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Rule of Law as the Hard Condition for Accession

Analysing the Current Preparedness of the Candidates in the Fields of the Judiciary and Fundamental Rights and Justice, Freedom and Security

The enlargement policy stands as one of the EU's most significant policies. In a changing world order and amid shifting geopolitical circumstances, it is in the vital interest of the European Union and its Member States to demonstrate progress in this policy area and to expand the Union with new members. Despite not expanding in the last ten years, the European Union's enlargement policy has undergone significant changes, resulting in increasingly stringent and evolving requirements for candidate countries. This article utilises the conceptual framework of Europeanisation to assess the current preparedness of candidate countries, with a specific focus on the 'fundamentals', including Chapters 23 and 24.

Keywords: rule of law, Europeanisation, preparedness, European Union, enlargement, candidate countries

Introduction

Ursula von der Leyen, who will conclude her first term as President of the European Commission in 2024, succinctly summarised the essence of the enlargement policy: “Enlargement is a vital policy for the European Union. Completing our Union is the natural horizon of our Union. Moreover, completing our Union has a strong economic

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and geopolitical rationale at this very moment. Past enlargements have demonstrated the enormous benefits for both the accession countries and the EU. We all win.”³

Despite the clear commitment and declaration from the current President of the Commission and the promised win-win situation for both the EU and the new members, the European Union has not admitted new members since 2013.⁴ In fact, the British exit has resulted in a reduction in the number of member states during von der Leyen’s term in office. Furthermore, despite significant changes in the external environment of the European Union over the past decade that have notably strengthened the geopolitical arguments for enlargement, the EU has failed to complete new waves of accession in the last decade. Why has the European Union not expanded in the last decade?

The European Union’s enlargement policy has undergone significant changes in the past two decades, leading to increasingly stringent and evolving requirements for candidate countries. The progress of these candidates in meeting the accession criteria and their preparedness for EU membership is closely monitored not only by the European Commission but also by the EU Member States. The accession process is both lengthy and demanding, contributing to enlargement fatigue and a growing skepticism about the credibility of the process, particularly among the populations of most candidate countries, especially in the Western Balkans.

To restore the credibility of the enlargement process, the current Commission implemented reforms in 2020, restructuring the chapters into six thematic clusters. This revised approach places a primary emphasis on the ‘fundamentals’, encompassing the rule of law, the functioning of democratic institutions, public administration and the candidates’ economies. Enlargement negotiations now commence and conclude with a focus on these fundamentals, and progress in these key areas determines the pace of the negotiations. Chapters related to the fundamentals are initiated first and finalised last, dictating the overall negotiation timeline.⁵

This article utilises the conceptual framework of Europeanisation to assess the current preparedness of candidate countries, with a specific focus on the ‘fundamentals’, in particular Chapters 23 and 24. This analysis aims to provide insights into the preparedness of Western Balkan candidate states, as well as new candidates such as Ukraine, Moldova and Georgia, concerning these crucial chapters.

Enlargement, Europeanisation and Normative Power Europe⁶

The history of the European Union is also a history of enlargements.⁷ The 2004 and 2007 Eastern enlargements, along with Croatia’s accession in 2013, highlighted that

³ VON DER LEYEN 2023.

⁴ Ursula von der Leyen’s predecessor, Commission President Jean-Claude Juncker, announced a pause in enlargement in 2014, a position he maintained until 2017, when he recommitted to the Western Balkans enlargement (see KOLLER 2019: 15).

⁵ European Commission 2020.

⁶ This section relies on the arguments and conclusions of the following book chapter: KOLLER 2019: 15–29.

⁷ ARATÓ–KOLLER 2023: 244–249, 296–308.



the pre-accession period is undoubtedly the best suitable period for the European Union to function as an external normative power⁸ and be able to affect the political, legal and economic processes of the candidates. During this phase, the EU guides candidate countries toward the establishment of the rule of law, the guarantee of fundamental rights, media freedom, democratic functioning, public administration reforms, and the efficient functioning of the market economy. Upon becoming a full member state, the EU's role as a normative power undergoes transformation, as the states that have already joined become internal shapers of European integration, therefore the EU's impact can only be limited on the member states.⁹

The conceptual framework of Europeanisation may offer a suitable approach to describe the process of enlargement and the preparedness of the candidate countries. To what extent have the candidates become Europeanised during their rapprochement to the EU, aligning with its values and treaty norms of the sui generis supranational community?¹⁰ For answering this question, Europeanisation provides a suitable conceptual framework.

Europeanisation is not a theory in its own right, but rather a conceptual framework for describing a complex set of integration phenomena. It became an increasingly fashionable concept in the 1990s when European integration had reached such a high level of integration that the so-called grand theories¹¹ of integration no longer provided an adequate answer for that.¹²

Europeanisation is a multi-layered concept with many definitions.¹³ Ladrech defines it as “an incremental process re-orienting the direction and shape of politics to the degree that EC political and economic dynamics become part of the organizational logic of national politics and policy-making”.¹⁴ Other scholars, like Bürzel applies the concept of Europeanisation to describe the impact of the European Union on the policy-making processes of the Member States, working from top-down – that is, from the Union and its institutions towards the Member States.¹⁵ According to Radaelli, Europeanisation is a process that involves the “creation, diffusion, and institutionalisation of formal and informal rules”, processes, public policy models, styles and shared beliefs and norms. These are initially defined and disseminated through the decision-making processes of the European Union and later incorporated into domestic (both national and sub-national) policy discourses, structures and institutions.¹⁶ Risse and his co-authors defined Europeanisation in the context of European governance. They argue that Europeanisation leads to the emergence and development of different governance

⁸ MANNERS 2002: 235–258.

