

# The Role of the EU in the Justice System Reforms\*

## *El papel de la UE en las reformas del sistema judicial*

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### Abstract

The European Union plays a significant role in reforming the judicial system, both in countries aspiring to EU membership and in existing EU member states. Achieving an adequate level of judicial independence, accountability, professionalism, and efficiency is crucial for preserving the rule of law across the EU. To this end, the European Union employs various mechanisms, initiatives, and corrective measures. These are essential not only for supporting judicial reforms but also for monitoring and evaluating the implementation of the recommendations provided.

The aim of this paper is to highlight the importance of the European Union's role in supporting judicial reform in both member states and countries aspiring to EU membership. To achieve this, the authors analyze European standards relevant

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to the independence, impartiality, and efficiency of the judiciary, as well as various mechanisms, reports, and opinions from relevant bodies. This approach allows authors to identify not only the challenges observed but also examples of good practices that can be valuable for both member states and candidate countries seeking EU membership.

**Keywords:** European Union, judiciary, justice system reforms, independence, rule of law

## Summary

I. Introduction. II. EU Standards on Judiciary. III. EU Role in Member States Judicial Reforms. 3.1. Rule of Law Backsliding. 3.2. EU Rule of Law Report. IV EU Requirements from Candidate Countries Judiciaries. V Conclusions. References

## I. Introduction

The rule of law stands as a foundational principle of the European Union (EU), enshrined in the Article 47, paragraph 2 of the Charter of Fundamental Rights of the European Union.<sup>1</sup> This provision incorporates the right to a fair and public hearing within a reasonable time by an independent and impartial court established in accordance with the law. Upholding the rule of law is crucial for ensuring justice, fairness, and accountability within the EU.

Moreover, the rule of law serves as a pivotal criterion for assessing the readiness of candidate countries seeking accession to the EU. Aspiring members must demonstrate a commitment to upholding the rule of law as part of the accession process, as it deemed essential condition for membership in the Union. This underscores the EU's dedication to fostering democratic governance, respect for human rights, and adherence to legal principles among its member states.

By emphasizing the importance of the rule of law both internally and in the context of enlargement, the EU underscores its commitment to upholding democratic values, protecting fundamental rights, and ensuring the proper functioning of legal systems across its member states and aspiring members alike.

The Treaty of Amsterdam from 1997 emphasized the importance of political criteria and stated that any European country that is committed to promoting the rule of law can become a member of the European Union.<sup>2</sup> Later, the rule of law became part of the Treaty of Lisbon.<sup>3</sup> Article 2 of the Treaty on the European Union stipulates that the Union is based on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of members of minorities. The stated values are common to member states in a society where pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail. The European Commission, together with the other institutions of the European Union, is responsible in accordance with the Treaties for guaranteeing respect for the rule of law as a fundamental value of the Union.

The Chapter 23 of the accession negotiations is focused on improving the independence of the judiciary, strengthening the impartiality, accountability, professionalism, and efficiency of the judiciary. However, oversight of the rule of

1 Charter of Fundamental Rights of the European Union, *Official Journal of the European Union*, 2000/C 364/01, available at: [https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf).

2 Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and certain Related Acts, *Official Journal of the European Union* (97/C 340/01), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:11997D/TXT>.

3 Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, *Official Journal of the European Union* (2007/C 306/01), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12007L%2FTXT>.

law continues even after the country's accession to the European Union to ensure continued consistency with the values of the rule of law.<sup>4</sup>

A key element of the rule of law is the independence of the judiciary as a part of the right to a fair trial. According to Article 19(1) of the EU Treaty, member states have an obligation to enable courts and tribunals to provide effective legal protection in accordance with the Charter of Fundamental Rights of the European Union. The authors point out that this is only possible by independent judiciary.<sup>5</sup> The European Commission gave own definition of the rule of law and accordingly, it implies that the government always acts within the limits established by law, in accordance with democratic values with respect for fundamental rights and under the control of independent and impartial courts.<sup>6</sup> Therefore, the rule of law requires respect for legality, equality of citizens, legal certainty, independence of judiciary, responsibility of decision makers and protection of human rights.<sup>7</sup>

Considering that the independence, impartiality, and efficiency of the judiciary are crucial elements of the rule of law, the first part of this paper analyzes European standards in this area. Subsequently, we highlight the significant role of the European Union in the judicial reform within member states, with a special focus on practical challenges that have endangered or threatened to endanger the principle of the rule of law. To address these issues, we examined the different mechanisms introduced over the time, as well as European Commission's reports, Venice Commission opinions and decisions of the Court of Justice of the EU, identifying not only the problems, but also examples of good practices. These examples can be valuable for both member states and candidate countries aspiring for EU membership, which must meet specific rule of law requirements. The most critical of these requirements pertain to the independence, impartiality, and efficiency of the judiciary.

4 Closa, Carlos. "Reinforcing EU Monitoring of the Rule of Law, Normative Arguments, Institutional Proposals and the Procedural Limitations from Part I – Establishing Normative Foundations". In: Closa, Carlos and Kochenov, Dimitry (ed.) *Reinforcing Rule of Law Oversight in the European Union*, Cambridge University Press, 2016, p. 19, available at: <https://doi.org/10.1017/CBO9781316258774.003>.

5 Matic Bošković, Marina. "Role of Court of Justice of the European Union in Establishment of EU Standards on Independence of Judiciary". *EU and Comparative Law Issues and Challenges Series (ECLIC)* no. 4, 2020, p.333.

6 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2020 Rule of Law Report, The rule of law situation in the European Union, (SWD(2020) 300-326), COM(2020) 580 final, 1.

