

Stabilitocracy as the Pitfall for Post-war Ukraine: A Lesson from the Western Balkans

Benjamin Nurkić

PhD candidate, Faculty of Law University of Tuzla, member of the Constitutional Committee of the House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina; correspondence address: Muhameda Hevajje Uskufije 7; e-mail: bnurkic@bih.net.ba

 <https://orcid.org/0000-0002-8906-2288>

Keywords:
stabilitocracy,
rule of law,
Ukraine,
Western Balkans,
European Union

Abstract: This paper aims to detect possible pitfalls for post-war Ukraine with regard to establishing the rule of law and the path to joining the EU. Since countries in the Western Balkans were in a similar situation to that Ukraine is facing nowadays, the author explains what Ukraine should learn from their post-war experiences. The author identifies the main pitfall for Ukraine after the Russian aggression ends, which is stabilitocracy. The author then suggests what the post-war strategy for Ukraine should be, and what should be done to avoid the “stabilitocratization” of Ukraine.

1. Introduction

Ukraine is still fighting to liberate the whole of its territory from the Russian army. Nobody can be sure how long the war will continue, and what the consequences of this war will be in the context of the global security system. However, sooner or later the war will end. Ukraine has already begun its path to membership in the European Union (EU) and this paper suggests what pitfall Ukraine should avoid on this path. Western Balkans (WB) countries¹ have already faced many of the challenges that are expected to be

¹ WB countries are Albania, Bosnia and Herzegovina, North Macedonia, Montenegro, (Kosovo), and Serbia.

faced by Ukraine.² In the context of the path to EU membership, the WB is known for its “long-waiting time” for the accession to the EU family. Yet, after Croatia successfully became a member state of the EU, other WB countries are still waiting for the next enlargement of the EU. Meanwhile, Albania (2009), Montenegro (2017), and North Macedonia (2020) became members of the North Atlantic Treaty Organization (NATO). So, the current situation in the WB is that the above-mentioned countries are members of NATO but not the EU, and Bosnia and Herzegovina and Serbia are not members of NATO or the EU. Regarding the path to EU membership of WB countries, Montenegro has been the candidate for accession since 2010, Serbia since 2012, Albania since 2014, and Bosnia and Herzegovina since 2022. Yet, the paths of WB countries toward membership in the EU are uncertain.³

Ukraine became the candidate state in 2022, and in December 2023, it opened negotiations with the EU. In this early phase of Ukraine’s EU membership path, it seems that the EU opened a fast-track procedure for Ukraine. From this point of view, many politicians and advocators of the EU enlargement applaud this approach.⁴ However, this paper considers why this approach will not necessarily ensure positive results for Ukraine, on the EU path, and in general, and, at the same time, presents what is the main pitfall for Ukraine in the near future in the context of accession to the EU. In the absence of the rule of law, fulfilling the EU’s conditions would lead to long-wait accession like in WB countries. Thus, this paper argues that for Ukraine the first aim should be establishing the rule of law, as the main precondition for accession to the EU family.

² See: Arolda Elbasani, “Europeanization Travels to the Western Balkans: Enlargement Strategy, Domestic Obstacles and Diverging Reforms,” in *European Integration and Transformation in the Western Balkans: Europeanization or Business as Usual*, ed. Arolda Elbasani (Oxon: Routledge, 2013), 3–22.

³ There is no consensus among EU member states on accession of new countries. Moreover, EU officials and scholars are unsure about the EU enlargement in the WB.

⁴ “Zelensky Hails ‘Victory for Ukraine’ as EU Agrees to Open Accession Talks,” France 24, accessed December 17, 2023, <https://www.france24.com/en/live-news/20231214-%F0%9F%94%B4-eu-leaders-agree-to-open-accession-talks-with-ukraine>.