⁹ KOLLER 2019: 15–29.

¹⁰ KOLLER 2019: 15–29.

¹¹ HAAS 1958; LINDBERG 1963; HOFFMANN 1966: 862–916; TAYLOR 1982: 741–766.

¹² CAPORASO 2008: 25.

¹³ KOLLER 2019: 18.

¹⁴ LADRECH 1994: 69.

¹⁵ BÜRZEL 1999: 574.

¹⁶ RADAELLI 2003: 27–56.



structures at both national and EU levels.¹⁷ Other scholars define Europeanisation simply as “national adaptation to European regional integration”.¹⁸

The 2000s witnessed a significant increase in literature on Europeanisation. The declaration of the Copenhagen criteria as conditions for accession for Central and Eastern European countries, as well as the two Mediterranean countries, has proven to be the effective means to bring the candidate states’ political systems, economies, legal systems and institutions closer to the European Union, i.e. to Europeanise them. The so-called conditionality benchmarking, largely conducted by the European Commission, has resulted in candidate countries stabilising their democracies, establishing functioning market economies, and gradually adapting their legal systems to the *acquis communautaire*. However, conditionality has not remained unchanged for the Big Bang enlargement,¹⁹ since the candidate countries had to adapt to the evolving and thus changing *acquis communautaire*.²⁰

In defining the concept of Europeanisation, a separate branch of the literature is represented by scholars that examine and typologise the external impact of the European integration process, i.e. the impact of the EU on non-member states.²¹ These scholars argue that the European Union can be considered a normative power (NPE = Normative Power Europe) in many respects because it is capable of disseminating European norms, patterns and models outside the EU through a multi-level system of instruments.²² Manners argues that the accession process itself can be interpreted as an effective instrument for asserting the normative power of the European Union. External states that are candidates for accession or aspiring candidates for membership are compelled to adapt to the EU before accession due to conditionality. They must fulfil the requirements of the European Union; otherwise, they will not be admitted to the EU. Other scholars use the term ‘enlargement Europeanisation’ to describe the external dimension of Europeanisation by stressing the external effects of European integration. In their interpretation, the European Union and its institutions, foremost the Commission can be seen as outside actors of the enlargement process which determine the processes of democratisation, economic transformation and legal harmonisation.²³ Their interpretation is very similar to Manners’s, but with the distinction that Manners identifies additional diffusion channels for Europeanisation beyond enlargement. These include international trade agreements, inter-regional agreements and memberships in international organisations.²⁴

Europeanisation, therefore, poses a significant constraint on the road to full membership, which does not cease with membership but takes on a different form thereafter. The credibility of the membership pledge and the factor of time are crucial in this process.

¹⁷ RISSE et al. 2001: 3.

¹⁸ GRAZIANO–VINK 2008: 8–9.

¹⁹ The 2004 and 2007 enlargement waves.

²⁰ GRABBE 2006: 32.

²¹ KOLLER 2019: 19.

²² MANNERS 2008: 45–60.

²³ GRABBE 2006; LŐRINCZNÉ BENCZE 2013; LŐRINCZNÉ BENCZE 2019: 145–159; SCHIMMELFENNIG 2010: 319–339; SCHIMMELFENNIG 2012.

²⁴ MANNERS 2002: 235–258.



If the external state, which is awaiting membership and exerting efforts to attain it, loses faith in the actual occurrence of membership or extends its temporal horizon beyond the foreseeable future, the imperative of Europeanisation will begin to weaken. In the early 2000s, a sense of enlargement fatigue and frustration with the protracted enlargement process could be felt among Central and Eastern Europeans. However, the momentum for Europeanisation eventually prevailed, leading to their actual accession with the inclusion of new members in 2004 and 2007. The Turkish accession process, however, serves as an example of the discrediting of the membership perspective, disillusionment with the accession process, and simultaneously, the loss of the power of Europeanisation.

When interpreting the concept of Europeanisation, we must also consider its multi-directionality.²⁵ Top-down Europeanisation refers to diffusion of certain institutional and policy norms from the EU level towards the political systems of the Member States and external states. On the other hand, the concept of bottom-up Europeanisation means that national political systems, and sometimes external states, can and do influence EU's functioning, policy-making and decisions. For example, top-down Europeanisation was particularly strong in the accession processes of Central and Eastern European countries. In the post-enlargement period, however, the top-down processes have been increasingly accompanied by bottom-up processes of Europeanisation, and the Central and Eastern European members increasingly tried to influence the EU's agenda and legislation on certain policy issues and to take a different position from some EU institutions or other Member States. Consequently, the adaptation phase of Europeanisation was replaced by strong emancipatory tendencies after acquiring full membership.²⁶ In general, during the accession negotiation period, the top-direction of Europeanisation is dominant, which does not exclude the possibility of advocacy. However, upon acquiring full membership, a bottom-up Europeanisation emerges.

The enlargement of the European Union also implies that, post-accession, the new, fully-fledged member states will only be subject to the 'coercive force' of Europeanisation, i.e. conditionality – Europe's normative power – to a limited extent. Therefore, deciding when to admit an external state as a member is a crucial decision for the EU institutions and the Member States. If a state joins at a time when the required level of Europeanisation is insufficient, further enlargement could jeopardise the EU's achievements. The strict entry criteria, along with their systematic monitoring by the European Commission, serve to minimise this risk.