7 Kostić, Jelena, Matic Bošković, Marina. "How Covid-19 Pandemic Influences Rule of Law Backsliding in Europe". In: Reljanović, M. (ed.) *Regional Law Review*, Belgrade: Institute of Comparative Law in cooperation with University of Pécs Faculty of Law, Hungary and Josip Juraj Strossmayer University of Osijek Faculty of Law, Croatia, 2020, p. 78, DOI: [https://doi.org/10.18485/iup\\_rlr.2020.ch6](https://doi.org/10.18485/iup_rlr.2020.ch6).

## II. EU Standards on Judiciary

EU standards on judiciary derive from various sources, including legal instruments, case law, guidelines, and recommendations developed and promoted by the European Union institutions. The Charter of Fundamental Rights of the European Union enshrines key principles and rights<sup>8</sup>, including the right to a fair trial. Article 47 of the Charter – right to an effective legal remedy and to a fair trial encompasses several important standards, including access to justice, impartiality and independence of the judiciary, presumption of innocence, legal representation, fair and public hearing and reasoned judgements. These principles form an essential part of the legal framework governing judicial proceedings across EU member states. It serves as a reference point for EU standards on judiciary. The EU often draws on international standards, conventions, and best practices developed by bodies such as the Council of Europe, the United Nations, and specialized agencies when formulating its own standards on judiciary. The EU's legal framework, including directives and regulations, is designed to ensure compliance with the principles of the European Convention on Human Rights (ECHR), including the right to a fair trial.<sup>9</sup> According to Article 6, Paragraph 1 of the European Convention on Human Rights, everyone has the right to a trial before an independent and impartial court formed based on the law. Additionally, EU member states are bound by the ECHR and must ensure that their domestic laws and practices adhere to its standards, including those related to fair trial rights.

Maintaining the independence and impartiality of the judiciary is crucial for upholding the rule of law and ensuring fair and just outcomes in legal proceedings. To achieve this, it's essential to prevent any form of political or undue influence on the judiciary's work. This involves several key measures including selection and promotion of judges, disciplinary proceedings conducted by independent bodies, and exclusion of political influence. Political actors, including government officials and elected representatives, should not have the authority to directly influence judicial appointments, promotions, or disciplinary actions. This separation of powers helps to maintain the integrity and independence of the judiciary from external pressures.

Among the most relevant documents for understanding judicial standards is the Magna Carta of Judges that set fundamental principles.<sup>10</sup> According to Magna Carta which the independence and impartiality of the judiciary are essential prerequisites for its work. Independence must be not only legal, but also functional and financial. It is guaranteed to all who seek justice before competent judges and society, through national

**8** Matić Bošković, Marina, Nenadić, Svetlana. "European Judicial Standards". *Foreign Legal Life*. 61(1). 2018, pp. 39-56

**9** Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4. XI. 1950, available at: [https://www.echr.coe.int/documents/d/echr/convention\\_ENG](https://www.echr.coe.int/documents/d/echr/convention_ENG).

**10** Consultative Council of European Judges, Magna Carta of Judges, CCJE (2010)3 Final, Strasbourg, 17 November 2010.

regulations at the highest level.<sup>11</sup> Accordingly, the independence of the judiciary should be guaranteed by the Constitution as the highest legal act of a country, and the state and each individual judge are responsible for promoting and protecting the independence of the judiciary. The guarantor of judicial independence is the existence of objective criteria for the selection, appointment, and advancement of judicial office bearers, as well as the decision-making by the authority responsible for guaranteeing independence.<sup>12</sup> In addition, it implies that disciplinary proceedings are conducted before an independent body with the possibility of going to court.<sup>13</sup> Therefore, the state is obliged to provide the human, material, and financial resources necessary for the efficient functioning of the judicial system, while initial and continuous training is not only a right, but also a duty of judges and it is organized under the supervision of the judiciary to ensure an adequate level of independence, quality and efficiency of the justice system.<sup>14</sup>

The Court of Justice of the European Union (CJEU) plays crucial role in interpreting and applying EU law, including provisions relevant to the judiciary. CJEU rulings contribute to the development of EU standards on judiciary and clarify legal principles and obligations. The CJEU's decisions establish binding interpretations of EU law that member states must adhere to, including those concerning the organization and functioning of their judiciary. These sources collectively contribute to shaping EU standards on judiciary and guide member states in their efforts to strengthen the rule of law, protect fundamental rights, and promote effective and independent judicial systems across Europe.

To improve the efficiency of the judiciary, and therefore independence and impartiality, in 2002, as a body of the Council of Europe, the European Commission for the Efficiency of Justice (CEPEJ) was established by a resolution of the Committee of Ministers of the Council of Europe.<sup>15</sup> Although, the CEPEJ is Council of Europe body, the EU is taking into account CEPEJ's findings and recommendations when developing policies or initiatives aimed at improving judicial systems within EU member states and candidate countries.

**11** Item 3 of the Magna Carta of Judges.

**12** Item 5 of the Magna Carta of Judges.

**13** Item 6 of the Magna Carta of Judges.

**14** Item 8 of the Magna Carta of Judges.

**15** One of the tasks of the aforementioned body is to facilitate the application of the international legal instruments of the Council of Europe related to the efficiency and fairness of the judiciary, in order to reduce the number of cases before the European Court of Human Rights caused by irregularities in the work of the judicial institutions of the member states of the Council of Europe due to the violation of the right to a fair trial which is recognized by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. A very important activity of the said body is to propose concrete solutions that will be applied to all member states of the Council of Europe to more effectively apply the existing Council instruments related to the organization of the judiciary. This is preceded by an evaluation of the efficiency of the justice system at the level of the member states of the Council of Europe. CEPEJ provide guidelines through various areas in which a need for improvement has been identified, e.g. executive procedure, mediation, organization and access to court premises, the role of experts in court proceedings, etc.