2. The EU Enlargement and the Rule of Law: Evidence from the WB

On the first reading of the thesis of this paper, a reader can ask, why establishing the rule of law in Ukraine should be prioritized over Ukraine's accession to the EU. In other words, the EU enlargement and establishing the rule of law are ordinarily regarded as processes that overlap. More precisely, the EU requires, among other things, that a candidate state must attain a high level of compliance with the rule of law before becoming a member of the EU.⁵ As Ardit Memeti points out, the rule of law represents one of the crucial criteria for accession to the EU.⁶ In that sense, the EU's conditions regarding the rule of law have been seen as the guideline for candidate states in the process of establishing the rule of law. This premise that EU conditions *per se* lead to the rule of law manifested as false in the case of the WB.⁷ For example, WB countries such as Albania (2020), Montenegro (2012), North Macedonia (2020), and Serbia (2013) have already opened negotiations with the EU, and they are much closer to becoming member states than Bosnia and Herzegovina (which has still not opened negotiations), and Kosovo (which is not formally a candidate state yet). In accordance with the first premise (that EU conditions lead to the rule of law), Albania, Montenegro, North Macedonia, and Serbia ought to have made more progress regarding the rule of law than Bosnia and Herzegovina and Kosovo. The Rule of Law Index measures the level of compliance with the rule of law in several segments such as constraints on government power, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice, and criminal justice.⁸ Hence, the Rule of Law Index indicates compelling data about the level of rule of law in WB countries for 2023.

⁵ See: Dimitry Kochenov, "The EU and the Rule of Law – Naïveté or a Grand Design?," in *Constitutionalism and the Rule of Law Bridging Idealism and Realism*, eds. Maurice Adams, Anne Meuwese, and Ernst Hirsch Ballin (Cambridge: Cambridge University Press, 2017), 419–45.

⁶ Ardit Memeti, "Rule of Law through Judicial Reform: A Key to the EU Accession of the Western Balkans," *Contemporary Southeastern Europe* 1, no. 1 (2014): 58–67.

⁷ On the reason why the EU is failing to establish the rule of law in the WB, see: Marko Kmezić, "Rule of Law and Democracy in the Western Balkans: Addressing the Gap Between Policies and Practice," *Southeast European and Black Sea Studies* 20, no. 1 (2020): 183–98.

⁸ WJP Rule of Law Index 2023, accessed December 18, 2023, <https://worldjusticeproject.org/rule-of-law-index/global>.

According to the Index, Montenegro is ranked in 57th place with an overall score of 0.56,⁹ and at the same time, Kosovo is ranked in 58th place¹⁰ with the same score. Albania is ranked in 91st place¹¹ with an overall score of 0.48, and Serbia is ranked in 93rd place¹² with the same score. Bosnia and Herzegovina for example is ranked in 75th place with an overall score of 0.51.¹³ North Macedonia is ranked in 67th place with an overall score of 0.53.¹⁴ This data reveals how countries from the WB that are formally closer to the EU do not have a higher level of compliance with the rule of law than Bosnia and Herzegovina and Kosovo. Particularly worrying is the decline in compliance with the rule of law in Albania and Serbia, both long-time EU candidates. In a more detailed manner, all WB countries have the worst results regarding corruption, civil and criminal justice, transparency of government, constraints of government power, regulatory enforcement, and fundamental rights. On the other hand, WB countries have the best result in order and security. Of course, this paper does not argue that the Rule of Law Index perfectly presents the situation regarding the rule of law in the WB. However, the Rule of Law Index reveals valuable data for analyzing the post-conflict building of the rule of law in the WB. This Index displays two main segments of the rule of law; the first being stability and security, and the second being human rights and freedoms, transparency, civil and criminal justice, and control over government. It seems that in its promotion of the rule of law in the WB, the EU has neglected the second segment of the rule of law for the sake of stability and security. Thus, as Kmezić points out, the promotion of the rule

⁹ WJP Rule of Law Index 2023: Montenegro, accessed December 18, 2023, <https://worldjusticeproject.org/rule-of-law-index/global/2023/Montenegro>.

¹⁰ WJP Rule of Law Index 2023: Kosovo, accessed December 18, 2023, <https://worldjusticeproject.org/rule-of-law-index/global/2023/Kosovo>.

¹¹ WJP Rule of Law Index 2023: Albania, accessed December 18, 2023, <https://worldjusticeproject.org/rule-of-law-index/global/2023/Albania>.

¹² WJP Rule of Law Index 2023: Serbia, accessed December 18, 2023, <https://worldjusticeproject.org/rule-of-law-index/global/2023/Serbia>.

¹³ WJP Rule of Law Index 2023: Bosnia and Herzegovina, accessed December 18, 2023, <https://worldjusticeproject.org/rule-of-law-index/global/2023/Bosnia%20and%20Herzegovina>.