Finally, it is necessary highlighting the three aspects of the process of accession to the European Union and the subsequent attainment of full membership. The policy aspect of European Union (*policy*) involves the operation of a range of institutions and public policy systems (*polities*) that enable the Member States to cooperate on a day-to-day basis with other EU Member States and the institutions of the European Union, and to ensure the effective policy-making and implementation. The third dimension of Europeanisation revolves around politics (*politics*), encompassing political leadership, political strategy, and acting in accordance with the values of a given state.²⁷ In the

²⁵ OLSEN 2002: 921–952.

²⁶ KOLLER 2011: 14–18.

²⁷ ARATÓ–KOLLER 2015: 377–399.



triangle of politics, policy and polity, the rapprochement to the European Union, the conditionality that accompanied the accession process, and the role of member states as full members in the political community of the European Union can be understood. Within this triangle, Europeanisation becomes an interactive process, offering an interpretative framework for political, economic, legal and institutional processes in both current and potential candidate countries. Moreover, upon their accession, it continues to provide an interpretative framework for the meaning of European Union membership.²⁸

By organising the negotiating chapters into six thematic clusters and establishing a priority order among them, with the ‘fundamentals’ opening first and closing last, the European Commission has explicitly stated that, before initiating negotiations on any other policy field, the fundamentals – convergence with the institutional and political structure, and alignment with the values of the European Union – must be demonstrated. In other words, preparedness is primarily assessed based on these fundamentals, specifically the establishment of a Europeanised polity and political alignment to the EU.

This implies that the current top-down conditionality, communicated by the European Commission, puts *polity* in the centre. It necessitates the establishment of an institutional and democratic framework for the rule of law, which not only is imperative but will also significantly influence the candidate countries’ alignment with the European Union in specific *policy* areas. Additionally, the governments of the candidate and potential candidate countries, along with the leaders of the EU Member States, play a crucial role in the process. *Politics* stands out as a key determinant of this ongoing process.

Preparedness of the Western Balkan countries with special focus on the rule of law

The Thessaloniki Summit²⁹ of 21 June 2003 gave the Western Balkans the hope of becoming full members of the European Union. It was a symbolic event important at the time, as it set out to support democratisation and stability in the countries, with the EU providing the opportunity to guide them to complete political transitions and to thrive as functioning democracies with the rule of law in place. However, the last twenty years have shed light on the problem of enlargement policy depending solely on the shared will of the parties, and that if one or the other party does not fully engage in cooperation, accession may be delayed. The countries of the region continue to have different levels of preparedness with regard to the Copenhagen criteria. The revised accession procedure has made the rule of law a priority, with Chapter 23 (Judiciary and Fundamental Rights) and Chapter 24 (Justice, Freedom and Security) the cornerstones. In the following, we set out to analyse the progress made in each of these areas for all the candidate countries.³⁰

²⁸ KOLLER 2019: 23.

²⁹ European Commission 2003.

³⁰ ÖRDÖGH 2022: 12–42.



All states in the Western Balkans are grappling with a hiatus in the area of the rule of law.³¹ Legal regulations are controversial, and their practical implementation falls short of expectations. Political influence is commonly exerted on the independence of the judiciary, and the appointment of prosecutors and judges often results from political bargaining. The financial autonomy of the branch of power is also undermined. The regulation of liberties is adequate, but there are obstacles to the exercise of rights. The right to assemble is guaranteed everywhere, mostly respected by the governments. However, physical violence is commonplace, indicating a lack of a culture of peaceful protests. Different groups face discrimination. Equality for women is not guaranteed, and they are limited in several areas. The LGBTI community is often subject to hate speech, and its rights do not meet European standards either. Minorities are frequently excluded from employment, housing, or education.

In most states, the media is pluralistic, with an appropriate institutional framework. However, they struggle with the significant influence of the political sphere, which is evident in the public sector market. Balanced information is not present in all countries, leading to the outstanding predominance of governing parties. The fight against corruption is the biggest problem in the region, as the established institutions lack adequate human and financial resources. Each special prosecutor's office finds itself regularly bumping into walls due to the scarcity of resources. Thus, the investigation of high-level corruption and accountability is pending in all countries. Politicians in governing parties are becoming untouchable. Although society perceives the presence of corruption, its elimination still awaits. In their rhetoric, individual governments consider the criteria of the rule of law important. However, in practice, they are not handled as priorities, aside from the adoption of action plans.

Albania

Albania applied for membership in 2009 and was granted candidate status in 2014.³² They had to wait until 2023 for the chapters to open, at which point negotiations began. According to the European Commission's opinion,³³ Albania has a moderate level of preparedness in terms of alignment with the EU's *acquis* and European standards in the area of justice and fundamental rights. Implementation of judicial reform has been slow. The vetting process of judges and prosecutors is proceeding well, although the pace of appeal processes needs to be accelerated in the light of the given deadline, with due regard to the quality of the proceedings. As of 6 October 2023, 57% of screening files processed had resulted in dismissal, resignation or termination of mandate. Albanian institutions need to ensure systematic judicial follow-up on screening cases involving forms of criminality. The efficiency of the judicial system and access to justice continues to be affected by delays in proceedings, increased workload, and a large backlog of cases, which remains significant. Progress has been made in filling vacant judicial positions

³¹ ÖRDÖGH 2022: 12–42.

³² VÉGH 2019: 198.

³³ European Commission 2023a.



with the appointment of 40 new judges who were sworn in at the Supreme Judicial Council in October 2023. The Special Anti-Corruption Structure (SPAK) has made progress, investigating several high-level cases involving two former ministers. A new Special Prosecutor General was appointed in December 2022.