### III. EU Role in Member States Judicial Reforms

The European Union plays a significant role in supporting judicial reforms in its member states through various mechanisms and initiatives that have impact on legislative framework, financial resources, monitoring and evaluation of the reforms, and capacity building of judiciary. The EU establishes legal frameworks and directives that member states must adhere to regarding judicial systems, legal procedures, and fundamental rights. These directives serve as guidelines for member states to align their national legislation with EU standards, promoting consistency and harmonization across the EU.

The EU provides financial support and funding through various programs and instruments to facilitate judicial reforms in member states. For example, the European Structural and Investment Funds (ESIF) 2014-2020 allocate resources to projects aimed at improving the efficiency, accessibility, and quality of judicial systems.<sup>16</sup> However, in 2020 the EU passed the Conditionality Regulation<sup>17</sup> aimed to tie the disbursement of EU funds to compliance with the rule of law principles, ensuring that recipients uphold the values enshrined in the EU treaties. The Regulation provided a mechanism for monitoring and addressing instances where rule of law deficiencies were identified within member states. It established a set of criteria and procedures for assessing such deficiencies and outlined potential consequences, including the suspension or reduction of EU funds in case of non-compliance. By linking the allocation of EU funds to adherence to the rule of law, the Conditionality Regulation sought to incentivize member states to uphold democratic principles, including an independent judiciary. It presented a proactive approach by the EU to address challenges to the rule of law within its borders and underscored the importance of these principles in the Union's governance framework.<sup>18</sup>

The EU monitors the implementation of judicial reforms in member states through regular assessments and evaluations. Bodies such as the European Commission and the Council of Europe's Venice Commission assess progress, identify areas for improvement, and provide recommendations to member states.

**16** More information are available at: [https://commission.europa.eu/funding-tenders/find-funding/funding-management-mode/2014-2020-european-structural-and-investment-funds\\_en](https://commission.europa.eu/funding-tenders/find-funding/funding-management-mode/2014-2020-european-structural-and-investment-funds_en).

**17** Regulation 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, OJ L 433I, 22.12.2020.

**18** Both Poland and Hungary challenged the Conditionality Regulation following its adoption by the EU. These challenges reflected the contentious nature of the regulation and the divergent views within the EU regarding the balance between the member states' sovereignty and the EU's commitment to upholding the rule of law. Poland and Hungary raised objections to the Conditionality Regulation on various grounds, including concerns about its legality, its potential infringement on national sovereignty, and its perceived political motivations. These challenges led to legal proceedings before the Court of Justice of the EU, where the validity and legality of the Conditionality Regulation were scrutinized (judgements in Cases C-156/21 Hungary v Parliament and Council and C-157/21 Poland v Parliament and Council). The Court of Justice has dismissed the legal challenges brought by Hungary and Poland and affirmed the validity and legality of the Conditionality Regulation. The judgement from February 16, 2022 represents a significant milestone in the ongoing efforts to safeguard the rule of law within the EU.



Furthermore, the EU has established mechanisms to safeguard the rule of law and address systemic threats to judicial independence, fundamental rights, and the functioning of the legal system in member states. This includes the Rule of Law Framework and the European Semester process, which assesses the rule of law situation in member states and facilitates dialogue and corrective actions where necessary. The Rule of Law Framework is a mechanism introduced by the European Commission in 2014 to address the rule of law backsliding in EU member states.<sup>19</sup> It provides a structured approach for assessing and addressing concerns related to judicial independence, effective judicial review, respect for fundamental rights, and other rule of law principles. The Framework as an early-warning tool allows the European Commission to engage in dialogue with member states experiencing rule of law challenges, seeking to identify the root causes of issues, and recommending corrective actions. The mechanism involves a three-step process: European Commission assessment of rule of law developments in a member state, Commission recommendations, and follow-up monitoring and reporting on progress in implementing recommendations. If a member state fails to implement recommendations from the Rule of Law Framework and concerns about the rule of law persist, the European Commission may initiate the Article 7 procedure from the Treaty on European Union that could lead to the suspension of certain rights.<sup>20</sup>

The European Semester is an annual cycle of economic policy coordination among EU member states, aimed at ensuring the sustainability and convergence of national economic policies. While primarily focused on economic governance, the European Semester also encompasses social and structural reforms, including those related to the rule of law and the functioning of national legal systems. As part of the European Semester, the European Commission conducts country-specific assessment of member states' economic and social policies, including aspects related to the rule of law and justice reforms. Recommendations issued through the European Semester process may address challenges such as enhancing judicial independence, improving the efficiency of legal systems, and strengthening the fight against corruption and organized crime. Member states are expected to consider these recommendations when formulating their national policies and reform agendas.<sup>21</sup>

The European Commission established the Justice Scoreboard in 2013 as part of its efforts to monitor and promote the rule of law and effective justice systems across the European Union through the European Semester. Since its inception, the Justice Scoreboard has been published annually, providing comparative data and analysis on

**19** Matić Bošković, Marina, Kostić, Jelena. "New EU Enlargement Strategy Towards the Western Balkans and Its Impact on Rule of Law". *Slovak Yearbook on European Union Law*. 1. 2021, pp. 37-58.

**20** More about different EU rule of law instruments: [https://commission.europa.eu/document/download/0202c616-e7e6-4378-9961-512c56d246c5\\_en?filename=rule\\_of\\_law\\_mechanism\\_factsheet\\_en.pdf](https://commission.europa.eu/document/download/0202c616-e7e6-4378-9961-512c56d246c5_en?filename=rule_of_law_mechanism_factsheet_en.pdf).

