



The Rule of Law: Supranationalization. The Case of Serbia

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Abstract. This study examines the supranationalization of the rule of law through the interaction between European Union legal standards and the constitutional and institutional framework of the Republic of Serbia as an EU candidate country. It first situates the rule of law within its historical and theoretical evolution, tracing its transformation from a predominantly national constitutional principle into a norm embedded in international and supranational legal orders. Particular attention is devoted to the European Union, where the rule of law constitutes a foundational value under Article 2 TEU, operationalized through principles such as primacy, direct effect, and effective judicial protection. The author analyses the case-law of the Court of Justice of the European Union and the institutional mechanisms developed to safeguard the rule of law, including judicial review and the European Commission's Rule of Law Framework. Against this background, the study evaluates Serbia's constitutional structure, judicial organization, and fundamental rights guarantees, assessing their alignment with EU rule of law requirements. It also reviews findings from recent European Commission Rule of Law Reports, highlighting progress and persistent challenges in judicial independence, efficiency, anti-corruption policy, and institutional accountability. The paper concludes that the supranationalization of the rule of law operates as both an accession conditionality mechanism and a transformative driver of domestic legal reform in Serbia.

Keywords: rule of law, supranationalization, European Union law, Serbia, EU accession

1. Introduction

Defining the concept of the rule of law has evolved throughout history, alongside the development of states. Initially conceived as a national concept, the rule of law has, with the development of international law, largely transcended national

boundaries. It is timeless, continually relevant, and of considerable importance, which justifies ongoing scholarly engagement with the topic. With the emergence of international law and international organizations possessing their own institutional structures, a legitimate question arises: do such organizations, distinct from nation-states, their institutions, and the laws they create, play a role in realizing the rule of law, and how do they ensure effective judicial protection through the application of the regulations they adopt? This paper argues that, from a contemporary perspective, the implementation of the rule of law in its full scope, together with its particular features, significantly exceeds national borders and national legislation. Emphasis is placed on defining the principles of the rule of law in general and its application through European Union law, including its connection with national laws, with a particular focus on Serbia.

The European Union is a unique international organization with characteristics found in no other international body. As emphasized in its founding treaties of the European Union, the rule of law represents one of its fundamental principles and pillars. Its unwavering observance by Member States, and by states preparing for EU integration, is an indispensable condition for membership. The European Union accords primacy to the law it creates, applying the principles of direct effect and applicability.

The Republic of Serbia is currently in the process of accession to the European Union and must fulfil specific membership criteria. One of the most important is adherence to the rule of law. This paper therefore examines how this principle is applied in Serbia within the broader framework of its relationship with the EU.

2. The Rule of Law Principle

When discussing the rule of law in its contemporary meaning, it is often accepted that its origins may be traced back to England, with the adoption of the Great Charter of Freedoms (*Magna Carta Libertatum*) in 1215. The central idea of the rule of law is the guarantee that basic rights and freedoms guaranteed will be respected, applied consistently, and upheld equally for all. In this way, legal security is ensured, which is a necessary condition for the functioning of individuals, groups, authorities, states, and international organizations. Although the rule of law has evolved alongside society itself, from local to international frameworks, its core idea has remained unchanged. The rule of law appeared at the beginning as an exclusively national concept limited to a state's internal legal hierarchy; it now raises the question, particularly after the development of international law and organizations, such as the United Nations, the Council of Europe, and the European Union, of whether it transcends national borders.