Albania has adopted documents regulating fundamental rights and has acceded to relevant international instruments. However, there is a need to intensify overall efforts in implementing the legal and policy framework. As regards the protection of personal data, Albania needs to take urgent measures to prevent recurrence of serious breaches of personal data and to improve the management of personal data. Albania continues to ensure good cooperation with the European Court of Human Rights (ECHR). As of June 2023, 389 cases against Albania were pending before the ECHR. Progress has been made in the use of alternatives to detention, in particular probation services. The use of gender-responsive budgeting has continued to improve. Since January 2022, the Albanian Government has implemented a number of measures to support families, women and vulnerable groups in response to the global crisis caused by the pandemic Covid-19 as well as Russia's war against Ukraine. Financial assistance to victims of domestic violence has been significantly increased. Implementation of the law on gender equality and the National Strategy for Gender Equality has been strengthened. Some progress was also made on the rights of persons with disabilities. Discrimination against LGBTIQ³⁴ people is still very widespread in the Albanian society, especially in terms of access to healthcare, education, justice, employment and housing. Community members continue to experience physical aggression and hate speech, especially on social media. Same-sex marriage is not legally recognised in Albania.

Bosnia and Herzegovina

Bosnia and Herzegovina applied for membership to the European Union in 2016 and received a positive response in December 2022. It is currently waiting for negotiations to pick up. Harmonisation in the areas of implementation of the EU acquis, European standards, justice and fundamental rights is slow, despite the efforts of the country's leadership. Limited progress has been made on the findings of the experts' report³⁵ on the rule of law.

The European Commission considers³⁶ that Bosnia and Herzegovina is lagging far behind in the area of civil justice, and has not made sufficient efforts to remedy this in the recent period. In September 2023, Bosnia and Herzegovina amended the Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina with a view to establishing a system for controlling the asset declarations of judges and prosecutors. Compared to the version agreed with the Venice Commission, the asset control system provided for by the adopted amendments has been weakened. In addition, under the adopted amendments, personal data contained in asset declarations and supporting documents will not be accessible to external experts in charge of the controlling of the functioning and enforcement

³⁴ Lesbian, gay, bisexual, transgender, queer and intersex people.

³⁵ European Commission 2019.

³⁶ European Commission 2023b.



of the asset declaration system. The Council of Ministers has also appointed a monitoring body to oversee the implementation of the national strategy against war crimes. The Constitutional Court has suspended and annulled several legal and political acts adopted by the Republika Srpska. The mandate of two judges of the Constitutional Court expired at the end of 2022 and no replacement has been found. The Assembly of the Republika Srpska has called for the resignation of state-level constitutional judges and legalised the non-implementation of the Constitutional Court's decisions, in violation of the country's constitutional and legal framework. While the High Representative annulled these laws, the authorities of the Republika Srpska decided to implement them anyway. There has been no progress in the fight against corruption, and the necessary legislation and its implementation to ensure effective law enforcement remain lacking.

In August 2023, the Parliament amended the Law on the Ombudsman, designating the institution as the national preventive mechanism against torture and ill-treatment. In 2023, the European Court of Human Rights ruled in six cases (10 in 2022) that Bosnia and Herzegovina had violated the rights guaranteed by the European Convention on Human Rights. These violations concerned the right to a fair trial, the protection of property and the general prohibition of discrimination. This year, a further 303 new applications have been submitted to the ECHR's decision-making body, bringing the total number of applications pending before the Court to 130.

There has been a negative tendency in ensuring freedom of expression. The reintroduction of criminal sanctions for defamation in the Republika Srpska in July 2023 will severely affect civil society, limit freedom of expression and media, and represent a significant step backwards in the protection of fundamental rights. In September 2023, the Assembly of the entity passed a first reading of a draft law targeting civil society groups as foreign agents; if fully adopted, this will be another regrettable and undeniable setback. Freedom of assembly remains restricted in large parts of the country. The country urgently needs to finalise pending constitutional and electoral reforms. Significant changes are needed to ensure that all citizens can effectively exercise their right to vote and to stand for election, bringing the country's constitutional and legislative framework in line with the ECHR *Sejdić-Finci*³⁷ case law. End segregated education to ensure non-discriminatory, inclusive and quality education for all, including by overcoming the practice of "two schools under one roof". Gender-based violence, ill-treatment of detainees and inadequate protection of minorities, including Roma, remain a concern. The Gender Action Plan was adopted in October 2023. The Council of Ministers adopted the Action Plan on the Rights of LGBTIQI People in July 2022. While legislation contains provisions on hate crimes based on sexual orientation and gender identity, the prosecution of hate crimes and hate speech remains insufficient. No steps have been taken to recognise and ensure the social and economic rights of same-sex couples, including the right to family life. In March 2023, local Serbian police banned the Pride march in Banja Luka, failed to protect activists from physical attacks and failed to prosecute perpetrators.

³⁷ KEMENSZKY 2019: 229.



Kosovo

Kosovo's journey has been a long one³⁸ up until its application to join the EU in December 2022. Its candidate status is still pending, partly because five Member States do not recognise it as an independent state,³⁹ and partly because the Belgrade–Pristina dialogue has not yet brought a satisfactory clarification of the relationship between the two sides.⁴⁰ Kosovo is lagging behind in its preparations to apply the EU *acquis*, with limited progress in the functioning of the judiciary and in investigations and prosecutions of organised crime and high-level corruption cases. Further efforts are needed to strengthen freedom of expression.