¹⁴ WJP Rule of Law Index 2023: North Macedonia, accessed December 18, 2023, <https://worldjusticeproject.org/rule-of-law-index/global/2023/North%20Macedonia>.

of law in the WB has led to stabilitocratization, rather than to democratization.¹⁵ Therefore, we can conclude that in the first, the evidence from the WB debunks the premise that the conditions for EU membership *per se* lead to compliance with the rule of law. Additionally, the Rule of Law Index shows us that WB countries attained an acceptable level of stability, under the influence of the EU, but they did not attain significant reform regarding human rights, civil and criminal justice, constraint of government, and transparency of public institutions.

3. What Went Wrong in the WB? The Pitfall of Stabilitocracy

What went wrong with the EU enlargement in the WB? As has been previously explained, the EU did not succeed in establishing the rule of law in the WB. Of course, the political elites of WB countries also obstructed the process of establishing the rule of law. The problem with the EU approach regarding the rule of law in the WB is that EU officials agreed to cooperate with political leaders of WB countries that obstruct building the rule of law. In other words, EU officials ostensibly negotiate the EU path with WB politicians, who are more in love with authoritarianism than with democracy. The consequences of this approach of the EU are the decline of the rule of law and deadlock on the path to EU membership for WB countries. Unfortunately, the WB as well as the EU have fallen into the trap of stabilitocracy. Because the term “stabilitocracy” was coined in particular to describe and explain the EU’s approach to the WB, this paper needs to offer a brief definition of this term.

The term stabilitocracy is derived from the Latin word *stabilis* meaning firm and Greek word *kratia*, meaning to rule. Stability is usually associated with the systems which maintain or achieve the state of balance after the cessation of the influence of the causes which previously disturbed such balance. Here we primarily refer to stability in (foreign) political context. When the term stabilitocracy is analysed in terms of the words composing it, then such a compound word should indicate the rule of stability.¹⁶

¹⁵ Marko Kmezić, “EU Rule of Law Conditionality: Democracy or ‘Stabilitocracy’ Promotion in the Western Balkans,” in *The Europeanisation of the Western Balkans A Failure of EU Conditionality?*, eds. Jelena Džankić, Soeren Keil, and Marko Kmezić (Cham: Springer, 2019), 87–110.

¹⁶ Zoran Lutovac, *Populism, Stabilitocracy and Multiculturalism* (Belgrade: Institute of Social Sciences, 2020), 145.

Thus, there are two main features of stabilitocracy. The first is flawed stability established by a semi-authoritarian regime, and the second is the foreign legitimacy of this model of ruling.¹⁷ Flawed stability is featured by the rule of political parties and para-legal actors. In this type of ruling, stability is not guaranteed by state institutions, but by a fragile balance between political leaders and agents of political parties. Thus, state institutions do not have a practical role in internal affairs, because their powers were taken over by political parties. On the other hand, legitimacy for all actions that guarantee stability in the region gives the EU false perception of stability in the region. In practice, thus, EU officials rather cooperate with semi-authoritarian leaders of WB countries, in exchange for guaranteed stability, than endorse politics that truly serve democracy. WB politicians accepted this EU approach to creating legitimacy for their long-term ruling in their countries, like Aleksandar Vučić in Serbia and, so far, Mile Đukanović in Montenegro.¹⁸ In the political context, this satisfied the interest of WB political leaders, who ostensibly seek accession to the EU (but in fact, they do not), and the EU that manifestly wants WB countries in the EU family, but in fact, it is not so much interested in enlargement in the WB. So far, the WB has been a stable and secure region. In this context, Bieber explains, this “chasm between formal commitment to EU membership and authoritarianism at home undermined the assumption of the simultaneity of pro-EU positions and democracy. It is this gap that enabled the rise of stabilitocracy.”¹⁹ In other words, WB political leaders are pro-West and pro-EU abroad, and authoritarian at home.

¹⁷ Florian Bieber, “What Is a Stabilitocracy?,” accessed December 18, 2023, <https://biepag.eu/article/what-is-a-stabilitocracy/>.