Waldron has stated,

it may be a mistake to think that the rule of law aims only to protect subjects from the state, the government or the law itself. It also aims to protect them from one another, both from other individuals at the national level and perhaps from other nation-states at the international level.¹

The rule of law is a broad legal concept, meaning ‘different things to different people’.² It is an ideal with deep historical roots that has changed in meaning and interpretation over time, developing and adapting alongside changing social and political circumstances.³ From the national perspective, the rule of law is often associated with resistance to overly powerful, centralized, and authoritarian state authority.⁴ Some scholars consider the rule of law not solely as the formal application of legal instruments but as a manifestation of justice and as protection for all members of society from the excessive power of those who rule.⁵

In international law, the rule of law was confirmed in the Universal Declaration of Human Rights of 1948. Its preamble states, ‘Whereas it is essential, if man is not to be compelled to have recourse, as a last resort to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.’⁶ Signs of the ‘constitutionalization’ of the international community, namely the recognition of human rights regulations in the international legal order and the role they play within domestic systems, may be found in judgments of both the Court of Justice of the European Union⁷ and the European Court of Human Rights. Moreover,

(...) the same conditions require the attention of a powerful International Court of Justice which can function as a true World Court, and which is not afraid to decide on the legality of Security Council resolutions, whenever it has jurisdiction to do so. A new World order – if that is a meaningful term – has to be based on the rule of law, which needs both an active Security Council and an independent Court.⁸

1 Waldron, 2011, p. 324.

2 Rubenstein, 2018, p. 169.

3 *Idem*, 179–180.

4 Hurd, 2014, p. 40.

5 Lauc, 2016, p. 48.

6 Universal Declaration of Human Rights, adopted by Resolution 217A(III), 10 December 1948.

7 Case T-306/01, *Ahmed Ali Yusuf, Al Barakaat International Foundation v Council of the European Union, Commission of the European Communities*, Judgment of 21 September 2005; Case T-315/01, *Yassin Abdullah Kadi v Council of the European Union, Commission of the European Communities*, Judgment of 21 September 2005; *Joined Cases C-402/05 P and C-415/05 P, Yassin Abdullah Kadi v Council of the European Union*, Judgment of 3 September 2008; Case T-85/09, *Kadi v Commission*, Judgment of 30 September 2010, *Joined Cases C-584/10 P, C-593/10 P, C-595/10 P; The European Commission, the Council of the European Union and the United Kingdom of Great Britain and Northern Ireland v Kadi*, Judgment of 18 July 2013.

8 Graefrath, 1993, pp. 205.

3. The Rule of Law in the European Union

Throughout history, the idea of a community founded on the highest democratic ideals has persisted. Over time, the rule of law developed from a symbolic aspiration into one of the most important principles of the European Union and an indispensable part of the integration process. The rule of law was included in the founding treaties for the first time with the Maastricht Treaty.⁹ Further clarification followed with the Treaty of Amsterdam, which stated in Article 6(1), ‘The Union is based on the principles of freedom, democracy, respect for human rights and fundamental freedoms and the rule of law, principles that are common to the member states...’¹⁰ The Treaty of Amsterdam thus made respect for the rule of law one of the prerequisites for obtaining full EU membership.

The rule of law subsequently became indispensable for achieving the objectives of the Common Foreign and Security Policy, the Union’s cooperation policies, and its economic, financial, and technical cooperation with third countries. Article 2 of the Treaty of Lisbon states, ‘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 national minorities’.¹¹

Through its case-law, the Court of Justice has emphasized the significance of the rule of law for the European Union. In *Granaria v Hofdproduktšap* (1978),¹² the Court expressly referred to the principle. Later, in *The Green Party v Parliament*, the Court emphasized that the European Community is based on the rule of law and that neither Member State nor EU institution may evade *judicial review of the question whether the measures adopted by them are in conformity with the basic constitutional charter, the Treaty*.¹³ This position was further confirmed in *UPA v Council*,¹⁴ where the Court held that EU institutions are subject to judicial control of the compliance of the acts with the Treaty and with general principles of law, including fundamental rights.

9 Treaty on European Union OJ C 191, 29.7.1992, pp. 1–112.

10 Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts OJ C 340, 10.11.1997, pp. 1–144.

11 Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, *Official Journal of the European Union*, Volume 51, 2008/C 115/01, Article 2.