The European Commission considers⁴¹ that the country has made little progress, despite an increase in the rate of effective trials, faster pace of trials and improved recruitment of judges and prosecutors. The human rights situation and the organisation of the administration of justice remain weak. The National Central Criminal Records System has been established and has been available online since December 2022, allowing the public to consult criminal records online. The government's decision to reduce the salaries of judges and prosecutors and the subsequent law on salaries raise concerns about the independence of the judiciary. In September 2022, the government submitted a bill on integrity checks for judges and prosecutors to parliament, which established an ad hoc committee to finalise constitutional amendments and relevant legislation on integrity checks for senior positions within the judiciary. Kosovo should ensure that the Venice Commission is consulted again during the process of finalising draft constitutional amendments and legislation related to judicial reform. Kosovo has made limited progress in the fight against corruption. Kosovo has adopted a new regulatory framework for the control of political parties and campaign financing, but implementation is pending, including the Law on the Prevention of Corruption Agency, the Law on Asset Declaration and the Law on Political Parties and Campaign Financing.

In general, the legal framework guarantees the protection of fundamental rights and is in line with European standards. The capacity of the authorities to monitor the implementation of fundamental rights and legislation has improved and the implementation rate of the Ombudsman's recommendations has increased. Parliament adopted the Law on Prevention and Protection against Domestic Violence and Violence against Women and Gender-Based Violence. Despite these positive developments, further efforts are needed to ensure effective implementation of fundamental rights. The government's capacity to streamline and monitor fundamental rights issues requires further improvements. Fundamental rights issues need to be placed higher on the political agenda and consequently more human and financial resources need to be allocated to the relevant institutions. Kosovo should continue its efforts to ensure equal access to institutions, quality services, employment and education for persons with disabilities. The Constitution prohibits discrimination on the basis of sexual orientation or gender. The draft

³⁸ REMÉNYI 2019: 237–252.

³⁹ Spain, Romania, Greece, Cyprus and Slovakia.

⁴⁰ ÖRDÖGH 2020: 227–248.

⁴¹ European Commission 2023c.



Civil Code containing provisions on civil partnerships for same-sex couples has not been adopted by Parliament. Concerns remain about the use of homophobic language by public figures, political actors and the media against same-sex NGOs. Suicide rates and incidents of domestic violence among minorities have increased. As regards legal gender recognition, the process of amending the law on civil status is pending. Further training is needed for law enforcement officials, in particular on transgender rights, hate crime classification and secondary victimisation.

Montenegro

Montenegro applied for candidate status in 2008, became a candidate member in 2010 and has been in accession negotiations since 2012.⁴² On the judiciary, the European Commission considers⁴³ that the country is moderately prepared to apply the EU acquis and European standards. No progress has been made on judicial reform, which continues to face a deep institutional crisis. The level of corruption is a cause for concern and is widespread in many areas, including state structures. Limited progress has been made in the prevention of corruption and the legislative and policy framework remains to be fully modernised. Several high-profile corruption cases are under investigation. Montenegro needs a strong and clear criminal justice response. The country is meeting its obligations under international human rights conventions as regards fundamental rights. However, challenges remain in the effective implementation of legislation, in particular for the most vulnerable. The continued increase in cases of femicide and gender-based violence remains a serious concern. The full and effective protection of journalists is steadily improving, but tangible results have not yet been achieved in relation to past attacks.

The legislative and institutional framework on fundamental rights is adequate, but further efforts are needed to fully implement it. Some legislative changes are also needed, in particular in the area of non-discrimination. As in previous years, polarisation and division in society remain. The most vulnerable groups in society (including Roma and Egyptians, people with disabilities, LGBTQI people) continue to experience high levels of discrimination, hate speech and hate crime. Access to justice in administrative and judicial proceedings needs to be improved, especially for vulnerable groups.

North Macedonia

North Macedonia applied for EU membership in 2004 and was granted candidate status in 2005,⁴⁴ but negotiations could not start due to the Greek–Macedonian name dispute and then the Bulgarian veto on North Macedonia joining the EU.

⁴² VARGA-KOCSICSKA 2019: 164.

⁴³ European Commission 2023d.

⁴⁴ BRAUN 2019: 207.



According to the European Commission,⁴⁵ the country's judicial system is inadequate and no progress has been made in recent years. The Judicial Council should strive to protect the integrity and independence of judges and institutions and resist any outside influence. The controversial removal of the President of the Judicial Council has raised concerns about undue political influence. The adoption of a new judicial reform strategy has been delayed. Limited progress has been made in implementing human rights strategies for the judicial services. Lack of measures to address the impact of scheduled retirements has affected effectiveness. Corruption remains widespread and a cause for concern in a number of areas, which have not been addressed.

The legal framework for the protection of fundamental rights is partly aligned with the EU acquis and relevant European standards. The country continues to fulfil its general obligations in relation to fundamental rights, but legislation needs to be systematically implemented. The Penal Code on gender-based violence has been amended. Persons with disabilities continue to face direct and indirect discrimination, social exclusion and barriers. The situation in prisons remains serious. The failure to take into account the recommendations of the European Committee for the Prevention of Torture on the treatment of prisoners and convicted persons is a matter of serious concern. Conditions of detention need to be improved as a matter of urgency. Particular attention must be paid to promoting non-discrimination and to increasing the effectiveness of the fight against hate crime and hate speech. The mechanism for external oversight of the police, including the prison police, is still not fully operational, and three representatives of civil society organisations have yet to be selected by parliament. The enacted amendments to the Law on Civil Registry pave the way for resolving cases of statelessness and meeting the country's international obligations. Negative stereotypes and hate speech against LGBTIQ people are prevalent in the society. No progress has been made in implementing the ECHR judgment of January 2019 on the legal recognition of gender by amending the Law on Civil Registry. The legal framework does not allow for the formal recognition of same-sex couples. No progress has been made in investigating the attacks on the LGBTIQ support centre in 2012, 2013 and 2014.

