



Rule of Law: Supranationalization from the Perspective of Central and Eastern European Countries – The Case of North Macedonia

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Abstract. North Macedonia is not immune to the diverse perspectives and contexts through which the rule of law is examined across Europe and globally. The rule of law, therefore, cannot be insulated from prevailing theoretical and practical considerations regarding its essence and meaning, both within the national context and the broader supranational sphere. Even within the European Union, divergent interpretations of the rule of law persist. These differences often stem from contrasting understandings of its nature: on the one hand its generality and on the other its specificity. The general dimension conceptualizes the rule of law as an overarching principle encompassing the core values and elements of a democratic legal order, whereas the specific dimension highlights the distinct features of national legal traditions, underscoring constitutional and cultural identities. Obvious differences exist between the Nordic pragmatic style of the rule of law, the American federal model, the British parliamentary version, the Continental European normative and constitutional style, the Eastern European post-socialist type, and the EU's formal approach. However, equally clear are the differences among the three traditional concepts – the Anglo-Saxon notion of the rule of law, the German concept of *Rechtsstaat*, and the French *État de droit*.¹ These variations present an additional challenge for analysis, which must identify both their connecting points and their divergences. This analysis has great significance especially for the Macedonian legal system, which has historically been, and continues to be, strongly influenced by German legal thought, specifically the concept of

1 Tanja Karakamisheva-Jovanovska, 2025.

the *Rechtsstaat*. The theoretical and practical differences between the rule of law and the *Rechtsstaat* highlight the need for a more precise analysis of the rule of law in North Macedonia. In addition to this, the paper will clearly distinguish the elements more inclined to one or the other concept. The study of these two principles and their application in the Macedonian legal system aims to position the national framework within the current process of supranationalization. In the context of the EU enlargement policy towards the Western Balkans, the tension between the universal and particular dimensions of the rule of law has acquired a distinctly political dimension. Candidate countries are expected to fully internalize and apply the EU's general understanding of the rule of law, yet the Union's own practice towards its Member States has not always been consistent with those standards. Monitoring of North Macedonia has at times revealed a selective application, with rigorous scrutiny and conditionality imposed on accession candidates more strictly than on Member States facing comparable challenges. This asymmetry, often described as EU 'double standards',² undermines the credibility of the enlargement process and complicates the reception of the rule of law narrative in candidate countries. In practice, such inconsistency risks fostering the perception that the rule of law, rather than being an objective and universally applicable principle, functions as a flexible political instrument shaped by the Union's strategic interests.

Keywords: rule of law, legal state, supranationalization, constitutional order, constitution, reform

1. Conceptualization of the *Rule of Law* Principle

After the collapse of the socialist system, North Macedonia introduced democracy and accepted the universal values of classical constitutional law – the principle of the rule of law, the separation and balance of powers among the legislature, executive, and judiciary, political and social pluralism as the foundation of a free and democratic society, free-market economy, and free and fair elections. These changes also included the gradual integration of the Macedonian legal system into international systems for the protection of human rights through the country's accession to new regional organizations and the global legal order.

The Macedonian legal system belongs to the category of states where continental law is applied, having a Constitution, national laws, and the international agreements concluded and ratified according to law. General legal principles are recognized as sources of law with reference to countries that fall under the civil law system in Europe based on the tradition of Roman law. The influence of German and French legal doctrine is evident in Macedonia, even though the Constitution itself introduces the rule of law as a fundamental value of the

2 Tanja Karakamisheva-Jovanovska, 2023, pp. 12–29.

constitutional order. For this reason, the Macedonian legal system can be defined as a mixed system with 'blended' compounds, where elite or political pressures act as prominent 'mixers'. The *Rechtsstaat* is understood as 'State rule through law' while *État de droit* as 'a means to vindicate fundamental rights through law'.

According to civil law doctrine, the crucial differences between common law and civil law systems lie in their structure, the classification of legal statutes, the basic principles underpinning each tradition, and their legal terminology. The existence of precedent as a legal source distinguishes the common law systems based on written law. Nevertheless, common law also relies partly on statutory law passed by Parliament. By contrast, civil law (continental) legal tradition is considered as the dominant model in Europe, developed through the reception and modernization of Roman law. The Macedonian legal system has adopted this tradition,³ reflecting the broader Western influence common to Central and Eastern European systems, where a number of existing mixed systems are more significant. Rooted in Roman legal concepts, the Macedonian framework also inherited Latin terminology, which can be divided into two groups: 1) terms and expressions preserved in their original Latin form; 2) terms and expressions of Latin origin adapted to the Macedonian language system.