**21** Bekker, Sonja. "The EU's Recovery and Resilience Facility: A Next Phase in EU Socioeconomic Governance?" *Politics and Governance*, 9(3), 2021, pp. 175-185.



various aspects of national justice systems within the EU. It serves as a valuable tool for assessing the efficiency, quality, and independence of judicial systems, as well as identifying areas for improvement and promoting dialogue and cooperation among member states.

In addition to the crisis management tool, there is the EU rule of law mechanism which serves as a preventive tool aiming to promote and uphold the rule of law while proactively addressing challenges that may emerge or deteriorate within the member states. This preventive approach is designed to maintain the integrity of democratic institutions, protect fundamental rights, and ensure the effective functioning of legal systems across the EU. The mechanism involves regular monitoring and assessment of the rule of law situation in all EU member states through tools such as the Annual Rule of Law Report.

Although, the Recovery and Resilience Facility (RRF) is established in response to the socioeconomic challenges posed by the COVID-19 pandemic, it includes reform plans as a condition to access to the funds.<sup>22</sup> The RRF offers significant financial support to EU member states in the form of grants and loans. The RRF focuses on investments and reforms in areas such as green transition, digital transformation, economic cohesion, and social resilience. Member states are required to develop and submit comprehensive National Recovery and Resilience Plans (NRRPs) outlining their reform and investment priorities for recovery and resilience. As reform priorities several countries included justice sector. For example, Bulgaria's NRRP reflects the recognition of importance of a well-functioning and accessible justice system for promoting economic development, social cohesion, and the rule of law. In Croatia's NRRP, one of the measures included is aimed at increasing the efficiency of the justice system with the overarching goal of enhancing citizens' trust in the judicial institutions. Impact of the RRF on judicial reform is specifically highlighted in case of Hungary. The approval of Hungary's NRRP by the Council on December 15, 2022, marked a significant step in the country's commitment to meeting the requirements set forth by the EU. The NRRP outlined 27 'super milestones', which included measures to safeguard the EU's financial interests and enhance judicial independence. However, as full compliance with the super milestones has not been achieved, no payment request can be process. This underscores the importance of Hungary's continued efforts to meet the justice reform requirements.<sup>23</sup>

The RRF includes conditionality measures to ensure that the funds allocated to member states are used effectively and in line with EU objectives. Disbursement of funds under the RRF is subject to compliance with EU rules and regulations, as well as the successful implementation of reforms and investments outlined in the NRRPs. The

**22** Bokhorst, David, Corti, Francesco. "Governing Europe's Recovery and Resiliency Facility: Between Discipline and Discretion". *Government and Opposition*. 2023, pp. 1-17.

**23** More information are available on the European Commission's website: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_6465](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6465).

performance-based approach ensures that funds are allocated based on results and outcomes achieved. The European Commission plays a central role in assessing and approving member states' plans and monitoring their progress in achieving the specific objectives. Regular reporting and evaluation mechanisms are established to track progress and identify any areas where corrective action may be needed. In case where a member state fails to meet the conditions attached to RFF funding, the European Commission has the authority to suspend or withhold disbursements. This provides a mechanism for ensuring compliance with EU rules and values and incentivizing member states to fulfil their commitments under the RRF. By incorporating justice sector reform into their NRRPs, member states have effectively tied access to funds to the progress and success of justice reforms. The RRF has emerged as a significant instrument for influencing justice reforms in member states.

To ensure correct and effective application of EU law by justice professionals, the EU offers capacity-building programs, technical assistance, and training opportunities for judges, prosecutors, and court staff in member states. These programs aim to enhance the skills, knowledge, and professionalism of legal professionals, contributing to the effectiveness and integrity of judicial systems. The EU facilitates peer learning, exchange of best practices, and cooperation among member states through networks, platforms, and initiatives focused on judicial reforms. This enables sharing of experience, expertise, and innovative approaches to common challenges in the field of justice. The European Judicial Training Network (EJTN)<sup>24</sup> and the European Training Platform<sup>25</sup> are key initiatives aimed at enhancing the training and professional development of legal professionals, including judges, prosecutors, and judicial staff, across Europe.

The Court of Justice of the EU plays a crucial role in overseeing the compliance of EU member states with EU law, including aspects related to judicial reforms. Specific examples of the EU Court of Justice involvement in judicial reforms relates to Poland and Hungary.<sup>26</sup> In relation to Poland, the Court of Justice of the EU has issued several rulings concerning judicial reforms, particularly regarding changes to the composition and functioning of the Judicial Council.<sup>27</sup> These ruling have had significant implications

**24** The EJTN was founded in 2000 as a collaborative network to promote cooperation and exchange of knowledge and best practices in judicial training among EU member states. The main objectives of the EJTN include improving the quality and effectiveness of judicial training, facilitating exchange of experience and expertise among legal professionals, and promoting mutual recognition of training activities and qualifications.

**25** The European Training Platform is an online platform developed by the EJTN to provide access to training resources and tools for legal professional across Europe. It serves as a centralized hub for sharing training materials, e-learning modules, interactive tools, and other resources related to judicial training.

**26** Ula Aleksandra, Kos. "Signaling in European Rule of Law Cases: Hungary and Poland as Case Studies". *Human Rights Law Review*. 23(4),2023, pp.1-37.