Serbia

Serbia indicated its intention to join in 2009 and was granted candidate status in 2012. Negotiations were launched in 2014, with the real chapter openings starting in 2016.⁴⁶ According to the European Commission,⁴⁷ the country's leadership has accepted some of the earlier proposals. On 9 February 2023, Serbia took an important step towards ensuring the independence and accountability of the judiciary by the timely adoption of the five laws implementing the 2022 constitutional amendments, while two implementing laws are still to be adopted: the Law on the Judicial Council and the law on the office and

⁴⁵ European Commission 2023e.

⁴⁶ ÖRDÖGH 2019a: 177.

⁴⁷ European Commission 2023f.



territorial jurisdiction of the public prosecution. The Venice Commission issued three opinions, which were generally positive in their assessment of the legislation, recognising the transparency of the process. Delays persist in the impartiality, accountability, efficiency and professionalism of the judiciary, access to justice and high quality training. The current system of recruitment, transfer and promotion of judges and prosecutors has not yet been reviewed to ensure that careers are fully merit-based. The situation remains a cause for concern as regards undue political pressure on the judiciary. Serbia has still not shown a real commitment to investigating and prosecuting war crimes. There continues to be public criticism of the judgements of the International Criminal Tribunal for the former Yugoslavia (ICTY). Many Serbian political parties, politicians and media continue to support convicted war criminals and provide them with a public platform.

Serbia has the legal and institutional framework to ensure adherence to fundamental rights. This framework must be implemented consistently and effectively. The Ombudsman was elected in April 2023 without cross-party support. The impartiality of the Ombudsman still needs to be ensured. There is a significant delay in recruiting additional staff for the Commissioner for Information of Public Importance and Personal Data Protection. The procedure for the implementation of the decisions of the European Court of Human Rights needs to be further regulated, including the role of the Serbian Government Representative before the Court.

Implementation of the new strategies and action plans on gender equality, anti-discrimination and Roma inclusion has started. Regarding LGBTQI rights, a Pride march took place in Belgrade in September 2023 without incident. No progress has been made on the draft law on same-sex partnerships initiated by the Ministry of Human and Minority Rights and Social Dialogue, nor on the Ombudsman's proposal to regulate the legal recognition of gender, although it was supported in the previous anti-discrimination strategy.

Preparedness of the newly declared candidates – Georgia, Moldova, Ukraine

Ukraine, Moldova and Georgia have long been part of the European Neighbourhood Policy (ENP), including the Eastern Partnership, and for a long time the question of accession to the EU was not seriously considered. Nor has the European Union sought to integrate the partner countries, which have a number of political, economic and even geographical issues. However, the escalation of the Russian–Ukrainian war in 2022 has transformed world politics and fears of Russia have increased. It was for these reasons that all three countries decided to apply for EU membership. Moldova formally applied for membership on 3 March 2022, Ukraine on 28 February 2023 and Georgia on 3 March 2023. The European Commission recommended granting candidate status to Moldova and Ukraine, and at the meeting of the Heads of State and Government on 23 June 2023, these two countries were given the green light, while Georgia concluded an agreement to



carry out further tasks in order to obtain candidate status. As regards these new states, the European Council decided on 14–15 December 2023 to open accession negotiations with Ukraine and Moldova.⁴⁸

Georgia

The European Commission has identified a set of twelve priorities for reform in the country in its opinion on Georgia's application for EU membership.⁴⁹ These are as follows: 1. Reducing political polarisation; 2. Implementing the recommendations of the OSCE/Venice Commission; 3. Comprehensive judicial reform; 4. Fighting corruption; 5. Deoligarchisation; 6. Fighting organised crime; 7. Ensuring media freedom; 8. Strengthen the protection of human rights; 9. Enhance gender equality and consolidate efforts to combat violence against women; 10. Involve civil society in decision-making; 11. Adopt legislation to ensure that Georgian courts proactively take into account the European Court of Human Rights judgments in their deliberations; 12. Ensure the independence of the Ombudsman.

Four consecutive waves of judicial reform have improved the legal framework for the functioning, capacity and organisation of the judiciary. However, progress in implementing judicial reforms has stalled, and in some cases there have been setbacks. Public perception of the independence of the judiciary has deteriorated. A strategy for judicial reform after 2020, necessary to move forward, has not yet been adopted.

The constitutional and legislative framework guarantees in principle the independence and impartiality of the judiciary, including specific guarantees for judges.

Georgia has taken significant steps to curb corruption and participates in most anti-corruption institutions. A significant number of corruption cases involving low and mid-ranking officials have been successfully prosecuted, notably in the area of public procurement. It has a similar track record in the area of cooperation against organised crime, participating in the necessary international protocols (e.g. CEPOL). The police arrested and prosecuted 152 cyber criminals.

Concerning fundamental rights, the country has ratified the main international human rights instruments, including the European Convention on Human Rights, the UN Convention on the Rights of the Child and its Optional Protocols, the Convention on the Elimination of All Forms of Violence against Women and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). The legal and institutional framework governing fundamental rights is largely in place and the laws follow European and international standards. There are ongoing efforts to raise awareness of gender equality and to address existing inequalities that prevent women from fully exercising their equal rights. 19.3% of the members of parliament elected in 2021 will be women. Gender-based violence rates, including domestic violence and femicide, remain high. Women continue to face inequality in the labour market; the gender pay gap persists, with women earning on

⁴⁸ European Council 2023.