The Constitution of the Republic of North Macedonia is a codified constitution outlining the country's system of government and basic human rights, adopted at the Macedonian Assembly on 17 November 1991.⁴ According to Article 51, the laws must be in accordance with the Constitution, and all other regulations with the Constitution and laws. Everyone is obliged to respect the Constitution and the laws. As the highest legal document (*lex superior*), the Constitution requires all state acts to comply with its provisions. This aligns with the core idea of the

3 According to historians, this process has begun during the 11th century in Italian city-states. By accepting Roman law in the period of the 11th until 15th centuries, European countries gradually abandoned the customs that served as law and oriented towards written law – legal statutes that to a certain degree incorporated the customs from that time period. The main characteristic of civil law traditions is the written law that contains abstract legal rules that can be applied in different legal situations. The role of the courts in countries that have accepted civil law legal tradition is not to pass law, only to apply the written law (Živkowska and Pržeska, 2014, pp. 251–267). The author Vernon Palmer suggested that we should be talking of a new 'third legal family' with the name 'mixed jurisdictions' to include a number of historically determined mixes, which he regards as sharing certain characteristics. This means that these systems 'are built upon dual foundations of common-law and civil-law materials', that is, there is a 'specificity of the mixture'. The mix is obvious to both insiders and outsiders, that is, 'obvious to an ordinary observer'; and the private law sphere has 'the outward appearance of a "pure" civil-law system', whereas the public law sphere 'will appear to be typically Anglo-American', that is, there is a 'structural allocation of content'. Palmer regards these as 'denominators of a mixed jurisdiction' and talks of a 'closed family' of fifteen members, with seven of them studied in his work.

4 Cekov, 2023.

rule of law that any exercise of power must be subject to law,⁵ that is, ‘the Rule of Law, not men’.⁶

Article 52 of the Constitution stipulates that laws and other regulations must be published before entering into force. They must be published in the *Official Gazette* no later than seven days after adoption. Laws shall come into force at the earliest on the eighth day after publication, except where the Assembly determines immediate effect. In accordance with Constitutional provisions, laws are proclaimed by decree, with both the President of the Republic and the President of the Assembly signing the proclamation of laws.

The competences of Macedonian public authorities are defined by the Constitution as well as by special laws, regulations, by-laws, and rulebooks. Their functioning is legally established through the Law on the Macedonian Government, the Law on the Macedonian Assembly, the Law on Local Self-Government, and separate legal norms governing other public institutions. According to Article 8, paragraph 4 of the Constitution, the separation of powers is carried out through legislative, executive, and judicial authority. Under Article 110, the Constitutional Court decides on conflicts of competence among these branches, as well as those between the central institutions and the units of the local self-government, and on cases of impeachment of the President of the Republic.⁷ Article 118 stipulates that international agreements ratified in accordance with the Constitution form part of the national legal order and cannot be amended by law. Ratification of international conventions lies with the Assembly. The Macedonian legal system thus ensures compliance with human rights law, including binding decisions of international courts. Article 98 further provides that ‘the courts decide on the basis of the Constitution, the laws and international agreements ratified in accordance with the Constitution’. Furthermore, it also establishes that

when the court considers that the application of the law in concrete cases is contrary to the provisions of an international agreement ratified in accordance with the Constitution, it shall apply the provisions of the international agreement, if they can be directly applied.

In concrete cases, courts could also directly enforce the final judgements of the European Court of Human Rights, the International Criminal Court, or other courts, where such decisions are enforceable.

5 Popper (1971) advocated the idea that any power, even that which is acquired democratically, should be checked: the Rule of Law can limit democracy.

6 U.S. Supreme Court, *Marbury v Madison*, 5 U.S. 137, 163 (1803), where the government of laws is famously opposed to the government of men. The wording seems to originate in James Harrington’s utopia, *Oceana*, published in 1653.

7 *Ibid.*

North Macedonia's Constitutional Court serves as a cornerstone of constitutional democracy – distinct from traditional branches, immune from appeals, and entrusted with broad oversight including judicial review of both domestic laws and international agreements upon ratification. In the supranational context, although no specific Constitutional Court case addresses the EU, the Council of Europe, or the UN rule of law norms, the state actively engages in alignment via frameworks such as the 'Horizontal Facility for the Western Balkans and Türkiye'. This joint EU and Council of Europe initiative supports reforms in justice, anti-corruption, and media freedoms, while aligning with European standards, the Copenhagen criteria requiring stable democratic institutions, rule of law, human rights, a functioning market economy, and acceptance of EU obligations.

