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## **European Union and the Rule of Law in the Western Balkans**

*MIREES Open Lecture/DG NEAR seminar*

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On April 29th 2016, MIREES in collaboration with the European Commission's Directorate General organised a round table on the "European Union and the Rule of Law in the Western Balkans" held at the Faculty of Political Science at the UNIBO campus in Forlì. Among the presenters were Dr Tanja Tamminen (Leader of the Junior Research Group on Frozen and Unfrozen Conflicts, Institute for East and Southeast European Studies, Regensburg), MIREES professor Francesco Privitera (International Coordinator/Director of MIREES programme, University of Bologna) and professor Leslie Holmes (University of Melbourne and the University of Bologna).

Professor Francesco Privitera briefly outlined the context of association between the Western Balkans states and the European Union. His analysis of the legacy of conflicts in the region underlined the fragility and weakness that characterize the Balkans. The overview ranged from the collapse of the Yugoslav Federation, which affected notably Bosnia Herzegovina but also Kosovo for the 1999 war, to the long-lasting democratisation process of Serbia and Macedonia, up to the outcomes of Albania's dramatic transition process. However, what the aforementioned countries do have in common is the question of "how can it be possible to achieve full respect to the rule of law in countries which have so fragile institutions?".

Kosovo represents, in a sense, what the EU thinks the rule of law means in the Balkans. Assisting the country in establishing the state structures, the EU created in February 2008 the European Union Rule of Law Mission in Kosovo, EULEX. This diplomatic mission underwent months of negotiations with the UNMIK, regarding the decision to transfer the functions to the EU, mainly due to the issue of Kosovo's status. In 2012, after having fulfilled the Ahtisaari Plan requests, Kosovo was detached from the supervised independence. However, this raised a question within EULEX relative to the legal legitimacy of the mission. Further improvements in Kosovo's legislation were thus implemented in order to guarantee legal basis to the European engagement in the region, which resulted in the full integration of EULEX into Kosovo legislation. Despite the fact

that police officers, lawyers and administrative experts are helping the Kosovo authorities to build a multi-ethnic police force, justice system and administration, the mission has limited executive powers.

Terrorism is a further field where the executive power was given to EULEX. However, despite the hundreds that left Kosovo to join ISIL in Syria, EULEX has had only one terrorism case. An explanation lies partly in the political will of Pristina, but also in the strong support the US enjoy among Kosovo Albanians. Recently, the migration crisis led Brussels to undertake more decisive steps in the fight against human smuggling in the region. On January 2016, the Dutch government consented to the EU's request to the Netherlands to host the Kosovo Relocated Specialist Judicial Institution. The court, which is to be established under Kosovo law, will process serious crimes allegedly committed in 1999-2000 by the members of the Kosovo Liberation Army against ethnic minorities and political opponents.

In sharp contrast with the past, on April 19th 2013, Kosovo and Serbia signed the historic Brussels Agreement, which provided the first formal basis for normalised relations between the two neighbours. The agreement forecasted the merger of the Serb municipalities in the north subject to Kosovo law, and it also stipulated that only the Kosovo police force will be deployed in the north. However, the regional commander will be a Serb and the force will reflect the area's ethnic make-up. Regarding justice, a division of the Kosovo court of appeal will hold a permanent session at North Mitrovica, with mainly Serb judges. In this sense, the agreement on elections was of paramount importance, since for the first time in 2013 local elections, Kosovo Serbs voted in Kosovo polls.

Although strengthening the rule of law remains a priority, the challenge posed by corruption, which professor Holmes referred to as "a symbol or symptom of the delegitimation of the community system", should not be overlooked. While World Bank's definition of corruption remains confined to the public sector, the Transparency International viewed corruption as "abuse of entrusted power for private gain", classifying it as grand, petty and political, depending on the amounts of money lost and the sector where it occurs. The EU has also endorsed the latter definition; explicitly stating, however, that the definition encompasses both the public and private sectors.

Hence, in terms of pre-conditions, the EU had a clear roadmap for all the applicant countries in view of the "Big Bang" enlargement eastwards as it was first outlined in "Agenda 2000" published by the Commission in July 1997. The only characteristic several countries had in common was the will to address corruption. In 2004, the EU allowed ten countries to join, but Bulgaria and Romania missed out on the big eastward expansion. A delay was linked to grand corruption, particularly in the Bulgarian case. Despite scepticism, the EU introduced a monitoring system which looks, inter

alia, at the extent Bulgaria and Romania are dealing with corruption and organized crime. As a response to its failure to combat corruption, organized crime and misuse of EU funds, in 2008 Bulgaria was heavily sanctioned by the EU when 825 million Euros of pre-accession funds were frozen. However, a major issue is that some EU member state as the Netherlands, Germany and Finland have been blocking the Bulgarian and Romanian access to the Schengen area, since they were concerned about border corruption and human smuggling risk.

As professor Holmes concluded, the EU has certainly been attempting to encourage applicants to reduce corruption as part of democracy and strengthening of the rule of law. However, the domestic will and capacity are as crucial as the political commitment. In this instance, Georgia shows that it is feasible to reduce substantially corruption. This Caucasian country, as a consequence of the anti-corruption campaign carried out by Saakashvili, consistently comes out as the least corrupt country among former Soviet states.

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