**27** Case C-619/18 *Commission v Poland* [2019] ECLI:EU:C:2019:531; Joined cases C-585/18, C-624/18 and C-625/18 *A.K. and Others v Krajowa Rada Sadownictwa* [2019] ECLI:EU:C:2019:982; C-719/19, *Commission v Poland*, [2021] ECLI:EU:C:2021:596.

for Poland's judicial system and prompted adjustments to proposed reforms. The Court of Justice of the EU has also addressed concerns about judicial reforms in Hungary, including measures that threatened the independence of the judiciary.<sup>28</sup> Rulings have contributed to ongoing discussions about the compatibility of Hungarian laws with EU legal standards.<sup>29</sup>

The EU's role in member states' judicial reforms is multifaceted, encompassing legislative, financial, monitoring, capacity-building, and collaborative efforts aimed at promoting the rule of law, upholding fundamental rights, and strengthening the effectiveness and independence of judicial systems across the European Union.

### 3.1. Rule of Law Backsliding

Problems related to respect of the rule of law in one EU member state can have a negative impact on other EU member states, i.e. and its political and economic system. That is why the European Union is interested in maintaining the rule of law at the level of the member states. After the reform of the judiciary in Hungary and Poland, the governments tried to threaten the independence of the judiciary. Therefore, the European Union has activated a political and legal mechanism to re-establish the rule of law in the mentioned countries. In Poland, after 2015, reforms were implemented in the field of justice, which greatly threatened the principle of the rule of law. New disciplinary procedures and a supervisory body were then established, which increased political influence in the judiciary.<sup>30</sup> Therefore, in 2016, the European Commission launched a mechanism to strengthen the rule of law and prevent further negative influence on the judiciary.

The same mechanism was applied by the European Commission against Hungary in 2017 due to concerns about the functioning of national institutions, as well as problems related to electoral systems, independence of the judiciary and respect for the rights and freedoms of citizens.<sup>31</sup> One of the key problems concerned the limitation of the jurisdiction of the Constitutional Court of Hungary. The Venice Commission expressed concern about the mentioned restrictions, as well as the procedure for appointing judges. Bearing in mind the situation from 2017, the United Nations Human Rights Committee expressed concern in 2018 that the current procedure for submitting a constitutional appeal allows for more limited access, with no deadline for constitutionality assessment and lack of suspensive effect on the challenged law.

**28** Case C-286/12 *Commission v Hungary* [2012] ECLI:EU:C:2012:687.

**29** Kostić, Jelena, Matić Bošković. Marina. op. cit. pp. 77-90.

**30** Pech, Laurent, Scheppele, Kim Lane. "Verbalism Within: Rule of Law Backsliding in the EU". *Cambridge Yearbook of European Legal Studies*, Vol. 19, 2017, p.3, available at: <http://dx.doi.org/10.2139/ssrn.3009280>.

**31** Müller, Jan-Werner. "Should the EU Protect Democracy and the Rule of Law inside Member States?" *European Law Journal*, Vol. 21, Issue 2, 2015, p. 151, DOI:10.1111/eulj.12124.

In its Resolution of January 16, 2020, the European Parliament stated that the talks between the European Union and Poland and Hungary have not yet contributed to alignment with the values of the European Union, and pointed out that the situation has worsened since the activation of Article 7(1). This also affected the new methodology in the process of negotiations with candidate countries, which was adopted on February 5, 2020. Its implementation will depend on the progress of the rule of law in the member states and the implementation of reforms in the candidate countries. An additional instrument for the protection of the rule of law in the European Union is included in the proposal for the introduction of the conditionality of the management of European Union funds on compliance with the principle of the rule of law.<sup>32</sup>

The European Court of Human Rights has expressly determined that the crisis of the rule of law in Poland has its roots in the abolition of the right of the judiciary to elect judicial members of the National Council of the Judiciary from among judges and that the continued work of the current Council can only lead to further endangering the rule of law.<sup>33</sup>

Efforts to prevent further backsliding of rule of law in the Poland continued. In line with the requirements of NRRP Polish authorities took measures to reform justice in line with the EU standards. To assess if proposed reforms are aligned with EU standards, the Venice Commission in 2024, together with the Directorate General for Human Rights and the Rule of Law of the Council of Europe, and at the request of the Parliamentary Assembly of the Council of Europe, evaluated the Draft Law on Amendments to the Law on the National Council of Poland under an urgent procedure at the request of the Polish Minister of Justice.<sup>34</sup> Provided recommendations are very detailed and paving way of future justice reforms.<sup>35</sup>

**32** Fiscaro, Marco. "Rule of Law Conditionality in EU Funds: The Value of Money in the Crisis of European Values", *European Papers*, Vol. 4, No. 3, 2019, p. 696.

**33** See: ECtHR, *Reczkowicz v. Poland*, 22 July 2021; ECtHR, *Dolińska-Ficek and Ozimek v. Poland*, 8 November 2021; ECtHR, *Advance Pharma sp. z o.o v. Poland*, 3 February 2022; ECtHR, *Wałęsa v. Poland*, 23 November 2023; ECtHR, *Grzęda v. Poland*, 15 March 2022.

**34** Venice Commission and the Directorate General of Human Rights and Rule of Law of the Council of Europe, Poland Urgent Joint Opinion - CDL-PI(2024)009-e Poland - Urgent Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law of the Council of Europe on the draft law amending the Law on the National Council of the Judiciary of Poland, available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2024\)009](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2024)009).

**35** Item 78-81, 86 of the Poland Urgent opinion: According to their opinion, the model of the election of fifteen judicial members of the National Council of the Judiciary by the judicial community, provided for in the draft law, is in line with European standards, as it foresees the election of only judges as well as quotas for judges of different levels and jurisdictions, which is a way of ensuring a broad representation of the judiciary in the National Council of the Judiciary. However, when it comes to the exclusion of the right to apply for membership in the National Council of the Judiciary of judges who were appointed or promoted during the activities of the reformed Council in 2017, the Venice Commission and the Directorate believe that in this way a large number of judges were excluded from candidacy for membership and thus raising the question of proportionality. Therefore, the opinion recommended that Poland review the eligibility criteria for judges running for election to the National Council of the Judiciary. In addition, the Venice Commission and the General Directorate recommended in their opinion that the Constitution foresee the method of electing members of the National Council of the Judiciary, the security of their tenure, the main functions of the Council, as well as the method of civil society participation.