From the EU law perspective, accession chapters most directly tied to the rule of law are Chapter 23 (Judiciary and Fundamental Rights) and Chapter 24 (Justice, Freedom, and Security). These require candidate countries to ensure judicial independence, public accountability of officials, transparent lawmaking, and fair law enforcement.⁸ The Commission's Rule of Law Framework along with annual Rule of Law Reports assess compliance in areas like judicial independence and anti-corruption, forming a structured dialogue and feedback mechanism. Pre-accession partnership agreements and financial assistance are conditional on respect for democratic values, including the rule of law, with violations potentially leading to suspension or withdrawal of support. The Venice Commission has issued key opinions in North Macedonia relating to the rule of law: Opinion on the Draft Law on the Judicial Council⁹ (structural and procedural aspects of judicial governance); Joint Amicus Curiae Brief¹⁰ co-authored with the DGII (European standards for minority language use in public life and judicial proceedings); Opinion on the Draft Law on the State of Emergency¹¹ (rule-of-law implications of emergency powers legislation); Opinion on the Law on the Use of Languages¹² (linguistic rights and constitutional guarantees); Opinion on the Draft Law on the Judicial Council¹³ (standards for judicial appointments and accountability mechanisms); Opinion on amendments to the Law on Courts¹⁴ (structural judicial reforms); Opinion on amendments to the Law on the Judicial Council and Law on Courts¹⁵ (legislative updates in judicial administration); Opinion on the Draft Law on Prevention and Protection against Discrimination¹⁶

8 European Commission (no date).

9 European Commission for Democracy Through Law (Venice Commission), 2025b.

10 European Commission for Democracy Through Law (Venice Commission), 2025a.

11 European Commission for Democracy Through Law (Venice Commission), 2021.

12 European Commission for Democracy Through Law (Venice Commission), 2019b.

13 European Commission for Democracy Through Law (Venice Commission), 2019a.

14 European Commission for Democracy Through Law (Venice Commission), 2018c.

15 European Commission for Democracy Through Law (Venice Commission), 2018b.

16 European Commission for Democracy Through Law (Venice Commission), 2018a.

(minority protections and rule-of-law safeguards); Opinion on draft laws¹⁷ covering the termination of the Council for Establishment of Facts, amendments to witness protection measures; Laws on Privacy and Whistleblower Protection¹⁸ evaluate legal frameworks significant for transparency and accountability and others. The Venice Commission's targeted reports have substantially shaped North Macedonia's legal and institutional reforms. While most recommendations have been legislated, implementation remains the crucial challenge. Continued external monitoring by the EU and the Venice Commission will be vital to ensure these laws translate into substantive reform.

2. How Has the EU's Requirement of Respect for the Rule of Law Changed Since North Macedonia Applied for EU Membership?

Since North Macedonia submitted its application for EU membership in March 2004, the EU's requirements regarding the rule of law have undergone a substantial qualitative and procedural transformation, reflecting broader shifts in the Union's enlargement methodology and lessons learned from earlier accession rounds. At the time of application, the EU's formal standard was framed by the Copenhagen political criteria, which defined the rule of law broadly – judicial independence, human rights, minority rights –, without the detailed monitoring architecture that developed later.

The European Commission's Progress Reports assessed rule of law alongside other political reforms but placed relatively limited emphasis on concrete benchmarks. Between roughly 2010 and 2015, the EU introduced the principle that chapters on judiciary and fundamental rights (Chapter 23) and justice, freedom and security (Chapter 24) should be opened early and closed last. Although negotiations with North Macedonia were stalled for political reasons, the EU's evaluation framework began to demand the following: functional independence through revised appointment procedures, career evaluation, and disciplinary responsibility; strengthened anti-corruption frameworks; and a track record of implementation, not merely legislative alignment. Since North Macedonia's application for EU membership, the requirement to respect the rule of law has changed more profoundly with the EU's 2020 revised enlargement methodology. The rule of law is now a central, cross-cutting condition of accession. Key changes include the principle of *reversibility*, allowing chapters to be frozen if backsliding is detected; the introduction of *interim and final benchmarks*

17 European Commission for Democracy Through Law (Venice Commission), 2017.

18 European Commission for Democracy Through Law (Venice Commission), 2016.

that demand not only formal adoption of laws but verifiable evidence of their consistent application over time; and the establishment of annual *Rule of Law Reports*, modelled on the EU's internal monitoring system. The process now relies more heavily on peer-review missions, Venice Commission opinions, and the jurisprudence of the European Court of Human Rights as guiding references.

