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## Book Review

### **Marko Kmezić (2017) *EU Rule of Law Promotion: Judiciary Reform in the Western Balkans*. London: Routledge. 186 pages.**

Marko Kmezić has been studying the role EU institutions have in Western Balkan countries and in particular the influence of EU conditionality on human rights and the rule of law. In recent years, his research focused on the effect Europeanization had in the area of rule of law. (Kmezić, 2014; Kmezić, Gordon and Opardija, 2013)

In his latest work, *EU Rule of Law Promotion - Judiciary Reform in the Western Balkans* (2017), Kmezić explores whether EU institutions have an influence on the implementation of the rule of law in potential candidate countries and, if so, of what kind. The question the book poses is quite valid considering that even though the EU launched the Stabilisation and Association Process over 15 years ago these countries seem to be far away from full EU membership. The book focuses on judicial reform in the five countries: Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, and Serbia, all Western Balkan countries still aspiring to EU membership.

In his book, Kmezić builds on the already existing scholarship on 'Europeanization', reflected in the works of Schimmelfennig (2010) and Sedelmeier (2006; 2011). During his research for this book, he collected empirical data on the EU's transformative power with regard to the effectiveness of rule of law and judicial sector reform. His work analyses the depth and limitations of EU rule of law promotion in the Western Balkans and ends with a presentation of policy recommendations intended to address the shortcomings of in judiciary reform. Kmezić uses a combination of the traditional top-down approach, already existing in Europeanization studies, and the constructivist institutionalist approach with a reconceptualization of the 'spiral theory' (Risse, Ropp and Sikkink, 1999). He uses a combination of three methodological strands: the *normative approach*, the problem-oriented *empirical approach* and the *institutional approach*. To this end he conducted a normative and empirical analysis of written (legal) documents, conducted explorative expert interviews and in-depth interviews with key actors including representatives of the political and economic elites, EU experts, and rule-of-law enforcement officers of the respective countries. In By doing so he provides a comprehensive analytical framework that tries to overcome theoretical dichotomies in an innovative way.

The book consists of three major parts. Beside the introduction, Part I provides an overview of the existing literature on Europeanization with a specific focus on its effect on the rule of law. Part II presents accurate and up-to-date normative and empirical analysis of the state of judiciary reforms in Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, and Serbia. Finally, Part III offers answers to the question of the success of the Europeanization by rule of law implementation in South East Europe (SEE), in the form of a comprehensive concluding chapter. In this part he also proposes policy recommendations, intended to address the shortcomings of

judiciary reforms in SEE observed during the research that led to this book, as well as ideas for how the EU could enhance its influence on rule of law promotion during the accession phase.

The countries studied were selected according to their status in the accession process, namely (1) Bosnia-Herzegovina, which have signed a Stabilization and Association Agreement, but also have serious problems with state institutions' stability due to the unresolved statehood and nationality issues; (2) Kosovo, a potential candidate country, still not recognized by five EU member states; (3) Macedonia, which is a candidate for EU accession, but with no date set for commencing accession negotiations; (4) Montenegro as a candidate country in the process of accession negotiations; and (5) Serbia, which formally started accession negotiations in January 2014.

As already indicated, democratic consolidation of the Western Balkans countries is intimately linked with the effectiveness of rule of law. However, the concepts of democracy and the rule of law are not identical. And although the rule of law principle has a long common tradition in most influential legal orders, it has not been precisely defined by any of them. Rule of law is one of the founding values of the European Union as confirmed in Article 2 of the Treaty of Lisbon.

With the prospect of enlargement to the SEE, Kmezić finds, the EU has become more aware of the need to provide content criteria, or benchmarks, with which to measure success or failure in fulfilling the principle of democracy and the rule of law. These criteria were set established with the conclusion of the Stabilization and Association Agreement(s) which marks only the beginning of the contractual relationship between the EU and the candidate countries/country. For this book, Kmezić uses benchmarks set for independence, accountability, efficiency and effectiveness of the judiciary in the Western Balkans and provides an in-depth normative and empirical analysis of the reforms undertaken to reach these standards in a five-country case-study.

The book concludes that there are two sets of obstructing factors that , which explain the gap between the adoption and internalization of norms related to the rule of law in the Western Balkans. On the supply side, i.e. on the side of the EU processes and strategies, these are the lack of *clarity* and *credibility* of EU conditionality while on the demand side, concerning the domestic drive for reforms, these relate to the obstructionist potential of *gatekeeper elites* and *legacies* of the past.

Kmezić finds that the EU has approached the rule of law reforms from the position that improving the performance of the judiciary is the most direct way to reinforce the legal stability in the target country. However, his research points out that the transformative effect of the 'current EU approach' for the Balkans appears to be insufficient. Conditionality in the Western Balkans is insufficient since it does not meet the main criteria for it to be effective: membership conditions should be clear, the same requirements should be applied to all applicants, which should be strictly but fairly monitored, findings should be transparently communicated, and there should be no doubt that the reward will come once conditions are met.

The EU's present approach also fails to deal with the problem of local cultural predispositions, to address the issue of informal institutions and centres of power, and to include the wider society in the reform process. Therefore, matters such as the

fairness and legitimacy of laws and court procedures, the effectiveness and accountability of the judiciary, and the role of civil society remain marginalized. He identifies five false assumptions that underlie the current approach: a) that an institutional approach is the answer, b) that governments are the key to achieving legal reform, c) that new laws are the answer, d) that governments know what they are expected to comply with and e) that the membership incentive is sufficient.

Finally, Kmezić fulfils his promise and suggests policy options which could improve the EU's rule of law conditionality toolbox in order to guide domestic reforms beyond the phase of formal rule adoption. His list of policy recommendations that need to be taken into account by relevant actors are: a) creating clear criteria and indicators for the rule of law conditionality, b) producing interim benchmarks, c) redefining progress reports, d) including civil society in the EU integration process, e) opening Chapters 23 and 24 and f) monitoring the state of democracy.

These recommendations are based on recognizing the false assumption that the top-down institutional approach employed by the EU, empowered by the golden carrot of full membership, has generated unique broad-based and long-term support for rule of law reform and progress towards EU membership in the Western Balkans. However, Kmezić finds that this approach is undermined by the technocratic, vague and short-term nature of the EU's rule of law conditionality coupled with the increasing lack of credibility of the overall enlargement process which at best leads to redistributive, capacity-related and short-term outcomes rather than sustainable and transformative change. At the same time, he suggests that it would be necessary to combine this approach with more bottom-up soft socialization mechanisms to ensure that capacities of civic society organizations are mobilized and to create a consensus among the ruling and oppositional elites on the necessity of socialization of the adopted norms.

In his book, Kmezić aims at and succeeds not only in advancing scholarship on this topic but also in providing policy recommendations which could have an impact on EU policy towards rule of law reform in the Western Balkans. However, turning policy recommendations into action requires a significant amount of advocacy, a task Kmezić, as a member of the Balkans in the Europe Policy Advisory Group, will have plenty of opportunities to pursue.

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