12 Case 101/78 *Granaria BV v Hoofdprodukschap voor Akkerbouwprodukten*, Judgment of the Court 13 February 1979, para. 5.

13 Case 294-83, *Parti écologiste ‘Les Verts’ v European Parliament*, Judgment of the Court, 23 April 1986, para. 23.

14 Case C-50/00 P, *Unión de Pequeños Agricultores v Council*, Judgment of 25 July 2002, para. 38.

3.1. Judicial Review as an Element of the Rule of Law in the European Union

The importance of effective judicial review, one of the EU's basic principles, extends far beyond Member State borders. Its influence is primarily strong across the European continent, affecting potential candidate countries, states engaged in the accession process, and even third countries with no intention of pursuing European Union membership. In all these settings, interaction with the European Union or its individual members requires adequate legal security (rule of law), namely adherence to the rule of law and effective judicial protection.

In addressing several of the issues raised in its case-law, The Court of Justice articulated its position on how effective judicial protection is to be achieved. Through its case-law, it has established the rule of law as one of the fundamental principles underpinning the European Union as it exists today. By solving cases through its judgments, the Court of Justice has created patterns for the protection of the rights of individuals and Member States. In a number of judgments in this area, the Court has demonstrated how effective judicial protection functions in practice and how it operates within the EU's rule of law framework. The formation of effective judicial protection is a basic principle of EU law, applicable both to Member States and to third countries engaging with the European Union. Member States were also influenced by the introduction of minimum standards in international law. These standards guarantee individuals certain rights that may be invoked irrespective of the State where they are located.

Although the rule of law as an institution has historical roots, its development through the application of effective judicial protection remains a relevant and contemporary issue. This principle derives its authority from Article 19 of the Treaty on European Union.¹⁵ The Lisbon Treaty also contains Declaration no. 17, which reads: 'The Conference recalls that, in accordance with well settled case law of the Court of Justice of the European Union, the Treaties and the law adopted by the Union on the basis of the Treaties have primacy over the law of Member States, under the conditions laid down by the said case law.'¹⁶

The opinion of the Legal Service of the Council was attached to this Declaration:

The case-law of the Court of Justice establishes that the primacy of EU law is a cornerstone principle of Community law. According to the Court, this principle is inherent to the specific nature of the European Community. At

15 Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, *Official Journal of the European Union*, Volume 51, 2008/C 115/01, Article 19.

16 Consolidated version of the Treaty on the Functioning of the European Union – Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007 – A. Declarations Concerning Provisions of the Treaties – 17. Declaration concerning primacy, *Official Journal*, 115, 09/05/2008 P. 0344 – 0344.

the time of the first judgment of this established case-law (Costa/ENEL, 15 July 1964, Case 6/641 [1]), there was no mention of primacy in the treaty. It is still the case today. The fact that the principle of primacy will not be included in the future treaty shall not in any way change the existence of the principle and the existing case-law of the Court of Justice.¹⁷

3.2. Case-Law of the Court of Justice

Under the principle of effective judicial protection, Member States are obliged to provide such protection in all areas governed by European Union law. This principle was further clarified in *Associação Sindical dos Juizes Portugueses*,¹⁸ in which the Court held that effective judicial protection is a concretization of the rule of law under Article 2 of the Treaty on European Union (TEU). This principle gives effect to well-established principles of EU law, including direct applicability, direct effect, and the principle of primacy of the European Union.

The Court of Justice has emphasized the rule of law expresses the unity of the EU judicial system, within which national courts and tribunals, in cooperation with the Court of Justice, fulfil their duty of ensuring respect for the law in the interpretation and application of the Treaties. Furthermore, the Court has clarified that the principle of effective judicial protection applies to all areas covered by European Union law, regardless of whether national law or European Union law is directly applicable in a specific case. In essence, the principle applies whenever there is an abstract possibility that EU law may be relevant.