¹⁸ Srđa Pavlović, “Montenegro’s ‘Stabilitocracy’: The West’s Support of Đukanović Is Damaging the Prospects of Democratic Change,” accessed December 18, 2023, <https://blogs.lse.ac.uk/europpblog/2016/12/23/montenegros-stabilitocracy-how-the-wests-support-of-dukanovic-is-damaging-the-prospects-of-democratic-change/>; Srđa Pavlović, “West Is Best: How ‘Stabilitocracy’ Undermines Democracy Building In the Balkans,” accessed December 18, 2023, <https://blogs.lse.ac.uk/europpblog/2017/05/05/west-is-best-how-stabilitocracy-undermines-democracy-building-in-the-balkans/>; Claudia Laštro, Florian Bieber, and Jovana Marović, “Mechanisms of Dominance: Understanding 30 Years in Power of Montenegro’s Democratic Party of Socialists,” *Comparative Southeast European Studies* 71, no. 2 (2023): 210–36.

¹⁹ Florian Bieber, *The Rise of Authoritarianism in the Western Balkans* (Cham: Springer, 2020), 101.

The previous section has shown all segments of the rule of law where WB countries attain the worst results. However, all WB countries show significant results in the segment of security and stability. This is the direct consequence of the stabilitocratic approach of the EU in the WB. Moreover, the EU and WB political leaders sacrificed all other segments of the rule of law such as civil and criminal justice, or respecting human rights, to preserve peace in the region. As Lutovac points out, “stabilitocracy is designed to preserve peace, even at the expense of liberal democracy’s fundamental values.”²⁰

But, regarding this problem of stabilitocracy in the WB, this paper offers the answer as to why this happened in the particular case of the EU enlargement in the WB, so that a lesson can be offered to Ukraine. There is no doubt that EU officials were enthusiastic about the enlargement of the WB at the beginning of the process. The problem was that WB countries got into this process without completing democratization, and with an absence of rule-of-law institutions. EU officials thought that WB countries would become truly democratic states before they became member states, i.e. they expected that they would be democratized during the EU enlargement process. Moreover, they thought that EU investments in the WB would attract WB political leaders to change the course towards building democratic institutions based on the rule of law. Contrary to this assumption, WB political leaders have not changed the course, and they continue to rule in an authoritarian manner. The EU has neglected this fact, and it has been pursuing the stabilitocratic approach in the WB because it was aware that it did not have enough capacity to face semi-authoritarian leaders of the WB. Or, the lack of interest of the EU in establishing the rule of law in the WB also determined the EU’s approach. Also, this was influenced by the fact that the only actors that can be truly interested in the rule of law are citizens and domestic political leaders (in the case of WB, mostly political leaders of an opposition). Therefore, the EU at best bolstered the security and stability of the WB, as the leading interest of the EU in the WB. Therefore, the lack of will and capacity to combat WB political leaders has been determined the EU’s approach to the WB.

²⁰ Lutovac, *Populism*, 146.

The approach “if you can’t beat them, join them” prevailed in the external politics of the EU, and instead of democratization in the WB, the EU bolstered the “stabilitocratization” of this region. In other words, EU officials accepted semi-authoritarian leaders of the WB as partners, who would not do much to access the EU, but would deliver stability and security in the region. In return, the EU delivered external legitimacy to WB political leaders. As Takács and Jancic point out, the EU “[t]o mitigate the negative effects thereof, the citizens and business operators of a number of the Western Balkans countries been given the ‘carrot’ of visa-free travel within the Schengen area and preferential trade arrangements.”²¹ This is one of the examples of how the EU has been using the “stick-and-carrot” strategy to attract or to bind the WB to the EU.

So, the first part of the lesson that should be learned from the WB in the context of the EU enlargement is that being on the path to EU membership does not mean building functional democratic institutions that comply with the rule of law standards. Otherwise, being a candidate state or in the process of negotiations *per se* means nothing regarding democratization and building the rule of law. Also, another part of this lesson is that EU officials are not going to build the rule of law instead domestic political leaders.

4. *Quo Vadis* Ukraine: Is Stabilitocracy a Pitfall for Ukraine?

Currently, Ukraine is in the process of negotiations with the EU. Not so long ago, Ukraine was considered one of the most corrupt countries in Europe.²² The Rule of Law Index ranked Ukraine in 89th place with an overall score of 0.49.²³ If we compare Ukraine’s ranking on this Index with other WB countries’ rankings, we can see that only Albania and Serbia have worse rankings than Ukraine. The high level of corruption is not the only problem

²¹ Tamara Takács and Davor Jancic, “Fundamental Rights and Rule of Law Promotion in EU Enlargement Policy in the Western Balkans,” in *Fundamental Rights in International and European Law: Public and Private Law Perspectives*, eds. Christophe Paulussen et al. (The Hague: Asser Press and Springer, 2016), 123–41.