These evolving standards have altered accession dynamics. Reforms that once sufficed to meet the 'Political Criteria' chapter now require sustained, demonstrable implementation, showing progress and heightened political sensitivity. EU engagement has shifted towards *micro-level oversight* – scrutinizing judicial appointment procedures, budgetary autonomy, and other detailed institutional practices –, thereby reducing national discretion and reinforcing conditionality. This approach has strengthened the EU's political leverage, making the rule of law a 'gateway' for advancement across the accession agenda. However, the increased formalization of requirements, coupled with perceptions of inconsistent enforcement within the EU, has fostered the belief that candidate countries face higher standards than some existing Member States. That perception can generate domestic political fatigue and weaken incentives for sustained reform.

The European Commission's 2023 compliance report reveals that the Committee of Ministers continues to oversee execution of 28 ECtHR judgments against North Macedonia, including 13 'leading' cases, highlighting continued institutional challenges and rule-of-law gaps regularly surfaced in EU progress assessments.¹⁹ The 2023 Commission Progress Report notes no progress in the judiciary, identifies political interference, delays in reforms, and erosion of public trust in judicial institutions – issues often exposed by ECtHR case-law. The 2024 Rule of Law Report emphasizes low perceived judicial independence, concerns over appointment practices, and continued political influence in judicial affairs – reflecting systemic deficiencies highlighted in ECtHR judgments.²⁰ EU Parliament reports similarly call for strengthening judicial independence, increased accountability, adequate resourcing of oversight bodies, and decisive action against corruption and undue influence – measures rooted in ECtHR standards on fair trial, equality before the law, and effective judicial protection.²¹ Both EU Progress and Rule of Law Reports integrate ECtHR-derived principles – notably in administrative justice, the right to fair trial, media freedom, and minority rights – into the framework for evaluating Chapter 23 reforms. Continued tracking of ECtHR judgment execution indicates that domestic reform momentum remains conditional on compliance with binding international legal standards, including those established by the ECtHR.

All the mentioned documents emphasize that judicial independence is an essential element of the rule of law. The degree of judicial independence directly

19 Parliamentary Assembly of the Council of Europe, 2024.

20 European Commission, 2024a.

21 European Parliament, 2025.

correlates with the strength of the rule of law, and conversely, the rule of law guarantees judicial independence. This guarantee encompasses not only the formal side of legality but also its essential and normative dimensions. Judicial independence is arguably the most critical segment of the rule of law, yet the rule of law itself enables judicial independence. Where the rule of law is problematic, judicial independence is inevitably compromised. Both principles depend on fulfilling formal and informal assumptions from a legislative and a broader, sociological and cultural aspect. Neither the rule of law nor judicial independence can be 'implanted' into a system simply because the EU or another international body requires it from the state. Without a general respect for law and a culture that values judicial independence, embraced by institutions and citizens alike, their 'life' in the system cannot be fully sustained.

Thus, awareness of legal, judicial, constitutional, and political culture is a key prerequisite for embedding these principles in the national system. Building a strong and sustainable national legal and political culture is therefore an inevitable parameter in realizing the rule of law. Within the judiciary, strengthening a culture of integrity among judges and other participants is crucial. Contemporary research on the quality of the rule of law, both in EU and national systems, often focuses on quantifiable indicators of compliance with standards. Yet such a formal and quantifiable approach cannot fully determine the content and quality dimensions of the rule of law.

In North Macedonia, the rule of law cannot be analysed only through formal and institutional rules. Structural changes and formal rules cannot remedy a judiciary unwilling to grasp and safeguard its independence. They usually remain indifferent and focused on narrow, particularistic interests. At the same time, politicization of the judiciary persists, with judges subject to political influence. Interestingly, according to some scholars, politicization is a lesser concern than the judiciary's indifference and self-interest, which cannot be remedied through formal rules alone. Genuine judicial independence requires a strong interaction between formal rules and informal norms and practices. In North Macedonia, judicial indifference and self-interest have fostered a culture characterized by fear, apathy, subject culture, and clientelism.²² Judicial independence and the institutional capacity to protect it from undue influence remain serious concerns. The level of public perception about judicial independence is low, and the concerns persist regarding its functioning. Appointment decisions of public prosecutors and judges have been criticized by civil society for lacking comprehensive and objective criteria. Despite the measures to improve transparency, notably under the leadership of the Supreme Court and Judicial Council,²³ the problems persist.

