figure 2). State capacity as such, while a necessary condition to advance the EU accession agenda (Börzel and Risse 2012), does not seem aligned with the rule-of-law fluctuations in the three countries from the comparative set.

The puzzle suggests that structural determinants of the rule of law, such as strong external pressure and adequate levels of state capacity, may not be sufficient drivers of change and will have a positive impact on political governance only when domestic political agents act upon existing opportunities. When the EU incentives for reform are aligned with the

FIGURE 2
GOVERNMENT EFFECTIVENESS



Source: The World Bank Governance Indicators, available at <http://info.worldbank.org/governance/wgi/index.asp> (accessed 31 March 2011).

ruling elites' domestic interests in the EU-advocated institutional and legislative changes (including but not limited to improved electoral prospects), we observe substantive progress in the rule-of-law area (Croatia, especially after 2009; Turkey before 2005). When, however, the EU incentives are only partially aligned with the incumbents' domestic incentives for rule-of-law change, we witness partial reform that may (Croatia between 2007 and 2009) or may not be provoked by the EU factor per se (Turkey after 2005). Short of alignment between the EU incentives and the ruling elites' domestic agenda (of which rent-seeking may form a big part), i.e. when the cost of rule-of-law reform is too high for government incumbents, we see non-reform or patchy reform that amounts to marginal advances in the rule of law (Albania). This is not to say that the EU incentives do not matter or to argue that the degree of state capacity is not important but to emphasise the key role of agency in transforming the EU stimuli into domestic impact. It is also to highlight the significance of the ruling elites' domestic incentives for genuine, partial, or non-reform in the pre-accession process, irrespective of the EU stimuli for change (see also Börzel and Pamuk 2012; Spendzharova and Vachudova 2012).

Croatia

Judicial Reform

Even though Croatia is the uncontested frontrunner in the Western Balkans in terms of political governance, its rule-of-law record has remained substantially

below the average score of the Central European and Baltic states (EU-8) throughout the 2000s. Notwithstanding a credible EU accession prospect, Croatia's rule-of-law score deteriorated between 2004 and 2006 to pick up moderately from 2007 onwards (see Figure 1). Judicial reform has been a major focus of EU conditionality, both as part of the general monitoring by the European Commission of Croatia's compliance with the Copenhagen political criteria and as part of the accession negotiations, in particular chapter 23 on judiciary and fundamental rights. The EU has consistently emphasised four aspects of judicial reform: independence, impartiality, efficiency and professionalism of the judiciary (European Commission 2006, 2008, 2010a). It has also closely monitored the anti-corruption policies of the governments in office as part of its overall efforts to uphold the rule of law.

Undoubtedly, judicial reform proved one of the most challenging tasks of Croatia's accession preparations. Although the Justice System Reform Strategy and the Action Plan for its implementation were adopted in September 2005, the real push for fulfilling the EU accession requirements in this area took place between 2009 and 2011 in the framework of the accession negotiations and in particular in response to the EU benchmarks for the opening and closing of chapter 23. In June 2010 the Croatian Parliament amended the Constitution in order to strengthen judicial independence and reduce political interference by boosting the autonomy of the State Judicial Council and the State Prosecutorial Council and reducing the power of the Justice Ministry in judicial appointments (European Commission 2010a). New criteria and selection procedures for the appointment of judges and prosecutors were introduced, based on proven qualifications and expertise. A long process of rationalising the court network began by merging the municipal courts, the misdemeanour courts and the state attorney offices. A substantial reduction of 50 per cent of backlog cases in the courts was achieved between 2005 and 2010, from 1.6 million to 800,000, although the number does remain high (Reding 2010). Taken together, the reforms constitute a complete overhaul of Croatia's judicial system.¹

The general public's evaluation of the functioning of the judicial system, however, remains unsatisfactory, especially with regard to the investigation, prosecution and conviction of high-ranking officials involved in corruption schemes (Doric 2010). Perception of corruption in the country is very high: 89 per cent of Croats think that corruption is pervasive in government, according to a 2010 Gallup poll (Gallup 2010). The general feeling among Croatian society is that the reforms of the judicial sector have not trickled down to the ordinary citizen and the government has not complied sufficiently with the EU accession requirements in this area (Srdoc and Samy 2011).

Credibility of EU Incentives

From a Croatian point of view, the credibility of the EU accession perspective has mostly revolved around the EU's ability and willingness to

differentiate between Western Balkan candidates. The EU has recognised Croatia's advanced status in the region and has treated it as a special Western Balkan candidate, accepting its application for membership as early as 2003, granting it candidacy status in 2004 and opening accession negotiations in October 2005.

During 2008–09, the EU's leverage was damaged by Slovenia's use of its veto power in the enlargement process to block Croatia's accession negotiations over disagreements between the two in a border dispute concerning the small Bay of Piran in the Adriatic Sea (EurActiv 2009). Pressure from other EU member states induced the two countries to agree to international arbitration on the border dispute in November 2009, which effectively decoupled the issue from the enlargement process. During 2008–09, negotiations on chapter 23, crucial for judicial reform, were not pursued due to Croatia's insufficient cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY).