This position implies that the principle of effective judicial protection encompasses judicial review by the Court of Justice of all measures adopted by European Union institutions within their competences, as well as those adopted by national authorities. Accordingly, the Founding Treaties ‘provide a complete system of legal remedies and procedures designed to enable the Court of Justice to review the legality of measures adopted by the bodies’ of the European Union. The principle of effective judicial protection also underpins the preliminary reference procedure under Article 267 of the Treaty on the Functioning of the European Union (TFEU),¹⁹ which enables national courts to refer questions to the Court of Justice concerning the interpretation or validity of European Union law. The purpose of the procedure is to ensure uniform interpretation and application of European Union law, thereby guaranteeing effective judicial protection.

17 *Idem*, Opinion of the Council Legal Service of 22 June 2007.

18 Case C-64/16, *Associação Sindical dos Juizes Portugueses v Tribunal de Contas*, Judgment of 27 February 2018.

19 Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, *Official Journal of the European Union*, Volume 51, 2008/C 115/01, Article 267.

Judicial independence remains the essential prerequisite for ensuring effective judicial protection (control). The Court of Justice considers a body to be independent if ‘it exercises its judicial functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever, and that it is thus protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions’.²⁰

3.3. Activities of the European Commission in the Field of the Rule of Law

In 2014, the European Commission introduced *The New Rule of Law Framework*²¹ as a systemic mechanism to address violations of the rule of law within Member States. Such violations arise when decisions taken at the national level threaten the integrity, stability, and proper functioning of domestic institutions and thereby hinder the mechanisms intended to safeguard the rule of law.

The framework is grounded in the existing EU Treaties and complements other instruments, notably the Article 7 procedure and the Commission’s infringement proceedings. It focuses on the rule of law as the foundation of all values upon which the Union is based. By ensuring respect for the rule of law, the protection of other fundamental values is also ensured. The Commission has adopted a broad definition of the rule of law, drawing on the case-law of both the European Court of Justice and the European Court of Human Rights, conceptualizing it essentially as a system in which laws are applied and enforced. The framework can be triggered in situations where a systemic breakdown threatens the integrity, stability, or proper functioning of national institutions responsible for safeguarding the rule of law. It applies equally to all Member States and operates on uniform benchmarks regarding what constitutes a systemic threat. The EU framework functions as an early-warning mechanism, allowing the Commission to engage in a dialogue with a Member State to resolve concerns before initiating procedures under Article 7 TEU.

The European Commission framework functions as the independent guardian of the Union’s values. The purpose of the framework is to enable the Commission to find a solution with the Member States, to prevent an emerging systemic threat to the rule of law. The Commission may launch a ‘clear risk of a serious breach’, triggering the use of Article 7 TEU by initiating a structured dialogue. This process consists of three stages. First, the Commission gathers and assesses relevant information to determine whether indications of a systemic threat to the rule of law exist. If it concludes that such a threat is indeed present, it initiates a dialogue with the Member State concerned by issuing a ‘rule of law opinion’,

20 Case C-64/16, *Associação Sindical dos Juizes Portugueses v Tribunal de Contas*, para. 44.

21 European Commission, 2014.

which serves as a formal warning and outlines the grounds for its concerns. The Member State is given an opportunity to respond.

In a second stage, unless the matter has already been resolved, the Commission issues a 'rule of law recommendation' addressed to the Member State. It recommends that the Member State address the problems identified within a fixed time frame and inform the Commission of the measures taken. The Commission will make its recommendation public. Third, the Commission monitors the follow-up by the Member State. If no satisfactory action is taken within the prescribed time, the Commission may have recourse to the mechanisms set out in Article 7 TEU.²²