²² Farah Stockman, “Corruption Is an Existential Threat to Ukraine, and Ukrainians Know It,” *The New York Times*, 10 September 2023.

²³ WJP Rule of Law Index 2023: Ukraine, accessed December 18, 2023, <https://worldjusticeproject.org/rule-of-law-index/global/2023/Ukraine>.

faced by Ukraine. Also, in other segments of the rule of law, Ukraine attains low-grade results. However, Ukraine has opened negotiations with the EU in a euphoric manner, with full optimism shown both by Ukraine and EU officials. Perhaps, this was the geostrategic decision of the EU to encourage Ukraine in the war against Russia, and at the same time, to show Ukraine that it belongs to the Western world. From this point of view, if we neglect the WB experience, we should applaud this decision. But the WB experience warns us that the same fate is expected for Ukraine as all other WB countries, if Ukraine and the EU do not change their approaches. It would be too optimistic to expect that the EU will change its stabilitocratic approach to new candidate states. Therefore, the crucial role in avoiding stabilitocracy has Ukraine's current regime. This paper will explain why the WB experience is so valuable for Ukraine. In other words, it will show that Ukraine is now in the same political position as the WB countries were 10 to 15 years ago.

Firstly, like the WB countries, Ukraine has never completed the process of democratization in the country. The absence of the rule of law in Ukraine is even higher than in WB countries. Also, similar to WB countries in the 90s, Ukraine is currently at war. Also, the outcome of the war will determine the future of Ukraine and its path to EU membership. Of course, the first objective for Ukraine after the war will be to stabilize the country. So, is the same scenario of stabilitocracy expected for Ukraine?

Ukraine has opened negotiations with the EU, although has a lower level of compliance with the rule of law than Bosnia and Herzegovina (which has not opened negotiations yet). The main goal of the EU will be to stabilize and secure Ukraine after the war, and accordingly, the EU will try to remove the Russian influence from Ukraine. To make this happen, the EU will legitimize Ukraine's actions, in internal and external contexts, and in return, the EU will expect to see stability in that part of Europe, and Ukraine that manifestly pivots to the West. In that sense, the EU will not rigorously demand crucial conditions to be fulfilled by Ukraine, to save its partnership with Ukraine's regime and because of the lack of interest in building the rule of law. On the other hand, if the outcome of the war is positive, Ukraine will stabilize and secure the situation in the country, but its democratization and the formation of the rule of law will depend on domestic political leaders. Accordingly, the EU will bolster the stabilization

and securitization of Ukraine as the first stage of building the rule of law, but the second stage of the rule of law, such as establishing an effective and independent judiciary, will exclusively depend on the will of domestic actors. Hence, the same scenario of stabilitocracy is expected in Ukraine, if Ukraine relies on the EU's support regarding the rule of law.

Of course, this is just a prediction based on the WB experience regarding the path to EU membership. Since Ukraine is now where WB countries were in the 90s and the beginning of the 2000s, this experience is a valuable caution for Ukraine. Accordingly, here we will offer what should be the solution for Ukraine to avoid the pitfall of stabilitocracy on the path towards EU membership.

5. The Rule of Law First, the European Union Second: Three Main Challenges for Post-war Ukraine

This subtitle might sound like advocating Euroscepticism. However, this paper argues that the rule of law ought to have priority over Ukraine's path to EU membership, and explains why this is not advocating Euroscepticism but rather proposing a sober view of the current occasions. Ukraine was struggling for a long time to get rid of the Russian influence, and one of the causes of the Russian aggression was Ukraine's shift to the West. Now, Ukraine's government is at a turning point; it can choose the path of frankly obeying the rule of law and other universal values, or it can choose the false path to the EU; namely, the path to stabilitocracy. This depends solely on the current government, which has a historic role to play in the context of Ukraine's future. EU officials will accept both scenarios. The EU's minimum conditions are stability and security in the region. If Ukraine's government decides to fulfill only a minimum of EU conditions, then Ukraine will fall into the same trap of stabilitocracy as WB countries did. On the other hand, if Ukraine begins with rigorous reform regarding the rule of law, then it might have the capacity to become a real candidate for the EU membership. Moreover, being a formal candidate state without an acceptable level of the rule of law undoubtedly leads to stabilitocracy. A candidate state with an acceptable level of the rule of law has the potential to become a member state. Of course, there is no guarantee that a candidate state will be admitted to the EU because, at the final stage of accession, all member states of the EU must ratify an accession of a new country. Thus, accession of a candidate

state does not depend only on fulfilling EU conditions but also on the benevolence of all EU member states.