22 Preshova, 2021.

23 The Macedonian judicial system consists of three layers: 27 First-Instance Courts, four Appeal Courts, and the Supreme Court. The latter is the highest instance in the judicial system, with

Furthermore, the independence of the judiciary and the institutional capacity to protect it against undue influence continue to raise serious concerns. More than a third of judges surveyed reported having faced attempts at external influence, either from the executive branch or from political parties.²⁴

An increase in attempts at internal influence was also observed compared with the 2009 results. In 2023, nearly 46% of the judges surveyed reported experiencing pressure or attempted influence from colleagues, while 42% reported similar pressure or influence from higher-ranking judges such as court presidents or judges of higher courts.²⁵ Among prosecutors, more than a third reported direct or indirect pressure, suggestions, or undue influence from senior public prosecutors and fellow colleagues. Many judges (59%) and prosecutors (49%) do not believe the current mechanisms effectively safeguard the judicial and prosecutorial functions from external pressures or attempts at influence. Stakeholders have indicated that the introduction of new measures, such as creating a dedicated unit within the prosecutor's office, could strengthen protections against undue influence by judges and prosecutors, and broader judicial integrity.

Respect for the principles of constitutionality and legality is another essential element of the rule of law, characterizing North Macedonia as a legal state functioning according to the law. The principle of constitutionality is reflected in the hierarchy of legal acts and their compliance with the Macedonian constitution. The principle of legality requires that all state institutions be established and operate in accordance with national laws. The constitutional principle of checks and balances among the legislative, executive, and judicial branches ensures that

competences to ensure the uniform application of laws by all courts, to decide on legal remedies against decisions of the appeal courts, and for the protection of trial in reasonable time. One Administrative Court and one Higher Administrative Court exercise the highest-instance control over the legality of measures by public administration. The Prosecution is organized around the State Public Prosecutor, four Higher Public Prosecutor's Offices, and 22 Basic Public Prosecutor's Offices (PPOs). The Constitutional Court is not part of the judiciary and, among others, reviews the constitutionality of laws. The Macedonian Constitution enshrines the independence of courts and the autonomy of the prosecution service. The Judicial Council and the Council of Public Prosecutors are the management bodies tasked with guaranteeing judicial independence and prosecutorial autonomy, respectively, and take decisions on the recruitment, career management, and disciplinary procedures of judges and prosecutors. Working arrangements with the European Public Prosecutor's Office (EPPO) are in place. The Bar Association is an independent and impartial public service that provides legal assistance and exercises public powers. European Commission, 2024.

24 OSCE Mission to Skopje, 2023, pp. 14–16.

25 OSCE Mission to Skopje, 2023, pp. 14–16. When compared to the results of the OSCE 2009 legal analysis on the Independence of Judiciary, there has been an increase in the perceived pressure or attempts to influence from fellow judges (+12%), higher-ranking judges (+12%), and members of the Judicial Council (+9%). The primary internal corruption risk that judges identified pertains to the influence wielded by court presidents through the Annual Schedule for Judges' work, especially noting that *ad hoc* changes made to the annual schedule may result in certain judges being assigned to cases of high public interest.

each institution is limited by law. Violations of legality in practice often cause incompatibility among legal acts and its implementation. Such violations remain frequent in Macedonia, both in a material and formal sense.

Within the framework of EU accession, North Macedonia has adopted multiple strategic and legislative measures to align its judiciary with European rule of law standards. Several strategies for the reform of the judicial system, closely monitored by the European Commission, have been implemented over the past two decades. Constitutional amendments have reinforced judicial independence by reshaping the composition and powers of the Judicial Council, introducing safeguards in judicial appointments and dismissals, and strengthening the financial autonomy of courts. The Law on the Academy of Judges and Public Prosecutors sought to establish a merit-based system for judicial training and recruitment, while procedural reforms aimed to streamline court processes and enhance efficiency. Revisions to the method of electing and holding judges accountable have been introduced, accompanied by adjustments to the organizational structure and jurisdiction of courts.

Despite these formal changes, the European Commission's annual progress reports consistently underline the limited substantive improvement in judicial independence. Persistent political influence over judicial appointments, inconsistent application of disciplinary measures, and weak safeguards against conflicts of interest undermine the credibility of reforms. The Venice Commission has similarly noted that constitutional and legislative measures, while partly aligned with European standards, require effective implementation, consistent jurisprudence, and resilience against political pressure. This discrepancy between the adoption of formal reforms and their practical application reflects a structural challenge common across the Western Balkans: compliance with the EU *acquis* in form but not in function. Consequently, the rule of law remains a key area in which North Macedonia must demonstrate tangible and irreversible progress to advance under Chapter 23 of accession negotiations.