The credibility of the EU accession perspective strengthened with the political decision to open negotiations on chapter 23 in June 2010. The perceived closeness to EU accession can explain the intensified efforts of the government on rule-of-law reforms in the run-up to the decision and until the provisional closure of the chapter in June 2011. Not only did EU monitoring of Croatia's judicial system intensify (European Commission 2010a, 2011) in that period, the government's efforts to demonstrate its compliance with the EU benchmarks also strengthened (Government of Republic of Croatia 2011). Yet these reforms are very recent and will only deliver results in the medium run, if implemented properly.

State Capacity

The Croatian state is the most capable in the Western Balkan region in terms of institutional and administrative capacity to enforce political decisions and to get society-wide compliance with formal rules and laws (Migdal 1988; Tilly 2007). On key indicators of institutional performance such as government effectiveness (see Figure 2) Croatia reveals a quality of governance closer to that of the eight EU member states from Central Europe and the Baltic region than to that of the Western Balkans. On many governance indicators, Croatia scores better than the newest EU member states Bulgaria and Romania (Spendzharova and Vachudova 2012).

Croatia's judicial capacity has been the target of a number of measures throughout the 2000s but especially after 2005 when the government's Justice System Reform Strategy outlined its plans for creating an efficient judiciary through reducing the number of pending cases and the duration of court proceedings, modernising the court administration, rationalising the court network and providing education and professional training to judges and prosecutors (European Commission 2007a). The European Commission has acknowledged Croatia's progress on all aspects of capacity-building

in the judiciary while criticising shortcomings such as the persistently high number of backlog cases and the slow pace of court-system computerisation as well as of the introduction of the integrated case management system (European Commission 2010a: 49). Yet, regardless of the investments in judicial capacity and other rule-of-law reforms after 2005, Croatia's state capacity has remained flat since 2004 although it improved moderately until then (see Figure 2). Croatia's relatively high (for the Western Balkans) state capacity has helped it advance the regulatory and legislative agenda envisaged in the EU accession process but cannot fully account for the observed rule-of-law trend throughout the 2000s.

Differential Empowerment

In many respects, Croatia's domestic transformation is more similar to that of Central and Eastern Europe than to the uneven reform trajectory of the Western Balkans. The political fate of the country changed with the death of its wartime nationalist leader Franjo Tudjman in November 1999 and the coming to power of a centre-left coalition government in 2000, opening the way for democratic change and European integration. Democratic consolidation in the early 2000s, however, depended on whether the main centre-right political party – the Croatian Democratic Union (HDZ) – would moderate its nationalist policies from the 1990s. The HDZ returned to power in 2003, raising questions about its democratic credentials and the degree of transformation it was capable of undergoing under its new moderate leader Ivo Sanader. In office, the HDZ adopted a pro-EU rhetoric and reform agenda while its leader fought to change the party base from within, getting rid of hardliners and gaining the support of the others for Croatia's pro-EU course (Vlahutin 2004: 28). The EU integration objective became the primary goal of all successive HDZ governments, which worked to deliver on domestically unpopular issues such as cooperation with the ICTY. The arrest and delivery to the Hague Tribunal of Ante Gotovina in December 2005 unblocked Croatia's accession negotiations with the EU and strengthened the reform image of its leadership abroad.

Rule-of-law reforms, however, were not an immediate priority of the first HDZ-led government. So tarnished was the image of the party from its wartime nationalist policies and the authoritarian tendencies of the Tudjman regime that its transformation into a modern centre-right political formation depended critically on a change of its policy in areas such as ICTY cooperation, regional cooperation, minority rights protection, refugee returns and media freedoms. Conveniently for the incumbents, the external scrutiny on reforms in the areas mentioned above left rule-of-law policies unchecked in the early period of HDZ's first term in office. This coincided with powerful domestic incentives for non-reform or token reform in the judiciary and the fight against corruption, reflected in Croatia's worsening rule-of-law scores in 2004–06 (see Figure 1).

Domestically, the two successive governments led by Sanader came to be associated with extreme forms of political corruption and nepotism, which also became a stumbling block for Croatia's accession progress in the latter half of the 2000s. In 2006, after the sacking of Justice Minister Vesna Skare-Ozbolt, known for her support for an independent judiciary and tough stance against corruption, the government's anti-corruption drive was further diluted (Cohen 2010: 28). When Sanader stepped down unexpectedly in July 2009 and proposed as his successor a low-profile figure from the HDZ, Jadranka Kosor, it was widely believed that he had become a liability for Croatia's accession prospects, in the midst of rumours about his participation in and toleration of corrupt schemes among the highest government ranks (*The Economist* 2010). As Prime Minister, Jadranka Kosor declared a policy of zero tolerance for corruption amid serious doubts that she would go after the top political level of her own HDZ. The arrest of the former Prime Minister Ivo Sanader on corruption charges in December 2010 was intended to convince Brussels and the public alike that the government was serious about fighting high-level political corruption, even among its own ranks. Not only Sanader himself but also close associates of his were charged and some even convicted for corruption (Loza 2010). Kosor's bold anti-corruption campaign was both an attempt to conclude EU accession negotiations in June 2011 and a pledge to secure her own political future ahead of the parliamentary elections later in the year (Loza 2010).