Accordingly, there are two main reasons why Ukraine should aim to establish the rule of law first, instead of just formally being a candidate state. The first reason is that without rigorous reform regarding the rule of law, Ukraine will fall into the trap of stabilitocracy, which means that it may become a “long-waiting candidate” for the EU. The second reason is that Ukraine’s path to EU membership is uncertain, like the paths of all other candidate states, since there is no consensus among member states on the accession of new countries. Thus, they should not rely on the promises of the EU officials, because the final word belongs to member states, since all of them have to ratify the accession of a new country. In the context of building the rule of law, Ukraine should follow the objectives of the “The Roadmap for Peaceful, Just and Inclusive Societies.” Regarding the rule of law, this Roadmap suggests as follows: scale up the prevention of violence against women and children, and against vulnerable groups; build safe, inclusive, and resilient cities; ensure targeted prevention for countries and communities most likely to be left behind; increase justice and legal empowerment; ensure commitment to open and responsive government; reduce corruption and illicit financial and arms flows; introduce legal identity and birth registration for all; empower people as agents of change; respect all human rights and promote gender equality.²⁴

For all of this to be fulfilled, Ukraine, in the first place, must build inclusive institutions that will have sufficient capacities to bolster the democratization of Ukraine. In other words, Ukraine regardless of the EU approach, in the first place should complete the process of democratization of the country. This does not necessarily mean, for example, a complete elimination of corruption. Rather, democratization means that all domestic actors, including politicians, judges, bureaucrats, and other state officials, together with citizens, will stand for the rule of law. This includes the transitions from electoral democracy to liberal democracy, where the rule of law

²⁴ See: Alistair D. Edgar, “The Rule of Law, Peacebuilding, and Agenda 2030: Lessons from the Western Balkans,” in *Crime Prevention and Justice in 2030: The UN and the Universal Declaration of Human Rights*, eds. Helmut Kury and Sławomir Redo (Cham: Springer, 2021), 401–15.

will not depend on the benevolence of domestic actors, but on institutions. For this to be achieved, citizens, including the judiciary, play the key role in forcing (with soft power) political leaders to hold the course towards transition into a liberal democratic state. Of course, building the rule of law will be a long-term and laborious process. There are three main challenges at the beginning of this process, that need to be sidestepped.

“Power tends to corrupt and absolute power corrupts absolutely.”²⁵ Ukraine postponed elections for 2024,²⁶ and in a time of war, the emergency can justify this action. However, Ukraine should be concerned about the outcomes of the war, not only about how much territory Ukraine’s army will liberate. Moreover, Volodimir Zelenski is likely to become Ukraine’s post-war hero. That will enable him to concentrate political power. So, the first challenge for Ukraine after the war, besides stabilizing and securitizing the country, will be to constrain the power of the government (regime). In line with the above citation on how absolute power corrupts absolutely, Ukraine’s (heroic) regime will be tempted by absolute power. The task of institutions, in particular the judiciary, will be to constrain the regime’s power. Thus, the judiciary will take the first step towards building the rule of law. Otherwise, Zelensky can become the new Vučić or Đukanović; Europe’s favorite autocrat.²⁷ This threat ought to be recognized by the judiciary and citizens. The judiciary should use the constitutional framework to constrain the actions of the regime in the post-war period, and citizens should use elections to change the government if it gets corrupted by the power.

The second challenge is combating corruption. Accordingly, two main priorities for Ukraine should be the transparency and efficiency of government. These two priorities are key factors in combating corruption. Corruption is not the cause; it is the outcome of an inefficient and non-transparent

²⁵ This statement was written by Lord Acton in a series of letters sent to Bishop Creighton.