Similarly, the Venice Commission has important role in assessing judicial reforms in Hungary. In 2021, the Venice Commission prepared a Opinion on the constitutional and legal amendments adopted by the Hungarian Parliament in December 2020. As it stated earlier in its opinion on the constitutional amendments, the Venice Commission again expressed its concern that the amendments were adopted during the state of emergency, that is without holding public consultations. It was not in accordance with the Hungarian legislative framework, because the holding of public consultations is mandatory for all legislative proposals prepared by the ministries.<sup>36</sup> In addition, the Venice Commission, in the same Opinion, called on the Hungarian authorities to review the 2019 amendments allowing members of the Constitutional Court to automatically become Curia judges at their request, particularly due to their lack of previous experience in regular courts.<sup>37</sup>

### 3.2. EU Rule of Law Report

In 2020, as a new preventive tool, the European Commission prepared for the first time a Report on the rule of law, which includes the development of the rule of law in the member states of the European Union. By conducting systemic evaluations, the EU can identify early signs of potential challenges to the rule of law, including threats to judicial independence, erosion of fundamental rights, or weaknesses in the legal framework. The aim of that report was to identify possible problems and best practices as a basis for establishing a dialogue between the Commission and the Council and the European Parliament and the Member States on the rule of law.<sup>38</sup>

The Rule of Law Report encompasses four key pillars that serve as the foundation for assessing the state of the rule of law within EU member states. These pillars include the justice system, media pluralism, institutional issues related to checks and balances, and the anti-corruption framework. The justice system pillar assesses the effectiveness, independence, and impartiality of the judicial system within each member state. It examines factors such as access to justice, judicial appointments and dismissals, judicial training, efficiency of court proceedings, and enforcement of court decisions. The aim is to ensure that the justice system operates in accordance with the principles of fairness, transparency, and the protection of fundamental rights. The media pluralism pillar refers to the diversity and independence of media outlets within a country. This pillar evaluates the legal and regulatory framework governing media freedom, including laws

**36** Item 64-66 of the European Commission for Democracy through law (Venice Commission), Hungary Draft Opinion CDL(2021)038 on the Amendments to the Act on the Organisation and Administration of the Courts and the Act on the Legal Status and Remuneration of Judges adopted by the Hungarian Parliament in December 2020, Strasbourg, Opinion 1050 / 2021, 1 October 2021, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2021\)038-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2021)038-e).

**37** Item 69 a) of the Hungary Draft Opinion.

**38** De Schamp, Korneel, Stiegel, Ute. "The Impact of the European Commission's Rule of Law Report in Monitoring the Prevention and Fight against Corruption". *Eucrim*. 4, 2023, p. 345.

protecting journalists, safeguards against censorship, and mechanisms to prevent media concentration and monopolization. It also examines the extent to which journalists and media organizations are able to operate freely without interference or intimidation. The checks and balances pillar focuses on the institutional mechanisms that ensure the separation of powers and prevent abuses of authority. It includes the assessment of the independence and effectiveness of constitutional bodies, such as ombudsmen, electoral commissions, and national human rights institutions. Additionally, it examines the functioning of parliamentary oversight, the role of civil society, and the protection of fundamental rights by independent regulatory bodies. The anti-corruption framework pillar evaluates the legal and institutional measures in place to prevent, detect, and combat corruption. It assesses the effectiveness of anti-corruption laws, the transparency and accountability of public institutions, and the enforcement of anti-corruption measures. This pillar also considers the role of specialized anti-corruption agencies, whistleblower protection mechanisms, and efforts to promote integrity and ethical conduct in both the public and private sector. The inclusion of the anti-corruption framework as one of the pillars in the Rule of law report underscores the importance of combating corruption as a fundamental aspect of upholding the rule of law. It reflects the Commission's commitment to promoting transparency, accountability, and integrity within EU member states and provides a comprehensive assessment of the strengths and weaknesses of their anti-corruption efforts.

One notable evolution in the Rule of law reports since 2022 is the inclusion of specific recommendations tailored to each EU member state.<sup>39</sup> These recommendations are based on the findings on the qualitative assessment and are aimed at addressing identified shortcomings or areas requiring improvement. By providing concrete recommendations, the Commission seeks to support member states in strengthening their rule of law frameworks and addressing any deficiencies or vulnerabilities. The incorporation of recommendations into the Rule of law reports enhances the utility and effectiveness of the reports as a tool for promoting the rule of law within the EU. It offers member states actionable guidance on steps they can take to address rule of law challenges and improve compliance with EU standards and principles. Additionally, it facilitates dialogue and cooperation between the Commission and member states in addressing rule of law issues in a constructive and collaborative manner.

How effective recommendations are could be assessed on specific country examples. In 2022 the EU Rule of Law Report on Romania, specific recommendations regarding the revision of the Justice Laws were made to ensure reinforcing of safeguards for judicial independence and reform of the disciplinary regime for magistrates.<sup>40</sup> Assessment in the 2023 Rule of Law Report concluded that the new Justice Laws brought important changes regarding the career organization and liability regimes for magistrates, however there are still areas requiring further attention to fully align with

**39** Pingen, Anna, "Commission's 2022 Rule of Law Report". *Eucrim*. 3. 2022, pp.166-167.

**40** 2022 Rule of Law Report – Country Chapter on the rule of law situation in Romania, SWD(2022) 523 final.

European standards on independence and effectiveness of judiciary.<sup>41</sup> Similar example is influence of recommendations from 2022 the EU Rule of Law Report on Hungary.<sup>42</sup> Based on 2022 recommendations the National Judicial Council got greater authority to counterbalance the influence of the President of the National Office for Judiciary, particularly concerning judicial career matters. Additionally, the revised regulations governing the Supreme Court aim to enhance transparency in its operations and reduce the potential for political intervention.<sup>43</sup> These measures signify a concerted effort to bolster the independence and integrity of the judiciary, thereby strengthening the rule of law and promoting public trust in the judicial system.