The Croatian case, therefore, is a vivid demonstration of domestic political empowerment through the EU membership perspective (Vachudova 2005). At critical junctures of the accession process, political elites coming to power sought to legitimise themselves through aligning their agenda with that of Brussels, and initiated reforms that improved Croatia's accession prospects. This was the case of HDZ's return to power in 2003, which accelerated democratic reform in the country; the re-election of the HDZ-led government in 2007, which could not completely ignore rule-of-law reform in light of Croatia's accession negotiations and increasing external demands and domestic public expectations in this area; and the coming to power of a new political leadership in HDZ in 2009, which speeded up rule-of-law reform. Yet the incumbents' domestic incentives for rent-seeking remained powerful throughout the 2000s and substantive progress in judicial reform and the fight against corruption was only achieved once the EU pressure to deliver in this area coincided with the interests of the new HDZ leadership to establish its political credentials after 2009, both externally and internally.

Turkey

Judicial Reform

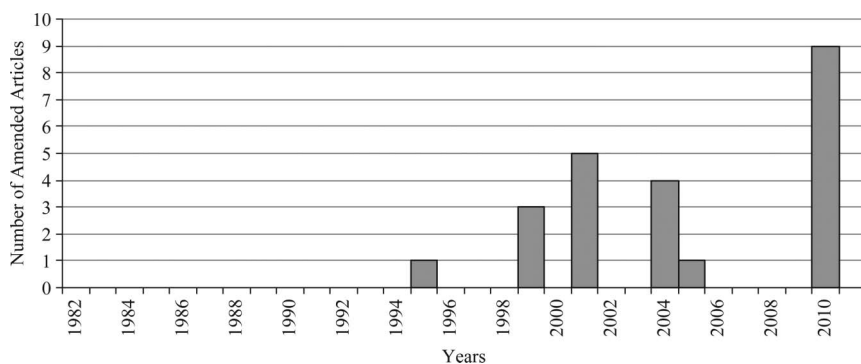
Currently Turkey ranks close to, yet below Croatia in the World Bank rule-of-law indicators. While the levels seem to rise between 2002 and 2004,

becoming almost even with Croatia in 2005 and 2006, they have dropped to below those of Croatia since 2007. The Turkish case is puzzling in the sense that despite a non-negligible preference for the curtailment of the rule of law for certain political groups (particularly minority groups) in Turkish society (Çarkoğlu and Kalaycıoğlu 2009: 50–54), substantial reform packages strengthening the rule of law, including the reform of the judicial system, have been passed by Turkish governments, especially in the last decade (Özbudun and Gençkaya 2009).

Judicial reform followed the general trend of rule-of-law-related reforms in Turkey, gaining momentum between 1999 and 2005, only to be suspended until the constitutional reform package was approved in the September 2010 referenda (see Figure 3). The 1999–2005 amendments covered some of the judicial reforms long demanded by the EU, including the abolition of the infamous State Security Courts that used to deal with crimes against the state, allowing re-trial in civil and criminal cases in which the European Court of Human Rights had found violations of the European Convention of Human Rights, and ending the jurisdiction of military courts over civilians. The most recent round of constitutional reform was also most notable for its focus on the reform of the judicial system, addressing some key priorities of the Accession Partnership Document in the area of the judiciary, such as further restricting the authority of military courts, allowing judicial appeals against expulsion decisions of the Supreme Military Council and changing the composition of the Constitutional Court and the High Council of Judges and Prosecutors.

Nevertheless, substantial problems remain in areas particularly concerning the independence, impartiality and efficiency of the judiciary and the securing of judicial guarantees for all suspects (European Commission 2010b: 12–14). Aside from legal and institutional matters, the Turkish judiciary is also well known for traditionally bestowing upon itself the

FIGURE 3
CONSTITUTIONAL AMENDMENTS IN JUDICIAL REFORM (1982–2011)



Source: <http://www.tbmm.gov.tr/anayasa.htm> (accessed 9 November 2011).

guardianship of militant secularism and for a monolithic understanding of Turkish nationalism as reflected in its decisions, some of which had served to restrict democratic freedoms and compromise the rule-of-law in the country (Yazıcı 2009: 166–209).

Credibility of EU Incentives

EU incentives played an important role in rule-of-law reform in Turkey. In the Turkish case, the credibility of conditionality was relatively high between 1999 and 2005 – a time period spanning the granting of candidacy status in 1999, followed by the promise of launching accession negotiations in 2002 (on condition that Turkey fulfil the Copenhagen political criteria) and the opening of accession negotiations in 2005. In fact, more than half of all the constitutional amendments in judicial reform undertaken since the adoption of the 1982 Constitution took place between 1999 and 2005 (see Figure 3).

Since then, the credibility of EU conditionality towards Turkey has been considerably weakened. Triggered by the rejection of the proposed Constitutional Treaty in France and the Netherlands, the EU's 'absorption capacity' quickly became a key element of the debate on Turkey's accession during 2005 (Emerson *et al.* 2006). The debate focused upon Turkey's size, its population, its culture and its unpopularity with EU citizens and conveyed the message that, unlike the Eastern enlargement, complying with the formal criteria alone might not be sufficient for Turkey's full accession to the Union. The concept was subsequently incorporated into the Negotiating Framework for Turkey (European Commission 2005) that highlighted 'absorption capacity' as part of the Copenhagen criteria and introduced the possibility of permanent safeguard clauses in areas such as free movement of people, structural policies and agriculture. This coincided with the election of Sarkozy and Merkel to power and their wide-reaching statements on the undesirability of Turkish accession.