The Academy for Training of Judges and Prosecutors was established by a special law adopted in 2006²⁶ to contribute to the professional, impartial, and independent administration of justice through training.²⁷ It provides initial training to law graduates aspiring to judicial or prosecutorial posts, as well as continuous legal education for sitting judges and prosecutors. The need for constitutional reform of the judiciary was determined in the National Strategy for European Integration of the State in 2004,²⁸ which reflected obligations under the Stabilization and Association Agreement of the Republic of Macedonia with

26 Official Gazette of RM No. 13/2006

27 Article 2 of the Law on the Academy for Training of Judges and Prosecutors, Official Gazette No. 13/2006

28 Government of the Republic of Macedonia, 2004.

the EU.²⁹ These reforms aimed to implement European standards in the field of justice and were based on two main pillars: strengthening judicial independence and increasing efficiency. Partisanship in the judiciary was highlighted as the primary culprit of weak independence, inefficiency, lack of promptness, and its high dependence on politics. Party-political pressures on judges were pointed out as the main reason for systemic anomalies and for the deviation of Macedonia's judicial system from those of other European countries.

To address these problems, a constitutional amendment established the Judicial Council of the Republic of Macedonia. The Judicial Council comprises 15 members and was introduced with expanded competences in 2006, following a broader European trend, intended to strengthen and protect the judiciary from political interference and reinforce independence. However, unfortunately, the Judicial Council has failed to guarantee judicial independence. Instead of depoliticization, the body itself became politicized. Previously, if the judge selection was carried out by the 120-member Macedonian Assembly through a controversial, party-dominated process, the transfer of this function to the Judicial Council has not eliminated political interference – especially considering the fact that the 15 members of the Judicial Council are a much easier target for the party, oligarchic, and business interests. This politicization is visible in the political manner of proposing and electing some of the members of the Council, the small number of members, and the professional performance of its members. Notably, seven of the Council's fifteen members are elected directly by the Assembly, ensuring significant political influence over both the Council and future judicial appointments. The Judicial Council's position, composition, method of election, and members' mandate are regulated by Amendment 28 of the Macedonian Constitution and by the Law on the Judicial Council.³⁰ Defined as an independent judicial body, the Council is tasked with guaranteeing the autonomy and independence of the judiciary through its functions in accordance with the Constitution and laws. The council consists of 15 members:

- Two members, the President of the Supreme Court and the Minister of Justice, serve *ex officio*.
- Eight members are elected by the judges from among their ranks, three of whom must represent communities that are not in the majority, ensuring adequate and fair representation of all citizens.

29 *Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part.* OJ L 84, pp. 13–197.

30 European Commission for Democracy Through Law (Venice Commission), 2019c.

- Three members are elected by the Assembly with a majority of votes from the total number of MPs, including a majority of MPs representing non-majority communities in the Republic of Macedonia.
- Two members are proposed by the President of the country and elected by the Assembly, one of whom must belong to a non-majority community.

Members of the Council elected by the Macedonian Assembly and proposed by the President are university law professors, lawyers, and other prominent legal professionals. Their mandate lasts six years with the possibility of one re-election. The position is incompatible with political party membership or with other public functions and professions defined by law. The Council is led by a President, elected for two years by a majority of members through secret voting. At the same session, a Deputy President is elected to act in the President's absence. Neither the President of the Supreme Court nor the Minister of Justice may serve as President or Deputy of the Council. In theory, the principle of independence should protect judges and prosecutors from undue influence. However, in reality, the legislative and executive branches continue to exert strong influence, particularly in judicial appointments, budget allocation, and oversight of judges' work. While European rule of law standards require judicial independence, in North Macedonia independence, success, and legitimacy depend not only on formal legal requirements but also on broader material criteria.

A common denominator of judicial independence across Western Balkan countries, including North Macedonia, is the role of the Judicial Council in the selection, promotion, and dismissal of judges, as well as in ensuring their accountability. The Macedonian Academy for Judges and Public Prosecutors also plays a crucial role in strengthening judicial independence as part of the reform process. Interestingly, unlike in Eastern, South-Eastern, and Central Europe, where the EU insisted on the establishment of judicial councils to guarantee independence, in many Western European countries, the judicial councils did not attempt to improve administrative management in the judiciary. In France, Italy, Portugal, and Spain, these powers are left in the hands of their ministries of justice, with little demand to transfer authority to councils. By contrast, judicial councils in Northern Europe, especially in Denmark or Sweden, were created exclusively for administrative management, including oversight of budgets and personnel,³¹ rather than for independence.

North Macedonia followed EU advice and established a judicial council in line with obligations established under the *Palermo Declaration*, which promotes

31 Aarli and Sanders, 2023. A qualified majority of European countries have judicial councils, making them seemingly 'must haves' in every country. Among the 41 member states that responded to the CCJE questionnaire, 34 replied that they had a judicial council, and only seven replied in the negative.

drafting an additional protocol to the European Convention on Human Rights. The *Palermo Declaration* advocates the creation of Higher Judicial Councils to 'guarantee the independence of the judiciary', with membership composed mostly of judges elected by their peers, but also including 'prominent figures designated by parliament'. It envisions broad powers for judicial councils, covering selection, appointments, disciplinary processes, court administration, and judicial training. Most of the contemporary thinking on the role and composition of such councils has been shaped by European experience.