In its case-law, the Court of Justice has highlighted several general principles derived from the constitutional traditions common to the Member States which are closely linked to the rule of law. These include the principle of legality, which in substantive terms requires a transparent, accountable, democratic, and pluralistic law-making process. The principle of legal certainty also applies, requiring amongst other things that rules be clear, predictable, and not applied retrospectively. The rule of law governs the exercise of public powers, ensuring that every State intervention has a legal basis and is subject to legal constraints. The Court has further confirmed the necessity of independent and effective judicial review, including respect for fundamental rights. The Court reiterated that the EU is a union based on the rule of law and that acts of its institutions are subject to review for compatibility with the Treaties, general principles of law, and fundamental rights. Citizens are, therefore, entitled to effective judicial protection. It has also confirmed the close connection between the right to a fair trial and the separation of powers, emphasizing that only a tribunal independent of the executive can guarantee a fair trial to citizens. The Court has reaffirmed the requirement of operational separation of powers, implying independent and effective judicial review. Moreover, it has stressed the role of equal treatment as a general principle of EU law, enshrined in articles 20 and 21 of the Charter of Fundamental Rights of the European Union.²³

4. The Rule of Law in Serbia

The Republic of Serbia is based on the rule of law, alongside social justice, democracy, and human and minority rights and freedoms.²⁴ The Constitution states, 'Rule of law is a fundamental prerequisite for the Constitution that is based on inalienable human rights. The rule of law shall be exercised through free and direct elections, constitutional guarantees of human and minority rights,

²² *Ibid.*

²³ *Idem*, Annex 1.

²⁴ Constitution of the Republic of Serbia, *Official Herald of the Republic of Serbia*, Nos. 98/2006 and 115/2021, Article 1.

separation of power, independent judiciary and observance of the Constitution and law by the authorities.’²⁵

One element of the rule of law is free elections, also guaranteed by the Constitution. Every adult citizen of the Republic of Serbia with legal capacity has active and passive electoral right, which are protected by law and exercised in accordance with the law. Suffrage is universal and equal, and elections are free and direct.²⁶

A second element comprises constitutional guarantees of human and minority rights, envisaged in Section Two of the Constitution – Human and Minority Rights and Freedoms. These include the categories of human rights, from civil and political rights to economic and social rights.²⁷ Article 75 of the Constitution provides, ‘Persons belonging to national minorities shall be guaranteed special individual or collective rights in addition to the rights guaranteed to all citizens by the Constitution. Individual rights shall be exercised individually and collective rights in community with others, in compliance with the Constitution, law and international treaties.’²⁸ Persons belonging to national minorities may determine matters related to their language, culture, education, and other issues. In doing so, they can elect their national councils. They are guaranteed equality before the law, equal legal protection, and protection against discrimination based on their minority status.²⁹

Another element of the rule of law is the division of power into legislative, executive, and judicial branches, the last of which must be independent. The relationship between these branches is founded on mutual checks and balances.³⁰

The rule of law can be observed through the system of the constitutionality of international agreements in the Republic of Serbia. That task is exercised by the Constitutional Court of Serbia.³¹

4.1. The EU 2024 Rule of Law Report for Serbia

The European Commission has issued a rule of law report covering both Member States and candidate countries.³²

Serbia is a parliamentary democracy with a unicameral National Assembly³³ composed of 250 Members of Parliament, which exercises constitutional and legislative power and elects the Government and other high-ranking officials,

25 *Idem*, Article 3.

26 *Idem*, Article 52.

27 *Idem*, articles 23–74.

28 *Idem*, Article 75.

29 *Idem*, Article 76.

30 *Idem*, Article 4.

31 Djurić, 2013.

32 European Commission, 2024.

33 Constitution of the Republic of Serbia, articles 98–110.

including judges of the Constitutional Court and the Ombudsman. Legislative proposals may originate from a Member of Parliament, the Government, the assembly of the autonomous province, at least 30 000 voters, or the Ombudsman and the National Bank of Serbia within their competences. The President of the Republic, who holds limited executive powers, is directly elected for a five-year term, renewable once.³⁴ The Constitutional Court³⁵ reviews the compatibility of laws, other general acts and international treaties with the Constitution, and decides on constitutional complaints against individual acts, as well as on a new appeal procedure for judges and prosecutors against decisions of the High Judicial Council and the High Prosecutorial Council. Serbia has three independent bodies in the field of fundamental rights: the Ombudsman, the Commissioner for Information of Public Importance and Personal Data Protection, and the Commissioner for the Protection of Equality, whose independence is regulated by law.