Another crucial factor that has hampered conditionality in the case of Turkey concerns the Cyprus conflict. In December 2006, the Council decided not to open negotiations on eight chapters of the *acquis* and not to provisionally close any of the chapters until Turkey opened its seaports and airspace to Greek Cyprus as required by Turkey's customs union with the EU. This has, to a large extent, served to block progress in accession negotiations and substantially fed into the perceptions in Turkey that the country is being unfairly treated, with the EU using Cyprus as a tool to block Turkey's accession (Öniş 2010: 7).

State Capacity

The World Bank Government Effectiveness indicators suggest that in Turkey the degree of state capacity rose significantly from 1998 to 2002,

with no significant change until 2009, situating it slightly below Croatia (see Figure 2 above). The relative strength of state capacity proves to be a facilitating factor in strengthening the rule of law in more specific cases where there is strong political will, such as the 2008 Law on Foundations that strengthens the property rights of non-Muslim minorities (European Commission 2010b: 23). This relatively higher capacity, however, can also serve to hinder the rule of law, such as in the limited delivery of 'efficient and neutral' services by the state, sustaining the appeal of informal structures and thus of corruption (Freedom House 2008: 5).

A similar picture is also observed in the more specific case of judicial reform. For example, the EU-assisted National Judicial Network Project initiated in 2001 has turned the Turkish justice system into one of the most computerised judiciaries in Europe (Council of Europe 2010: 92–7). This has significantly helped to ease citizens' access to justice and improve the efficiency and transparency of judicial services by accelerating administrative procedures (Van Delden 2009: 11). Nevertheless, this mixed capacity imposes limits on wider-scale capacity-related issues in the judiciary, such as excessive caseloads in both the low and high courts or shortages of judges and public prosecutors, both of which factors lead to significant backlogs hampering the rule of law (Van Delden 2009: 7, 13).

In the Turkish case, one also needs to account for the threat posed to 'statehood' by the Kurdish nationalist terrorist organisation Kurdistan Workers' Party (PKK). The decline of terrorist activities upon the capture of PKK leader Öcalan in 1999 created a favourable domestic climate for undertaking reforms that have served to strengthen the rule of law in the country. In the more specific case of judicial reform, one of the related notable developments was the abolition of the State Security Courts that were notorious in handling cases related to Kurdish rights issues. It has also been observed, however, that the rise of terrorist activity (first in 2005, then intensifying in 2007), and the nationalist reactions fuelled by it, have contributed to delimiting judicial reform on this issue. For example, special courts established in 2004, especially after the amendments made to the Anti-Terror Law in 2006 that delimit fundamental rights and freedoms (Aytar 2006), continued to serve a function similar to State Security Courts in violating the principles of fair trial in cases related to, among other issues, Kurdish rights (Kurban 2011).

Differential Empowerment

In accounting for democratic institutional change, one has to focus on the role of the current ruling Justice and Development Party (AKP), which has been in power since 2002. The AKP is a splinter of the former Welfare Party that was ousted from government by a post-modern military coup in February 1997 on grounds of anti-secular activities. Immediately upon

coming to power, the party successfully promoted EU accession and its democratic reform agenda to widen its support base towards the centre. The party attempted to preserve its core voter base by the promise of extended religious freedoms and to guarantee its survival vis-à-vis the secularist state establishment in the judiciary and the military (Özel 2003).

It has been argued that especially after its second electoral victory in the 2007 general elections the AKP stood much stronger both in society and also against the secularist establishment, and thus became less dependent on the EU and its democratisation agenda (Öniş 2010: 9). The reactions of the government to the recently intensified EU criticisms of the state of democracy in Turkey are in fact indicative of the weakened reliance on the EU. In response to the critical report of the European Parliament on Turkey published in March 2011, Prime Minister Erdoğan stated that the 'Parliament is entrusted to draft the Report and we are entrusted to do as we see fit' (*Milliyet* 2011).

This has had two main implications for democratic institutional change in Turkey. First, despite the weakening EU anchor, the relative strength of the government has facilitated the pursuit of further reform in some areas, most notably in strengthening civilian control over the military, which largely stands in opposition to the government (Gürsoy 2011). However, the relative weakness of the opposition and the dwindling of the EU anchor have also led to more selective democratic reform, dependent on the interests of the government. For example, while civil-military relations are being reformed, the government still chooses to retain some of the infamous remnants of the 1980 coup, such as the High Education Board (YÖK) through which it exercises significant control over the universities.