It should be noted that EU Rule of Law recommendations have impact since they are aligned with other instruments such as the European Semester recommendations and the commitments from the NRRP.

#### IV. EU Requirements from Candidate Countries Judiciaries

Countries aspiring to membership in the European Union are obliged to implement judicial reforms to harmonize judicial legislation with European Union standards on independent, accessible, and efficient justice.<sup>44</sup> These reforms entail comprehensive changes to establish an independent judiciary resilient to external influences. In addition to enhancing independence, the reforms target the delivery of high-quality judicial services, ensuring accessibility and equality before the courts for all citizens. Moreover, efforts are concentrated on improving efficiency, particularly by ensuring timely trials, a right guaranteed under the European Convention on Human Rights.

Drawing from lessons learned from previous enlargement processes, the European Commission has revised its methodology for accession negotiations of Croatia and later Western Balkans.<sup>45</sup> One significant change is placing justice reform at the forefront of the EU accession negotiations. This prioritization is reflected in Chapter 23 of the accession negotiations, which focuses specifically on justice and fundamental rights. By emphasizing justice reform within Chapter 23, the European Commission aims to ensure that candidate countries prioritize and demonstrate tangible progress in strengthening their judicial systems and upholding fundamental rights. This includes measures to enhance the independence, efficiency, and accountability of the judiciary, as well as efforts to safeguard human rights. Through this approach, the European

<sup>41</sup> 2023 Rule of Law Report – Country Chapter on the rule of law situation in Romania, SWD(2023) 823 final.

<sup>42</sup> 2022 Rule of Law Report – Country Chapter on the rule of law situation in Hungary, SWD(2022) 517 final.

<sup>43</sup> 2023 Rule of Law Report – Country Chapter on the rule of law situation in Hungary, SWD(2023) 817 final.

<sup>44</sup> Bobek, Michal, Kosar, David. "Global Solutions, Local Damages: A Critical Study in Judicial Councils in Central and Eastern Europe". *German Law Journal* 15(7). 2014, pp. 1257-1292.

<sup>45</sup> Matić Bošković, Marina "The Perception of Justice in Western Balkans Countries". *Regional Law Review*. 2021, pp. 25-37.



Commission seeks to address key challenges related to the rule of law and judicial independence in candidate countries early in the accession process. By doing so, it aims to lay a solid foundation for the effective functioning of democratic institutions and judiciary.

Key justice reforms in the countries of the Western Balkans included the implementation of the legislative framework, the establishment of new institutions and judicial professions. In all Western Balkan countries, the adoption of new constitutions or amendments to existing ones has been deemed necessary to ensure the independence of the judiciary and eliminate political influence in the appointment processes of judges and prosecutors.

The Western Balkan Constitutional reforms underscore a pivotal focus within the EU accession conditionality framework on enhancing judicial governance and independence. While judicial governance systems vary across Europe due to historical contexts, recent decades have witnessed a notable evolution in the standards pertaining to judicial governance. This evolution has emphasized the promotion of robust and independent judicial councils<sup>46</sup> and training academies as essential markers of progress in judicial reforms.<sup>47</sup> This signifies a concerted effort to align judicial systems with European norms and standards, thereby bolstering the rule of law and ensuring fair and effective justice mechanisms across the region. The Venice Commission serves as the primary EU partner in assessing the independence of the judiciary and guiding legislative reforms in this regard. Additionally, the European Union relies on the opinions and recommendations provided by the Venice Commission to guide its efforts in promoting judicial independence.

At the institutional level, all Western Balkan countries have established judicial councils to safeguard the independence of the judiciary.<sup>48</sup> Aligned with European standards and recommendations, these judicial councils have assumed responsibilities previously managed by the ministries of justice. The primary role of these councils across the Western Balkans is to adjudicate on matters concerning the judiciary's status, including appointment, evaluation, promotion, and dismissal. While the composition of these councils varies, in all countries, members of the judiciary hold at least a slight majority within them. This structure reflects a commitment to upholding judicial independence and ensuring a fair and impartial judiciary in line with European norms.

<sup>46</sup> Matić Bošković, Marina, "Prosecutorial Councils and Guarantees of Prosecutors Autonomy in Western Balkans States". 65(1). 2017, pp. 169-186.

<sup>47</sup> Preshova, Denis, Damjanovski, Ivan, Nachev, Zoran. *The Effectiveness of the European Model of Judicial Independence in the Western Balkans: Judicial Councils as a Solution or a New Cause of Concern for Judicial Reforms*. 2017. The Hague: Asser Institute.

<sup>48</sup> Albania introduced High Judicial Council in 1992, Bosnia and Herzegovina introduced High Judicial and Prosecutorial Council in 2004, in Kosovo Judicial Council was established by UNMIK Regulation in 2005, Montenegro established Judicial Council in 2008, North Macedonia established Judicial Council by Constitutional amendments in 2005, and Serbia introduced High Judicial Council by Law in 2008.