Parliament's capacity to exercise checks and balances is constrained by issues of effectiveness, autonomy, and transparency, including in its oversight of the executive and legislative process. Public confidence in democratic institutions, including Parliament, has also been negatively affected by the frequent recourse to early elections.

The Constitutional Court currently has four vacant positions, of which two are to be appointed by the Supreme Court on the proposal by the High Court Council and the High Prosecutorial Council, and the other two judges are to be elected by the National Assembly on a proposal from the President.

As of 1 January 2024, Serbia had 14 leading judgments of the European Court of Human Rights pending implementation. At that time, 27% of Serbia's leading judgments delivered in the past ten years remained pending, with an average implementation time of almost seven years. These cases concern instances where the applicants' rights to a fair trial were violated due to excessive length of civil, family, and commercial proceedings. Additionally, some cases highlight the absence of effective domestic remedies to address procedural delays. With respect to payment deadlines, by 31 December 2023, 52 cases were awaiting confirmation of payment (compared to 51 in 2022). As of 1 July 2024, the number of leading judgments pending implementation remained 14.³⁶

Although Serbia has three independent bodies in the field of fundamental rights, follow-up given to their recommendations is not always clear. The Ombudsman, accredited with A-status by a national human rights institution (NHRI), is responsible for promoting and protecting human rights, minority rights, and fundamental freedoms. Together with the Commissioner for Information of Public Importance and Personal Data Protection, and the Commissioner for the

34 *Idem*, articles 111–121.

35 *Idem*, articles 166–175.

36 European Commission, 2024.

Protection of Equality, these three independent bodies face persistent challenges relating to resources.

According to the Ombudsman's 2023 report, the rate of recommendations followed up under the control procedure increased to 78% (from 63% in 2022).

One of the issues in the Report was the judicial system. The implementation of a constitutional reform aimed at strengthening judicial independence remains ongoing, with further implementing legislation still to be amended. The 2022 constitutional amendments transferred the power to appoint judges and prosecutors from the National Assembly to the High Judicial Council and the High Prosecutorial Council. In February 2023, five laws: Law on the High Judicial Council, Law on the High Prosecutorial Council, Law on the Public Prosecutor's Office, Law on Judges, and Law on the Organization of Courts, were amended to implement these changes. The Venice Commission assessed these reforms positively³⁷ and noted the transparency and inclusiveness of the process. As part of this reform process, the High Judicial Council and the High Prosecutorial Council began operating in their new composition in May 2023.

Both Councils have improved the transparency of their work by publishing meeting agendas and minutes of their meetings on their websites and, in the case of the High Prosecutorial Council, live-streaming its meetings. The Government is reconsidering whether amendments to the Law on Seats and Territorial Jurisdiction of Courts are necessary and intends to consult the European Commission and the Venice Commission on the draft Law on the Judicial Academy.³⁸

However, no steps were taken regarding reforms to the Constitutional Court, particularly concerning the introduction of a qualified majority and the election of certain judges by Parliament, as highlighted by the Venice Commission.

The laws governing the Public Prosecutor's Office and the High Prosecutorial Council have been amended to strengthen prosecutorial autonomy. In line with the constitutional amendments, these laws on Public Prosecution Office and the High Prosecutorial Council contain new safeguards allowing prosecutors to challenge mandatory instructions before the High Prosecutorial Council if they consider such instructions 'illegal' or 'unfounded'. In 2023, five objections were filed and six in 2024, out of which four were confirmed and the related instructions annulled, while seven were rejected.