A similar situation can also be discerned in the more specific area of judicial reform. The government, especially during its second term in power, enjoyed conflictual relations with the largely oppositional Kemalist judiciary, culminating in the closure case against the AKP in March 2008. In August 2009, the government announced the Judicial Reform Strategy and put its main provisions to the vote in the 2010 referendum. The amendments aim to democratise the judiciary and make it more responsive to the demands of society by diversifying the background of the members of the Constitutional Court and by widening the composition of the High Council that determines the career paths of judges and prosecutors. On the other hand, these amendments have been criticised mainly for retaining substantial provisions that compromise judicial independence, in particular with regard to the powers of the Minister of Justice in the High Council.

These constitutional amendments in judicial reform are no doubt very recent, thus requiring more time in assessing their full impacts regarding implementation. The EU's initial reaction was generally positive but cautious, adopting a 'wait and see' attitude pending implementation (European Commission 2010b: 14). Yet there are now certain early indications that concerns regarding judicial independence are not comple-

tely unfounded. The elections held in the judiciary to select the new members of the High Council in the immediate aftermath of the constitutional referendum are a case in point. The new amendments give judges and prosecutors the right to elect 10 (out of 22) High Council members. While this officially expands the legitimacy of the Council in the judiciary, the actual implementation was tarnished by the election of all the names in a block list allegedly prepared by the government (Ergin 2010).

Albania

Judicial Reform

Albania has been considered the laggard of the Western Balkans in terms of democratic reforms. Yet Albania's rule-of-law score has improved steadily throughout the 2000s after a serious drop between 1996 and 1998, although starting from a very low level compared to the rest of the countries in the region (see figure 1). In principle, the EU applies to Albania the same criteria for the quality of justice as to the other applicant countries but its discussion with Albania on judicial reform is at a very early stage almost a decade after the EU extended the membership perspective to the region.² In November 2010, the European Commission declared Albania unfit to officially become a candidate country, citing in particular the country's insufficient progress on fulfilling the Copenhagen political criteria (European Commission 2010c: 5). In stipulating the requirements for Albania's successful promotion to EU candidacy, the European Commission demanded that Albania 'strengthen the rule of law through adoption and implementation of a reform strategy for the judiciary, ensuring the independence, efficiency and accountability of judicial institutions' (European Commission 2010d: 11).

While Albania is still in the process of developing a credible judicial reform strategy with EU assistance,³ it has introduced some sporadic measures aimed at improving the functioning of the judicial sector. A process of rationalising the court system has been initiated, intended to redistribute courts and judges throughout the country and ensure a balanced workload for judges (Panda 2005). In 2007, eight small district courts were abolished, reducing the overall number from 29 to 21 (European Commission 2007b: 8). A Magistrates' School has been set up to provide specialised training programmes to judges and prosecutors, including programmes on issues related to the EU accession agenda (European Commission 2007b: 9). In 2008, the Parliament passed amendments to the Law on the General Prosecutor's Office, specifying more transparent recruitment and promotion criteria for judges. It also passed the Law on the Private Bailiff Service, which provided for speedier enforcement of civil court rulings (European Commission 2009: 10). In 2009, legislation on legal aid and witness protection was adopted, guaranteeing the citizen's right to

legal defence and protection in criminal trials, but its implementation has remained weak (Gjipali 2010: 62). Legislative and institutional improvements notwithstanding, the European Commission's assessment of the state of justice in Albania has been categorical: 'There is corruption in the judiciary, risks to the independence of judges, as well as a lack of transparency and accountability of many procedures and a lack of efficiency in general of the justice system' (European Commission 2010c: 21).

Albania's efforts to fight against corruption, including in the judicial sector, are noteworthy at the legislative level but unsatisfactory at the implementation level. All main forms of corruption are criminalised, including public sector bribery and trade in influence (European Commission 2010c: 22). There has nevertheless been a notable reluctance among the political class to address the issue of immunity for judges, ministers and parliamentarians, which has blocked the prosecution of corruption at the highest level. Simultaneously, perceptions of corruption remain very high in Albanian society. In 2010, 69 per cent of Albanians believed that corruption was widespread throughout the government while 49 per cent of them admitted they had had to offer a bribe in order to 'solve a problem', the highest percentage in the whole Western Balkan region (Gallup 2010).

Credibility of EU Incentives

Albania's lack of substantial progress on democratic reforms in the 1990s, while largely determined by path dependency and difficult domestic conditions at the start of the transition, may partly be explained by the absence of an EU accession prospect at the time. The country was put under the EU accession conditionality straightjacket only in 2000 and since then Albania has been subject to the same pre-accession instruments as the rest of the countries from the region, especially after the signing of the Stabilization and Association Agreement with the EU in 2006. The low level of its institutional capacity and the poor results of its economic and political transition, however, have made it an unlikely candidate for early EU accession. The perceived distance to accession has not served as a powerful driver of domestic change but the improvements in the rule of law that have occurred in Albania since 2003 have undoubtedly been influenced by the long-term EU accession prospect.

Targeted EU pressure to deliver on judicial reform has been much weaker in the case of Albania in comparison with Croatia. Albania is not a candidate country yet, nor has it been invited to start accession talks with the EU. The specific EU instruments employed in the context of chapter 23 negotiations on judicial reform, such as stipulating reform benchmarks for opening and closing of the chapter as well as tight monitoring on compliance with the specific requirements, have not yet been part of the EU–Albania exchanges. The rejection of Albania's EU membership

application in 2010 served to confirm the long road the country faces before becoming a credible accession candidate.