²⁶ “Zelensky Says ‘Not the Time’ for Presidential Elections in Ukraine,” *France 24*, accessed December 19, 2023, <https://www.france24.com/en/europe/20231107-ukraine-s-zelensky-says-not-the-time-for-presidential-elections>.

²⁷ Aleks Eror, “How Aleksandar Vucic Became Europe’s Favorite Autocrat,” accessed December 19, 2023, <https://foreignpolicy.com/2018/03/09/how-aleksandar-vucic-became-europes-favorite-autocrat/>.

public sector. Therefore, reforming the public sector by prioritizing these two factors is the key to fighting against corruption.

The third challenge is related to human rights issues. Ukraine authorities declared derogation of the European Convention on Human Rights (ECHR). Derogation of the ECHR provisions was done in line with Article 15 of the ECHR. Ukraine derogated Articles 4(3) (forced labor), 8 (right to private and family life), 9 (freedom of religion), 10 (freedom of expression), 11 (freedom of assembly and association), and 14 (prohibition of discrimination). Additionally, Ukraine also derogated from Articles 5 (right to liberty and security), 6 (right to a fair trial), and 13 (right to an effective remedy).²⁸ In this context, Ukraine will be challenged to go back to regular enforcement of the ECHR as soon as possible after the war ends. Solving the above-mentioned challenges, in my opinion, will determine the future of the rule of law, and it will determine whether Ukraine is going to be a liberal democracy or another example of stabilitocracy.

6. Concluding Remarks

This paper examines the main pitfall for post-war Ukraine regarding the building of the rule of law and Ukraine's path to EU membership. The main pitfall in this process is stabilitocracy. To avoid this pitfall, Ukraine should avoid the WB scenario. In other words, Ukraine should not be satisfied with the status of candidate state for EU membership, since being a candidate state means nothing in the context of the rule of law and democratization. As this paper has demonstrated, having the formal status of a candidate state does not lead to democratization, but to stabilitocratization, as the experience of WB countries has shown. Therefore, Ukraine should focus on building the rule of law in two segments. The first one concerns stabilizing and securing the country after the war. Simultaneously, the constraint of government, the fight against corruption, and human rights issues will be the three main challenges that Ukraine must deal with if wants to create a space for the democratization of the country.

²⁸ See: Kanstantsin Dzehtsiarou and Vassilis P. Tzevelekos, "Thorny Road to Democracy, Human Rights and the Rule of Law: Ukraine and the European Court of Human Rights," *European Convention on Human Rights Law Review* 3, no. 4 (2022): 427–34.

References

- Bieber, Florian. *The Rise of Authoritarianism in the Western Balkans*. Cham: Springer, 2020.
- Bieber, Florian. “What Is a Stabilitocracy?” Accessed December 18, 2023. <https://biepag.eu/article/what-is-a-stabilitocracy/>.
- Dzehtsiarou, Kanstantsin, and Vassilis P. Tzevelekos. “Thorny Road to Democracy, Human Rights and the Rule of Law: Ukraine and the European Court of Human Rights.” *European Convention on Human Rights Law Review* 3, no. 4 (2022): 427–34.
- Edgar, Alistair D. “The Rule of Law, Peacebuilding, and Agenda 2030: Lessons from the Western Balkans.” In *Crime Prevention and Justice in 2030: The UN and the Universal Declaration of Human Rights*, edited by Helmut Kury and Sławomir Redo, 401–15. Cham: Springer, 2021.
- Elbasani, Arolda. “Europeanization Travels to the Western Balkans: Enlargement Strategy, Domestic Obstacles and Diverging Reforms.” In *European Integration and Transformation in the Western Balkans: Europeanization or Business as Usual*, edited by Arolda Elbasani, 3–22. Oxon: Routledge, 2013.
- Eror, Aleks. “How Aleksandar Vucic Became Europe’s Favorite Autocrat.” Accessed December 19, 2023. <https://foreignpolicy.com/2018/03/09/how-aleksandar-vucic-became-europes-favorite-autocrat/>.
- France 24. “Zelensky Hails ‘Victory for Ukraine’ as EU Agrees to Open Accession Talks.” Accessed December 17, 2023. <https://www.france24.com/en/live-news/20231214-%F0%9F%94%B4-eu-leaders-agree-to-open-accession-talks-with-ukraine>.
- France 24. “Zelensky Says ‘Not the Time’ for Presidential Elections in Ukraine.” Accessed December 19, 2023. <https://www.france24.com/en/europe/20231107-ukraine-s-zelensky-says-not-the-time-for-presidential-elections>.
- Kmezić, Marko. “EU Rule of Law Conditionality: Democracy or ‘Stabilitocracy’ Promotion in the Western Balkans.” In *The Europeanisation of the Western Balkans A Failure of EU Conditionality?*, edited by Jelena Džankić, Soeren Keil, and Marko Kmezić, 87–110. Cham: Springer, 2019.
- Kmezić, Marko. “Rule of Law and Democracy in the Western Balkans: Addressing the Gap Between Policies and Practice.” *Southeast European and Black Sea Studies* 20, no. 1 (2020): 183–98.
- Kochenov, Dimitry. “The EU and the Rule of Law – Naïveté or a Grand Design?” In *Constitutionalism and the Rule of Law Bridging Idealism and Realism*, edited by Maurice Adams, Anne Meuwese, and Ernst Hirsch Ballin, 419–45. Cambridge: Cambridge University Press, 2017.