3. The Rule of Law through a Macedonian Prism

If there is no mentality of respect for the law and a culture of respect for judicial independence across institutions, including citizens, their 'life' in the system will always be questioned. Awareness of legal and judicial culture, as well as constitutional and political culture, is a key prerequisite for the life of these two principles in the national system. In the Macedonian context, the rule of law is usually analysed as a condition and criterion for EU enlargement. In this process, it is notable how the original, general Copenhagen criteria like democracy, rule of law, human rights, and minority rights, gained more concrete content upon the progress of European integration. These include legislative deficiencies, administration performance, judicial structure, length of proceedings, and corruption.

The rule of law in North Macedonia should not be analysed only through formal and institutional rules. Structural and legal changes cannot remedy a judiciary unwilling to grasp and safeguard its independence, as judges often remain indifferent and focused on individual interests.

Citizens have serious doubts about the functioning of the rule of law. Surveys consistently show a high percentage of citizens who do not trust the system to make the right decisions. In a survey conducted in November 2017 by the European Policy Institute³² in Skopje, it was concluded, 'Rule of law and good governance; improving the level of democracy in the country, protecting minority rights, fighting corruption, independence of the court and successful judicial reforms will only be possible after the country joins the EU.' Citizens thus lack confidence in the judicial system and believe that progress regarding rule of law can only occur after EU accession.

As per the *Bertelsmann Stiftung's Transformation Index* (BTI),³³ which assesses the transformation towards democracy, market economy, and governance in 137 countries for the period from 1 February 2019 to 31 January 2021, North Macedonia was given a score of 7 out of 10 for the rule of law. Key shortcomings

32 European Policy Institute, 2023.

33 BTI Transformation Index, 2024.

included political influence on the judiciary, widespread corruption, the lack of genuine cooperation between institutions responsible for criminal prosecution (e.g. Anti-Corruption Agency, public prosecution, and the police), discrimination, denial of basic freedoms for vulnerable groups such as the Roma, poor prison infrastructure, overcrowding, and the politicization of independent authorities for the guarantee of civil rule of law in the Republic of Macedonia. The World Justice Project between 2019 and 2023³⁴ shows the overall ranking of the Rule of Law Index. In 2019, it ranked 126 countries worldwide, using scores from 0 to 1 to indicate respect for the rule of law. EU Member States in Southeastern Europe (SEE) performed better in the rule of law than the Western Balkan countries but still lagged behind much of the world.

According to the 2023 WJP Rule of Law Index, North Macedonia³⁵ ranked 67th out of 142 countries. The findings from the General Population Poll 2023 were based on a nationally representative sample of 1,594 Macedonian households, formulated by questionnaires collected between May and July 2023 through face-to-face interviews. The poll was designed to capture the experiences and perceptions of ordinary people regarding multiple dimensions of the rule of law.

Thematic findings on the current rule of law in North Macedonia reflect attitudes towards:

- government accountability;
- authoritarianism;
- fundamental freedoms;
- corruption, trust in institutions, the criminal justice system, and its actors;
- crime victimization, security, police performance, and access to justice.

A majority of respondents in North Macedonia agreed that top government officials engage in authoritarian behaviour across all branches of government. 67% of the interviewed citizens felt officials resort to misinformation to shape public opinion, 60% believed they attack or attempt to discredit opposition parties, and 60% believed they seek to influence the promotion or removal of judges.

Regarding fundamental freedoms, more respondents believed their freedom of expression is guaranteed, while fewer believed that freedoms of political participation, free and fair elections, and religion are not guaranteed. On government accountability, perceptions are extremely negative: only one in ten surveyed respondents believed a high-ranking government official would be held accountable for breaking the law. Public views on corruption among legislators, national officials, and judges and magistrates have worsened in Macedonia since 2017. Perceptions of corruption in the judiciary deteriorated the most, by an

34 World Justice Project, 2023a.

35 World Justice Project, 2023b.

average of 18 percentage points. Members of Assembly were considered the most corrupt, with 74% of respondents agreeing that most or all members were corrupt. Police officers were considered the least corrupt, with 50% of respondents agreeing that most or all police officers were corrupt. A majority of respondents considered corrupt behaviour as unacceptable: nearly 75% of respondents said it was unacceptable for a private citizen to offer a bribe, while over 75% said it was unacceptable for law enforcement to request one.