State Capacity

One of the main obstacles for deepening the reform tendencies in Albania is the extremely weak institutional performance of its state structures even in comparison with the low capacity of the Western Balkan region as a whole. The ad hoc initiatives aimed at building institutional capacity within the public administration in general and the judiciary in particular have resulted in a patchy record of government effectiveness throughout the 2000s, as shown by Figure 2.

On the positive side, an e-procurement system has been introduced in the public administration which has not only made bidding for public contracts simpler and more efficient but has also reduced the potential for corruption in public procurement (European Commission 2010c: 23). On the negative side, the persistent non-enforcement of court rulings reveals how profound the problem of judicial capacity in the country is. According to the Albanian Ministry of Justice, in 2009 the number of unimplemented court decisions (8057) by far exceeded the number of implemented decisions (5806) (Gjipali 2010: 62). The judicial infrastructure is also extremely poor and 'courts continue to lack adequate space for courtrooms, archives and equipment' (European Commission 2007b: 9).

The necessity to respond to the EU accession requirements has strengthened institutional capacity within the national bureaucracy by mobilising resources around specific tasks but it has failed to entrench a new political culture geared toward respecting the institutional rules and procedures and implementing the laws already adopted (FRIDE 2010). Weak institutional capacity in Albania makes it possible for political leaders to avoid the democratic channels of policy making and to subordinate the state apparatus to the will of the political majority (Elbasani 2009). Examples include the dismissal of judicial proceedings against some high-ranking political figures on trial for 'abuse of office' after reported political pressure on the judicial system (Gjipali 2010: 61). And although a lot of activity has gone into creating the institutional foundations and administrative capacity for good governance, the reality has failed to move beyond bad governance.

Differential Empowerment

The lines of division in Albanian politics run deep and the EU integration project, while publicly endorsed by all political actors, has not provided sufficient stimuli for consensus-building on a national scale. In contrast to many other Western Balkan countries, there are no important ethnic cleavages cutting across the Albanian political scene. Yet the long-standing

confrontation between the two main political parties – the Socialist Party and the Democratic Party – has often led to political stalemate paralysing the state institutions for months, especially the legislature. Albania's difficult communist past, which for decades stifled political opposition and suppressed societal dissent, has often been invoked to explain the authoritarian instincts of its 'new' political actors and the practice of purging the public administration of political opponents with every swing of power between the centre-left and centre-right (Elbasani 2009; Fischer 2010). It is not surprising that rule of law is having difficulty taking root in a domestic political environment in which the structural weakness of the state is added to political divisiveness linked to family and clan rather than to ideology (O'Brennan and Gassie 2009).

The patchy reform record of all post-communist governments in Albania even after the extension of the EU membership perspective deviates from the track record of the Central and Eastern European countries, in which the EU accession prospect had a 'lock-in' effect on government policies (Vachudova 2005). The socialist government that came to power in 1998 after a popular revolt against the state as a result of collapsed pyramid schemes and the economic hardship felt by many impoverished Albanians did nothing to convince citizens or external observers of a decisive break with the past. In fact, its leader Fatos Nano consolidated power within his most trusted circle and presided over a corrupt regime which ignored the will of the ordinary citizens (Fischer 2010).

The return to power of the Democratic Party and its leader Sali Berisha in 2005 promised another new beginning, especially with regard to combating corruption and progress towards EU accession (O'Brennan and Gassie 2009). Indeed, most of the anti-corruption measures introduced by the Albanian authorities to date have been initiated during Berisha's term in office. The Berisha government also worked hard to deliver on the EU roadmap for visa liberalisation in 2008–09, introducing concrete reforms on the fight against corruption and organised crime, human trafficking, money laundering, drug trafficking, etc. (European Commission 2010e). Given the tangible interim EU reward of visa-free travel for Albanian citizens, the political establishment and the state apparatus have united to produce legislative and institutional changes which, if implemented adequately, will lead to better rule of law.

The visa example, however, remains a single episode. Extreme political polarisation continues to be a core feature of Albanian politics as demonstrated by the contested results of the parliamentary election held in June 2009 when the opposition Socialist Party accused the ruling Democratic Party of rigging the vote and staged a boycott of the Parliament blocking the adoption of many laws, including those meant to align the national legislation with the EU *acquis* (EurActiv 2010). The EU accession incentive, while capable of galvanising public support for democratic

change, has not yet had the same disciplining effect on political parties and leaders who have often prioritised narrow party and personal interests over the society-wide goals of rule of law and EU accession. There are powerful domestic incentives for incumbents from both sides of the political spectrum to continue the status quo and to introduce only marginal improvements in the rule of law, thus avoiding more serious external sanctions. The public is equally disempowered and unable to serve as an internal check on government policies. In short, the EU incentives and the ruling elites' domestic incentives work at cross-purposes and result in patchy reform insufficient to substantially improve the rule of law in Albania.