Serbia still lacks a uniform, centralized court management system interlinking cases across courts and prosecutor's offices. Currently not all prosecution offices and courts are covered by the same case management system, and their systems are not interoperable. The case management system for prison administration has been operational since December 2021, and the new system for prosecutor's offices is expected to be finalized by the end of 2024. Implementation of the new case

37 European Commission for Democracy through Law (Venice Commission), 2023, p. 3.

38 European Commission, 2024.

management system for courts is currently stalled. While efforts to implement the ICT Strategy continue, the exact state of progress remains difficult to ascertain. To enable online accessibility of information for the general public, the Constitutional Court is taking steps to improve visibility and transparency of court practice database of both domestic and European Court of Human Rights judgments.

The implementation of the Strategy on Human Resources in the Judiciary 2022–2026 is ongoing, although activities have so far focused mainly on problem analysis, with concrete follow-up activities still required. There is a need to make judicial careers more attractive. The Judicial Training Academy provides initial and continuous training with quality assurance mechanisms, but its capacity, particularly regarding EU law training, requires further strengthening.

Efficiency indicators show positive trends in civil, commercial, and criminal cases, but serious challenges persist in the handling of administrative cases and constitutional complaints. Between 2021 and 2022, the clearance rate for first- and second-instance civil and commercial cases has improved significantly (from 74% to 178% for first-instance), while disposition time decreased. Criminal case indicators and the disposition time also improved. However, administrative cases showed a marked decline: due to a stark increase in incoming first-instance administrative cases, the clearance rate fell from 56% in 2021 to 39% in 2022, and disposition time rose from 1,089 days to 1,528.38. Furthermore, a high number of cases (41,279) are pending before the Constitutional Court, 99.38% of which are constitutional complaints.³⁹

The second part of the Report relates to the anti-corruption framework. Serbia's anti-corruption framework includes the Agency for the Prevention of Corruption, an autonomous body with competences in areas such as public officials' conflicts of interest, asset declarations, political party and campaign finance, and monitoring the implementation of the National Anti-Corruption Strategy and Action Plan. Since 2020, the Agency has been empowered to initiate legislation and provide opinions on corruption risk assessments in draft legislation. The Agency is accountable to the National Assembly, to which it reports annually. The Anti-Corruption Council acts as a policy advisory body to the Government with monitoring and policy proposal functions, while the State Audit Institution oversees financial and economic control and public spending. Repressive measures are handled by specialized entities, including the Public Prosecutor's Office for Organized Crime (in charge of high-level corruption cases), specialized police units, regional prosecution offices, and specialized courts.

Most forms of corruption are criminalized, and Serbia's legal framework largely aligns with the UN Convention against Corruption (UNCAC). Illicit enrichment, however, is not criminalized. The Criminal Code was extensively amended in 2016 to increase alignment with international conventions on corruption and

³⁹ *Ibid.*

to include economic crimes and offences against official duty. Serbia is not a signatory party to the OECD Anti-Bribery Convention.

Serbia has established specialized departments for suppressing corruption in the public prosecutor's offices, courts, and the police. The Law on the organization and jurisdiction of state authorities in suppression of organized crime, terrorism, and corruption introduced specialized structures and modern investigative tools.

Challenges remain in the enforcement and oversight of political party and campaign financing. Campaign finance is primarily regulated by the Law on financing of political activities and the Law on prevention of corruption. The 2022 amendments addressed several ODIHR recommendations by lowering donation limits, introducing interim reporting of donations and expenditures, and capping membership fees and loans.

The Law on prevention of corruption defines conflict of interest and prohibits public officials from obtaining personal benefits for themselves or third parties through their public office functions. A system exists for ad hoc reporting of conflict of interest, with administrative sanctions for non-compliance. In 2023, the Agency for the Prevention of Corruption detected issues and rendered decisions in 107 cases, including 19 involving conflicts of interest and nepotism. It issued 32 opinions on ad hoc declarations, including measures to manage conflict-of-interest situations. As of July 2024, 18 further opinions were issued. Shortcomings exist, particularly regarding the personal scope of the law, as not all high-ranking public officials are vulnerable to corruption.