- Lašto, Claudia, Florian Bieber, and Jovana Marović. “Mechanisms of Dominance: Understanding 30 Years in Power of Montenegro’s Democratic Party of Socialists.” *Comparative Southeast European Studies* 71, no. 2 (2023): 210–36.
- Lutovac, Zoran. *Populism, Stabilitocracy and Multiculturalism*. Belgrade: Institute of Social Sciences, 2020.
- Memeti, Ardit. “Rule of Law through judicial Reform: A Key to the EU Accession of the Western Balkans.” *Contemporary Southeastern Europe* 1, no. 1 (2014): 58–67.
- Pavlović, Srđa. “Montenegro’s ‘Stabilitocracy’: The West’s Support of Đukanović Is Damaging the Prospects of Democratic Change.” Accessed December 18, 2023. <https://blogs.lse.ac.uk/europpblog/2016/12/23/montenegros-stabilitocracy-how-the-west-support-of-jukanovic-is-damaging-the-prospects-of-democratic-change/>.
- Pavlović, Srđa. “West Is Best: How ‘Stabilitocracy’ Undermines Democracy Building In the Balkans.” Accessed December 18, 2023. <https://blogs.lse.ac.uk/europpblog/2017/05/05/west-is-best-how-stabilitocracy-undermines-democracy-building-in-the-balkans/>.
- Stockman, Farah. “Corruption Is an Existential Threat to Ukraine, and Ukrainians Know It.” *The New York Times*, 10 September 2023.
- Takács, Tamara, and Davor Jancic. “Fundamental Rights and Rule of Law Promotion in EU Enlargement Policy in the Western Balkans.” In *Fundamental Rights in International and European Law: Public and Private Law Perspectives*, edited by Christophe Paulussen et al., 123–41. The Hague: Asser Press and Springer, 2016.
- WJP Rule of Law Index 2023. Accessed December 18, 2023. <https://worldjusticeproject.org/rule-of-law-index/global>.
- WJP Rule of Law Index 2023: Albania. Accessed December 18, 2023. <https://worldjusticeproject.org/rule-of-law-index/global/2023/Albania>.
- WJP Rule of Law Index 2023: Bosnia and Herzegovina. Accessed December 18, 2023. <https://worldjusticeproject.org/rule-of-law-index/global/2023/Bosnia%20and%20Herzegovina>.
- WJP Rule of Law Index 2023: Kosovo. Accessed December 18, 2023 <https://worldjusticeproject.org/rule-of-law-index/global/2023/Kosovo>.
- WJP Rule of Law Index 2023: Montenegro. Accessed December 18, 2023. <https://worldjusticeproject.org/rule-of-law-index/global/2023/Montenegro>.
- WJP Rule of Law Index 2023: North Macedonia. Accessed December 18, 2023. <https://worldjusticeproject.org/rule-of-law-index/global/2023/North%20Macedonia>.
- WJP Rule of Law Index 2023: Serbia. Accessed December 18, 2023. <https://worldjusticeproject.org/rule-of-law-index/global/2023/Serbia>.
- WJP Rule of Law Index 2023: Ukraine. Accessed December 18, 2023. <https://worldjusticeproject.org/rule-of-law-index/global/2023/Ukraine>.