Conclusions

The analysis has shown the importance of both EU-level factors and domestic factors for explaining the uneven patterns of rule-of-law reforms in the Western Balkans and Turkey. A credible EU accession perspective has helped stir a reform dynamic in domestic political settings as different as those of Croatia and Turkey. By providing material benefits and external legitimacy to the ruling elites in these countries, the EU has had a transforming effect on domestic institutional and legislative structures underpinning the rule of law. In Croatia, the change in the domestic political opportunity structure has been permanent regardless of the delays in the reform process triggered by the rent-seeking tendencies of the political class. In contrast, in Turkey the democratic reform process slowed down after 2005 as a reaction to the decreasing credibility of the EU incentives. Turkish ruling elites have continued to introduce selective changes in the judicial system, but only where those have served the political interests of the incumbents. In Albania, inhibiting domestic structural conditions have so far blocked the emergence of liberal elites willing to introduce bold reforms, irrespective of the external incentives offered to domestic political actors to initiate democratic change.

The comparative study of judicial reform in the Western Balkans and Turkey has also demonstrated the critical role of state capacity for the initiation and sustainability of the democratic institutional changes required by the EU. The case of Albania is illustrative of this point. So worryingly low is the capacity of the Albanian state that a great deal of capacity-building is needed before the EU-inspired legislative and institutional changes can start to have a tangible impact on the rule of law in the country. While a necessary condition for reform, higher levels of state capacity are not sufficient to drive the accession agenda in candidate countries, as the cases of Turkey after 2005 and Croatia between 2004 and 2006 reveal. A capable state administration and functioning state institutions cannot substitute for lack of political will and lack of leadership in upgrading the rule of law in accession candidates.

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Notes

1. Interview with a European Commission official, 26 May 2011, Brussels.
2. Interview with a European Commission official, 26 May 2011, Brussels.
3. The EU has financed the European Assistance Mission to the Albanian Justice System (EURALIUS) which brings legal experts from the EU member states to help judicial reform in the country. EEAS, available at http://eeas.europa.eu/delegations/albania/press_corner/all_news/news/2010/20100617_01_en.htm (accessed 29 May 2011).

References

- Aytar, Volkan (2006). *Daha Karanlık bir Geleceğe Doğru mu? Terörle Mücadele Kanununda Yapılan Değişiklikler* (Towards a Darker Future? Amendments to the Anti-Terror Law). Istanbul: TESEV Publications.
- Börzel, Tanja A., and Yasemin Pamuk (2012). 'Pathologies of Europeanisation. Fighting Corruption in the Southern Caucasus', *West European Politics*, 35:1, 79–97.
- Börzel, Tanja A., and Thomas Risse (2012). 'From Europeanisation to Diffusion: Introduction', *West European Politics*, 35:1, 1–19.
- Cohen, J. Lenard (2010). 'Administrative Development in "Low-Intensity" Democracies: Governance, Rule of Law and Corruption in the Western Balkans', *Simon Papers in Security and Development N 5/2010*, School for International Affairs, Simon Fraser University, Canada.
- Council of Europe (2010). *European Judicial Systems, Edition 2010 (Data 2008): Efficiency and Quality of Justice*. Strasbourg: Council of Europe.
- Çarkoğlu, Ali, and Ersin Kalaycıoğlu (2009). *The Rising Tide of Conservatism in Turkey*. New York: Palgrave Macmillan.
- Doric, Petar (2010). 'Croatia', in *Nations in Transit 2010*. Washington, DC: Freedom House, 159–76.
- Elbasani, Arolda (2009). 'EU Administrative Conditionality and Domestic Downloading: The Limits of Europeanization in Challenging Contexts', *KFG Working Paper 2*, Free University of Berlin.
- Emerson, Michael, Senem Aydın, Julia De-Clerck Sachsse, and Gergana Noutcheva (2006). 'Just what is this "Absorption Capacity" of the European Union?', CEPS Policy Brief 113, Centre for European Policy Studies, Brussels.
- Ergin, Sedat (2010). 'HSYK Seçimi Nasıl Okunmalı' (How to Interpret the High Council Elections?), *Hürriyet Daily*, 19 October.
- EurActiv (2009). 'Border Dispute with Slovenia Delays Croatia EU Entry Talks', 24 April.
- EurActiv (2010). 'EU Mediators Try to Save Albania from Political Chaos', 20 May.
- European Commission (2005). *Negotiating Framework (Turkey)*, Luxembourg, available at http://ec.europa.eu/enlargement/pdf/st20002_05_tr_framedoc_en.pdf (accessed 9 November 2011).
- European Commission (2006). *Croatia 2006 Progress Report*, SEC(2006) 1385, Brussels.
- European Commission (2007a). *Screening Report Croatia*. Chapter 23 – Judiciary and Fundamental Rights, Brussels.
- European Commission (2007b). *Albania 2007 Progress Report*, SEC(2007) 1429, Brussels.
- European Commission (2008). *Croatia 2008 Progress Report*, SEC(2008) 2694, Brussels.