⁴⁹ European Commission 2022a.



average 36.2% less than men in 2019. More needs to be done to protect the rights of LGBTIQI people, especially in light of the events of July 2021.⁵⁰ The Code of Rights of the Child, which sets out the legal framework for the protection of children's rights, has been adopted. People with disabilities remain one of the most marginalised groups. The European Council granted Georgia candidate status on 15 December 2015.

Moldova

In 2022, the European Commission prepared a report on Moldova's level of preparation, which proposed measures in nine additional areas in exchange for membership: 1. Comprehensive judicial reform; 2. Implementation of OSCE/UN Committee recommendations; 3. Fight against corruption; 4. Deoligarchisation; 5. Fight against organised crime; 6. Administrative reform; 7. Stability of public finances; 8. Involvement of civil society in decision-making; 9. Strengthening the protection of human rights.⁵¹ As can be seen, a significant number of the measures relate to the rule of law, so progress in this area was required for the candidacy.

In its opinion, the Committee noted⁵² that Moldova has succeeded in implementing reforms in the police and judiciary, but needs to step up its efforts to address political interference and trade disputes. In the judiciary, Moldova has implemented a number of judicial reforms since 2009 to ensure independence, efficiency and effectiveness. Judicial reforms are a priority in the current government's programme. Moldova has adopted a comprehensive strategy for the independence and integrity of the judicial sector for the period 2022–2025. The constitutional and legal framework of the judiciary is largely in line with European standards. Law enforcement and judicial structures have been consolidated. The constitutional amendments affecting the functioning of the judiciary entered into force in April 2022. The amendments have significantly improved the independence, accountability and efficiency of the judiciary and judicial administration, in line with the recommendations of the Council of Europe. The opinion notes that the appointment of judges and prosecutors is still not based on fully objective criteria. In addition, decisions affecting the management and leadership of the Moldovan prosecution are sometimes politically motivated, such as the removal, (temporary) replacement and arrest of the anti-corruption prosecutor in 2021. The necessary legislative framework to fight corruption is in place and a specialised body to investigate this type of cases has been set up, as confirmed by GRECO surveys.⁵³

In the field of fundamental rights, Moldova has ratified the main international human rights instruments, including the Istanbul Convention, the European Charter for Regional or Minority Languages, the European Convention on the Exercise of Children's Rights and the European Convention on Human Rights (although it has not ratified its

⁵⁰ In July 2021, violent groups stormed the community centre of Pride organisers, where rainbow flags were torn apart and journalists were injured. The organisers called off that year's parade, citing the violence.

⁵¹ European Commission s. a.

⁵² European Commission 2022b.

⁵³ GRECO 2023.



12th instrument). The country has ratified the UN Convention on the Rights of the Child and two of its Optional Protocols, but not the third (on communication procedures) or the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities. The capacity of institutions responsible for the protection and promotion of human rights and the implementation of existing strategies and action plans is limited, which hampers the effective protection of human rights. In particular, the National Council is seriously underperforming in preventing discrimination and ensuring equality.

Moldova has adopted a new human rights and democracy strategy for the period 2021–2024. The key priorities are gender equality/women's rights, respect for human rights in the criminal justice system, guaranteeing the integrity of electoral processes, and supporting independent media, access to information and combating disinformation. Long pending legislation on hate crimes has been adopted. More needs to be done to combat hate speech and discrimination based on sexual orientation and gender identity, as well as gender-based violence. As regards equality for women in the labour market, the legal framework no longer prohibits access to certain professions, but women continue to face de facto barriers and age discrimination. A gender pay gap persists in Moldova, with women overall earning 14.1% less than men in 2019 (the same as the EU average) and 39.6% of parliamentarians elected in 2021 being women (above the EU average). More needs to be done to protect the rights of LGBTIQ people. Employment discrimination based on sexual orientation is prohibited by law, but social discrimination persists. Pursuant to the decision of the European Council of 15 December 2023, negotiations can begin with Moldova.

Ukraine

Similarly to the previously mentioned countries, for Ukraine, seven priorities were identified in the European Commission's report.⁵⁴ They are as follows: 1. Adopting a new law on the election of constitutional judges; 2. Electing members of the Supreme Judicial Council; 3. Stepping up the fight against corruption; 4. Stepping up the fight against money laundering; 5. Deoligarchisation; 6. Ensuring media freedom; 7. Reforming the legal framework governing the situation of national minorities.

As regards the judiciary, Ukraine has started to reform the judicial sector, with the right strategic approach. One of the cornerstones is the Supreme Judicial Council, the main body responsible for the self-governance of the judiciary. The constitutional and legislative framework guarantees the independence and impartiality of the judiciary. Judges and prosecutors are appointed in principle on the basis of merit and objective criteria, following public recruitment competitions. However, unjustified internal and external attempts to interfere in the judiciary remain a cause for concern. The judiciary is facing a serious shortage of judges, as the new examination system and integrity requirements have led to the resignation of around 2,000 judges, while the body specialised in the appointment of new judges was dissolved in 2019 and no new appointments have been made. The establishment of the Supreme Anti-Corruption Court is an important

⁵⁴ European Commission 2022c.



innovation in the fight against corruption in the judiciary, partly in response to pressure from civil society and partly from the international community.

The country is a member of all key international anti-corruption conventions and organisations. Following an extensive drafting process, a new national anti-corruption strategy has been developed, focusing on relevant sectors, although the final adoption by the legislature is still pending. The number of completed investigations into crimes committed by organised groups and criminal organisations has slowly increased in recent years, but remains relatively low (2021 – 499 cases; 2020 – 377 cases; 2019 – 293 cases), especially in relation to allegations of human trafficking (2021 – 45 cases; 2020 – 57 cases; 2019 – 10 cases).