The previous government's judicial reform efforts also proved unsatisfactory. The Judicial Reform Strategy for 2017–2022 aimed to tackle challenges and promote the reform in the light of EU accession. Strengthening the process was identified by the EU commission in its progress reports. However, a few years after adoption, the strategy and the action plan failed to yield any significant improvements despite the government's promises of fundamental change. Strengthening this process was identified as essential for stabilizing North Macedonia after its post-crisis period and for allowing the government to reinvigorate reforms needed for EU accession.³⁶ Problems in implementing the rule of law principle extend beyond the formal applicability of legal instruments. On the contrary, the problems referred to the realization of the rule of justice itself, as the state has not ensured the protection of citizens from absolute power, arbitrariness, and discretionary rule. Moreover, the state has failed to provide legal certainty to ensure that laws govern, not the people.

The stability and consistency of the laws in North Macedonia remain among the weakest aspects of the rule of law. Laws are often amended without fair warning through shortened procedures. Various analyses³⁷ show that since 2011, more than 60% of the laws have been adopted in such procedures. This undermines political stability and, more critically, has a negative impact on the economic stability, especially in attracting foreign investors, as legal instability strongly influences the decisions of investors in such environments.

A survey conducted in November 2017 by the European Policy Institute in Skopje³⁸ concluded, 'Rule of law and good governance; improving the level of democracy in the country, protecting minority rights, fighting corruption, independence of the court and successful judicial reforms will only be possible after the country joins the EU.' Citizens thus lack confidence in the judicial system, and many believe that development of the rule of law can only take place after the state joins the EU. If there is no mentality of respect for the law and a culture of judicial independence among institutions and citizens alike, the 'life' of these principles in the system will always be questioned. Awareness of legal, judicial, constitutional, and political culture is therefore a key prerequisite for

36 Cekov, 2023.

37 Blazewski, no date.

38 European Policy Institute, 2017.

their vitality in the national system. In the Macedonian context, the rule of law is usually analysed as a condition and criterion for EU enlargement. In this process, it is notable how respect for the original Copenhagen criteria, such as democracy, rule of law, human rights, or the rights of minorities, acquires more concrete meaning with the progress of European integration and how deficiencies in legislation, functioning of the administration, structure of the judiciary, length of proceedings, and corruption become more apparent.

4. Conclusions

The rule of law is enshrined as one of the fundamental values of the Macedonian Constitution. In the Macedonian context, this principle is most often examined through the core foundations of the constitutional order and in relation to the state's capacity to attain European Union membership. The condition of the rule of law represents a pivotal aspect of North Macedonia's EU accession negotiations. Although constitutionally recognized as a fundamental value, the Macedonian understanding and implementation of the rule of law are more closely aligned – both in practice and in functionality – with the German principle of *Rechtsstaat* and the French notion of *État de droit*. By contrast, the common law tradition – historically characterized by a plurality of legal sources, including customs, judicial precedents, general principles, and statutes – does not fully apply in the Macedonian legal order, and in some cases these sources have no legal standing. In common law systems, the doctrine of governmental limitation grounds the rule of law in the supremacy of judicially proclaimed law. This contrasts with the *Rechtsstaat* tradition and other civil law systems, which reject the notion that law can claim primacy over the state itself. Similarly, the French concept of *État de droit*, conceived as a safeguard for citizens' rights, extends beyond subjecting administrative authorities to statutory and regulatory constraints – it also entails the subordination of legislation to constitutional norms. Both *Rechtsstaat* and *État de droit* embody a deep commitment to human rights, understood as inherent and inseparable from the rule of law.

But what are the specific elements of the rule of law in the Macedonian legal system, as well as in other Eastern and Central European states? The rule of law can never be detached from the political context and historical experiences of a nation. In the Western Balkans, it has been imposed as one of the main concerns in the EU accession process. Thus, establishing an independent judiciary has been a top priority for states including North Macedonia. Unfortunately, judicial and prosecutorial councils have long functioned as instruments of political parties. Politically motivated appointments and promotions were regularly used by the ruling parties to expand their influence over the judiciary. Citizens, in

turn, harbour doubts about the functioning of the rule of law. Research shows that citizens hold the judicial system in low esteem. An extremely high percentage of respondents report that they do not trust the system to make fair decisions, citing a high degree of corruption and mistrust in the institutions. Assessments of the rule of law are often conducted narrowly, focusing mainly on the quality and empowerment of the judiciary – what risks producing an independent but irresponsible judiciary. By contrast, the World Justice Project (2023) applies different evaluation criteria, which appear to yield more reliable results for judging the level of rule of law. Ultimately, the rule of law does not reside solely in legislation but in the spirit and morals of society. Building trust in law and legal institutions cannot be administered like a vaccine; it requires critical engagement of national constituencies at all levels.

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