- European Commission (2009). Albania 2009 Progress Report, SEC(2009) 1337/3, Brussels.
- European Commission (2010a). Croatia 2010 Progress Report, SEC(2010) 1326, Brussels.
- European Commission (2010b). Turkey 2010 Progress Report, SEC(2010) 1327, Brussels.
- European Commission (2010c). Commission Opinion on Albania's Application for Membership of the European Union, COM(2010) 680, Brussels.
- European Commission (2010d). Commission Opinion on Albania's Application for Membership of the European Union, COM(2010) 680, Brussels.
- European Commission (2010e). Commission Staff Working Document on the Fulfilment of the Open Benchmarks by Albania and Bosnia and Herzegovina, SEC(2010) 1085, Brussels.
- European Commission (2011). Interim Report on Reforms in Croatia in the Field of Judiciary and Fundamental Rights (Negotiation Chapter 23), COM(2011) 110, Brussels.
- Fischer, Bernd (2010). 'Albania and Enver Hoxha's Legacy', *Open Democracy*, 10 June.
- Freedom House (2008). *Turkey in Transit: Democratization in Turkey*. Washington, DC: Freedom House.
- FRIDE (2010). 'Albania', Democracy Monitoring Report, FRIDE, Madrid.
- Gallup (2010). 'Insights and Perceptions: Voices of the Balkans', Summary of Findings, available at <http://www.balkan-monitor.eu> (accessed 15 April 2011).
- Gjipali, Gledis (2010). 'Albania', in *Nations in Transit 2010*. Washington, DC: Freedom House, 49–64.
- Government of Republic of Croatia (2011). First Report on Meeting the Closing Benchmarks of Chapter 23 – Judiciary and Fundamental Rights, Zagreb, available at <http://www.vlada.hr/.../Report%20on%20Chapter%2023%20FINALNO%20ENG.pdf> (accessed 23 May 2011).
- Grabbe, Heather (2006). *The EU's Transformative Power: Europeanization through Conditionality in Central and Eastern Europe*. New York: Palgrave Macmillan.
- Gürsoy, Yaprak (2011). 'The Impact of EU-Driven Reforms on the Political Autonomy of the Turkish Military', *South European Society and Politics*, 16:2, 293–308.
- Kurban, Dilek (2011). 'KCK Davasını Anlamak için Tek Celse Yeter' (One Hearing is Enough to Understand the KCK Case). *Radikal*. Daily, 12 January, available at <http://www.radikal.com.tr/Radikal.aspx?aType=RadikalYazar&ArticleID=1036585&Yazar=DİLEKKURBAN&Date=05.05.2011&CategoryID=98> (accessed 12 May 2011).
- Loza, Tihomir (2010). 'Croatia's Scalp Collector', *Transitions Online*, 16 December.
- Migdal, Joel (1988). *Strong Societies and Weak States: State–Society Relations and State Capabilities in the Third World*. Princeton, NJ: Princeton University Press.
- Milliyet Daily (2011). 'We Will Do as We See Fit', 11 March, available at <http://www.milliyet.com.tr/bildigimizokuruz/siyaset/haberdetay/11.03.2011/1362801/default.htm> (accessed 14 March 2011).
- O'Brennan, John, and Esmeralda Gassie (2009). 'From Stabilization to Consolidation: Albanian State Capacity and Adaptation to European Union Rules', *Journal of Balkan and Near Eastern Studies*, 11:1, 61–82.
- Öniş, Ziya (2010). 'Contesting for the 'Center': Domestic Politics, Identity Conflicts and the Controversy over EU Membership in Turkey', *Working Paper No. 2*, Istanbul Bilgi University European Institute, Istanbul.
- Özbudun, Ergun, and Ömer Faruk Gençkaya (2009). *Democratization and the Politics of Constitution-Making in Turkey*. Budapest: CEU Press.
- Özel, Soli (2003). 'After the Tsunami', *Journal of Democracy*, 14:2, 80–94.
- Panda, Ilir (2005). 'Judicial Reform in Albania', in *Judicial Reform and Administrative Justice No. 9*, SIGMA Unit, OECD, February.
- Reding, Viviane (2010). 'Justice and Fundamental Rights: The Key to Successful Accession to the EU', Speech/10/420, Zagreb.
- Schimmelfennig, Frank, and Ulrich Sedelmeier (2004). 'Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe', *Journal of European Public Policy*, 11:4, 661–79.

- Spendzharova, Aneta, and Milada Anna Vachudova (2012). 'Catching Up? Consolidating Liberal Democracy in Bulgaria and Romania', *West European Politics*, 35:1, 39–58.
- Srdoc, Natasha, and Joel Anand Samy (2011). 'Croatia Needs More EU Pressure', *EU Observer*, 25 March.
- The Economist* (2010). 'Cordon Sanader: More Stumbles on the Path to the European Union', *The Economist*, 25 November.
- Tilly, Charles (2007). *Democracy*. Cambridge: Cambridge University Press.
- Vachudova, Milada Anna (2005). *Europe Undivided: Democracy, Leverage and Integration after Communism*. Oxford: Oxford University Press.
- Van Delden, Bert. (2009). Fourth Advisory Report on Effectiveness of the Judicial System in Turkey, European Commission, Brussels.
- Vlahutin, Romana (2004). 'The Croatian Exception', in Judy Batt (ed.), *The Western Balkans: Moving On*. Paris: EU Institute for Security Studies, 21–35.
- Yazıcı, Serap (2009). *Demokratikleşme Sürecinde Türkiye* (Turkey in Democratisation Process). Istanbul: Istanbul Bilgi University Press.