In terms of enhancing the efficiency of the justice system, the EU collaborates with the Council of Europe's Commission for Efficiency of Justice (CEPEJ). CEPEJ is actively involved in establishing indicators and standards for judicial efficiency and quality. Through this partnership, the EU aims to support Western Balkan countries in implementing reforms that enhance the effectiveness and performance of their justice systems, ultimately contributing to the overall rule of law and democratic governance in the region. To enhance the efficiency of judicial procedures and alleviate the administrative burden on court administration and judges all Western Balkan countries have introduced new judicial professions. While notaries were introduced in some countries as early as the 1990s, the introduction of private bailiffs has been more recent, occurring over the last decade.<sup>49</sup> These new judicial roles aim to streamline legal processes, improve access to justice, and modernize judicial systems to better align with European standards and practices.

## V. Conclusions

Bearing in mind that the rule of law is a fundamental principle of the European Union, which includes the right to a fair and public hearing within a reasonable time by an independent and impartial court established in accordance with the law, this paper explores the significant role of the European Union in judicial reform in both EU member states and countries aspiring to membership. Adherence to this principle reflects a commitment to democratic governance, respect for human rights and adherence to legal principles.

European Union standards in the areas of judicial independence, impartiality, and efficiency encompass various preliminary instruments, judicial practice, guidelines, and recommendations developed by European institutions. Achieving the rule of law across the European Union requires preventing any form of political or inappropriate influence on the judiciary in member states. This includes ensuring the absence of such influence during the selection and promotion of judges and the conduct of disciplinary proceedings. Consequently, significant judicial reforms have been necessary in some countries.

Financial support from the European Union plays a crucial role in enhancing the rule of law and reforming the judiciary. This support is provided through various programs and instruments that facilitate judicial reforms at the member state level. However, the importance of conditionality in financing, based on adherence to values underpinning the European Union's function, must be emphasized. This mechanism was first introduced in 2020 with the adoption of the Conditionality Regulation, aiming

**49** Private bailiffs and notaries were introduced in Serbia in 2014, in Montenegro notaries were introduced in 2011 and private bailiffs in 2014, in North Macedonia notaries were introduced in 1997 and private bailiffs in 2006, in Albania notaries were introduced in 1994 and private bailiffs in 2010, in Kosovo notaries were introduced in 2011 and private bailiffs in 2014, and in Bosnia and Herzegovina notaries were introduced in 2007, while enforcement is conducted only by court enforcement agents.

to further encourage member states uphold democratic principles, with particular emphasis on judicial independence.

The European Commission and the Council of Europe Venice Commission provide substantial support for judicial reforms in member states through regular assessments and evaluations. Beyond evaluating progress, they offer recommendations crucial for advising ongoing reforms. In terms of the rule of law, mechanisms such as the Rule of Law Framework and the European Semester process, which evaluate the state of the rule of law in member states, are particularly significant. These mechanisms are designed to establish and implement corrective measures when necessary. A key corrective measure, should a member state fail to implement the recommendations from the Rule of Law Framework, is the European Commission's ability to initiate procedure that could lead to the suspension of certain rights.

In addition to corrective measures, this paper also examines preventive measures aimed at promoting and supporting the rule of law while proactively addressing challenges that may arise or worsen at the member state level. One such mechanism involves the regular monitoring and assessment of the state of the rule of law in all member states through the Annual Report on the Rule of Law.

Furthermore, the Recovery and Resilience Facility, established in response to socioeconomic challenges, requires member states to develop and submit comprehensive national recovery and resilience plan outlining their reform and investment priorities. Several countries, including Bulgaria, Croatia, and Hungary, have prioritized the justice sector in their plans. The approval of Hungary's National Plan for Recovery and Resilience by the Council in 2022 marked a significant step for the country in meeting the judicial reform requirements previously set by the European Union.

Based on the analysis of the European Union's role in judicial reform, it can be concluded that whenever there is a threat to the rule of law, new mechanisms are activated, which are crucial not only for addressing the perceived challenges but also for proactive measures. Monitoring the state of the rule of law in member states should be an ongoing process. For instance, after attempts to undermine judicial independence in Hungary and Poland, the European Union activated political and legal mechanism to re-establish the rule of law in those countries. However, even ten years after these crises began, there has been no significant improvement in aligning with EU values.

In response to the challenges faced by member states regarding the rule of law, in 2022 the European Union introduced specific recommendations for each member state in the Rule of Law Reports, based on qualitative assessments. This approach increased the usefulness and effectiveness of the recommendations for each country and improved cooperation between the Commission and the member states. The recommendations had a significant impact because they aligned with the European Semester recommendations and the obligations outlined in the National Recovery and Resilience Plans of the member states.

Experiences related to judicial reform in the context of the rule of law in EU member states are used as valuable examples for countries aspiring to join

the European Union, especially since judicial reform is a critical component of accession negotiations. This is particularly important for the countries of the Western Balkans. The lessons learned influenced the development of a new methodology for negotiations with candidate countries, adopted in 2020. Consequently, the process of joining the European Union now emphasizes progress in the rule of law and success in judicial reform as critical criteria for future member states. Also, based on the experience with EU member states, Western Balkan countries have gained access to funding through Growth Plan,<sup>50</sup> which includes indicators of success in various reforms, including judicial reforms. This access to funding is contingent upon meeting specific benchmarks and criteria that reflect progress in these reform areas. By linking financial support to these reform indicators, the European Union encourages Western Balkan countries to prioritize and accelerate their judicial reforms.

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**50** The Growth Plan is designed to support economic development and institutional strengthening, with particular focus on the rule of law as a foundational element of sustainable growth. For the Western Balkan countries, this means that securing financial assistance and investment is closely tied to their ability to demonstrate tangible improvements in judicial independence, efficiency, and impartiality.

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