The Law on the Protection of Whistleblowers is not yet aligned with the EU acquis. While the legislation offers protection for persons reporting corruption or other illegal actions, there is room for improvement to ensure full alignment with EU acquis, including strengthening the support mechanisms for whistleblowers along with the provision of legal aid. In particular, the law does not expressly include all types of disclosures and persons, such as former employees, and it does not explicitly protect whistleblowers in the event that their disclosure is not grounded. The practice of appointing acting senior civil servants in breach of the Law on Civil servants also remains unresolved.⁴⁰

Another part of the Report relates to the media situation. Freedom of expression, media freedom, and access to official documents are guaranteed by the Constitution and legislation, including the Law on electronic media, the Law on public information and media, the Law on public service media, and the Law on free access to information of public importance. Amendments to the first two laws were adopted in October 2023 to align them with the EU acquis and European standards, although further amendments are required for full compliance. The independence of the Regulatory Authority for Electronic Media (REM) is guaranteed by Law.

40 *Ibid.*

4.2. The Rule of Law in the Process of Accession of the Republic of Serbia to the European Union

One of the most important issues in Serbia's accession to the European Union is the rule of law. It remains central for both national bodies and institutions of the European Union, notably the European Commission, which issues regular reports on Serbia. Supranationalization is closely associated with EU standards, as the Union maintains robust requirements concerning the rule of law, outlined in the previous chapters.

The Republic of Serbia is a candidate country for EU membership and has concluded the Stabilization and Association Agreement (SAA).⁴¹ Article 1 of the Agreement states that one of its aims is to support Serbia's efforts to strengthen democracy and the rule of law.⁴² Moreover, Article 80 emphasizes the Parties' commitment to consolidating the rule of law and strengthening judicial independence, increasing efficiency, and improving the functioning of the police in fighting corruption and organized crime.⁴³ Article 114 of the SAA envisages that the development of an efficient and accountable public administration in Serbia is essential to supporting the implementation of the rule of law and the proper functioning of the state institutions.⁴⁴ Placing these objectives so high on the list indicates their importance for both the European Union and the Republic of Serbia.

Conclusions

The rule of law has been debated in the legal doctrine and carries significant practical implications. It has evolved into a general principle of law and can be understood as having moved from solely national principle into the sphere of international law.

With the creation of the European Communities and, later, the European Union, the rule of law principle obtained a new dimension. Supranational organization includes a novel relationship between national legal systems and the supranational legal order it creates. The European Union is based on the values of freedom, democracy, equality, the rule of law, and respect for human rights. These values are shared across Member States in societies characterized by pluralism, non-discrimination, tolerance, justice, solidarity, and where equality of women and men prevail.

41 Stabilization and Association Agreement between the European Communities and their Member States of the one part and the Republic of Serbia of the other part, *Official Journal of the European Union*, L 278, Volume 56, 18 October 2013, Article 1.

42 *Idem*, Article 1(2).

43 *Idem*, Article 80.

44 *Idem*, Article 114.

Effective judicial protection, and therefore the rule of law, requires uniform application of the law, so that it can function properly. Uniformity in the application of EU law requires synchronization with the specificities of the law of Member States, up to the limits that ensure its normal functioning. This is achieved through a specific model of legislation characteristic of European Union law. In some of its most famous judgments, the Court of Justice expressed its views in favour of EU law in relation to the national regulations of the Member States. In that way, the supranationalization of EU law was established.

National constitutional courts routinely consult the decisions of the Court of Justice and the European Court of Human Rights in their deliberations. In Serbia, the rule of law remains high on the agenda and has been regarded as one of the most important elements in the process of accession to the EU.

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