The legal and institutional framework for fundamental rights is in place and laws generally adhere to the European and international standards. In 2021, Ukraine adopted a new national human rights strategy for the period up to 2023 to strengthen efforts to harmonise administrative structures and procedures, but the same is missing for the period from 2023 onwards.

Ukraine is gradually making progress towards gender equality. Women's political representation is on the rise (20.5% of parliamentarians elected in 2019 are women). The gender pay gap persists, with women overall earning 23% less than men in 2019. Ukraine has not ratified the Istanbul Convention, while gender-based violence persists. There is a growing level of tolerance of LGBTIQI people in the Ukrainian society.

Ukraine has taken various legal initiatives to improve the rights of children, ratified the UN Convention on the Rights of the Child, and supported the Paris commitments to protect children from unlawful recruitment or use by armed groups. At the same time, Ukraine has one of the highest rates of institutionalisation of children in the world (around 1.5% of all children), which is a cause for serious concern and needs to be urgently addressed. Similarly, persons with disabilities (about 6% of the population) remain under-protected. Pursuant to the decision of the European Council of 15 December 2023, negotiations can begin with Ukraine.

Conclusions

As demonstrated in the overview of candidates' preparedness outlined in Chapters 23 and 24, it is evident that countries intending to join the European Union have been pursuing legal harmonisation with varying degrees of intensity (see Annex 1). The Western Balkan states have shown progress in recent years concerning Chapters 23 and 24, but no profound changes have taken place in any of the countries. Progress has been made in the field of justice, but each country still faces numerous problems. The situation of minorities, the disabled and women remains unsettled, indicating a lack of fundamental freedoms. The greatest lag can be identified in the fight against corruption. When comparing the group of Western Balkan states with the countries of the Eastern Partnership, it becomes clear that the latter are at an even greater disadvantage in terms of fulfilling the two chapters, and they still have a long way to go before achieving full-fledged legal harmonisation. Consequently, the process of Europeanisation is not progressing at the pace needed to achieve membership very soon. There are a number of reasons for this,



including internal political tensions and disillusionment with the European Union and its enlargement policy. The EU's enlargement perspective apparently has lost credibility over the last decade mainly due to the fact that less clear procedural rules have been laid down with unclear expectations in the examined chapters. While the European Commission has been continuously insisting on delivering results in the cluster of 'fundamentals' and necessitates legal, institutional and democratic reforms, many of the rule of law requirements are not met in most of the candidate countries. The core of the enlargement policy currently revolves around Chapters 23 and 24, where both the Western Balkans and the countries in the neighbourhood are lagging behind. At present, it seems that the process of enlargement has stalled because the 'fundamentals' dictated by the European Union have not been met, the polities of the candidate states have not been sufficiently Europeanised, therefore, the enlargement process cannot move on to wider policy areas. Although the process of top-down Europeanisation continues, and the European Commission is constantly making proposals to the candidate states on the direction of the required reforms, they are slow in implementing them or they do not implement them at all. Accordingly, the expected date of their accession is constantly being pushed back. The earlier prospect of the next wave of enlargement in 2025 has already dissipated, with French President Emmanuel Macron mentioning 2030 as the target year, which would result in a European Union of 32 or 35 members. Finally, the quickly acquired candidate status of Ukraine and Moldova and the recent decision of opening of negotiations with them show that politics is the main determinant of enlargement. As for the people in the Western Balkans, their disappointment stems from waiting several years for candidate status or the opening of negotiations, while Ukraine and Moldova were able to achieve the same in a year or less.

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Annex 1: Enlargement Countries

Country	Status	Stabilisation and Association Agreement		Accession							
		Signing	Effective from	Submitting application for membership	Enter candidate status	Start of negotiations	Number of chapters opened	Number of chapters provisionally closed	Chapters 23 and 24 opened	Chapters 23 and 24 closed	
Iceland*	Withdrawn candidate membership*	-	-	17.07.2009	17.06.2010.	27.06.2011.	27	11	23: 12.12.2011. 24: -	23: 12.12.2011. 24: -	
Ukraine	Candidate member	-	-	28.12.2022	23.06.2022.	-	-	-	-	-	
Moldova	Candidate member	-	-	03.03.2022	23.06.2022.	-	-	-	-	-	
Georgia	Candidate member	-	-	03.03.2022	15.12.2023.	-	-	-	-	-	
Türkiye	Candidate member	-	-	01.12.1964	14.04.1987.	12.12.1999.	18	1	-	-	
Montenegro	Candidate member	10.10.2005.	01.05.2010.	15.12.2008	17.12.2010.	29.06.2012.	33	3	23: 18.12.2013. 24: 18.12.2013	23: - 24: -	
Serbia	Candidate member	10.10.2005.	01.09.2013.	22.12.2009	01.03.2012.	21.01.2014.	22	2	23: 18.07.2016. 24: 18.07.2016.	23: - 24: -	
North Macedonia	Candidate member	15.04.2000.	01.04.2004.	22.03.2004	17.12.2005.	19.07.2022.	-	-	-	-	
Albania	Candidate member	31.01.2003.	01.05.2009.	28.04.2009	24.06.2014.	19.07.2022.	-	-	-	-	
Bosnia-Herzegovina	Candidate member	25.11.2005.	01.06.2015.	15.02.2016.	15.12.2022.	-	-	-	-	-	
Kosovo	Potential candidate member	28.10.2013.	01.04.2016.	15.12.2022.	-	-	-	-	-	-	

Note: * The government of Iceland withdrew its candidate membership application on 12 March 2015.
Source: Compiled by the authors based on ÖRDÖGH 2019b: 52–56; data accessed from the official website of the European Union.