Review

DOI: https://doi.org/10.17816/RJLS679005 EDN: OCQLCX

Reforming the Judicial and Legal Systems in South-Eastern Europe: Sociocultural Context and Consequences of European Union Policy

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ABSTRACT

The paper describes the concept of sociological and legal transformation of the Bulgarian and Romanian judicial system after 1989. The theoretical framework of the study is a combination of concepts, including multiple modernities, historical sociology, and the sociology of law. Both countries are analytically combined into one typologic case. In particular, these countries are characterized by the Orthodox-Byzantine tradition, the legacy of Ottoman rule, and the method of creating national law by implementing the provisions of foreign law. Despite the distinctive features, the development of these countries during the socialism age had some common patterns. However, the rejection of the communist project did not lead to a complete separation from its legacy. Since the accession of Bulgaria and Romania to the European Union in 2007, the situation has altered. The paper describes the evolution of approaches to studying the Europeanization of the South-Eastern Europe. It shows that only the positive consequences of this process have been highlighted for a long time, whereas limitations of the EU's influence on legal reforms in new member states were reported only in rare cases. The study shows that, since the mid-2010s, the researchers have focused on unhealthy influence of EU mechanisms and procedures on the transformation of legal institutions in Bulgaria and Romania, where the rule of law was insufficient at the time of their accession. The analysis identified that rapid reforms led to formal compliance rather than genuine adherence to the rule of law. Although the European Commission's monitoring of Bulgaria and Romania under the Cooperation and Verification Mechanism was officially terminated in 2023, legal frameworks of both countries still have many defects. External legal reforms tend to consolidate the existing social order and governance principles based on the marginalization and instrumentalization of law. It is emphasized that the development of the rule of law system in these societies requires a fundamental change in the system of social relations. The paper concludes that the situation in Bulgaria and Romania shows some general trends in post-communist states associated with congenital errors in the reforms and the choice of their implementation methods.

Keywords: sociology of law; legal institutions; judicial system; rule of law; European Union policy; Bulgaria; Romania.

To cite this article

Maslovskaya EV. Reforming the Judicial and Legal Systems in South-Eastern Europe: Sociocultural Context and Consequences of European Union Policy. *Russian journal of legal studies*. 2025;12(2):9–18. DOI: 10.17816/RJLS679005 EDN: OCQLCX

Submitted: 29.04.2025 **Accepted:** 06.05.2025 **Published online:** 28.06.2025

Обзор

DOI: https://doi.org/10.17816/RJLS679005 EDN: OCQLCX

Реформирование судебно-правовой системы в странах Юго-Восточной Европы: социокультурный контекст и последствия политики Европейского Союза

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АННОТАЦИЯ

В статье представлена социолого-правовая концептуализация трансформации судебной системы в Болгарии и Румынии после 1989 г. Теоретической рамкой исследования выступает композиция концепции множественных модернов, исторической социологии и социологии права. Обе страны аналитически объединены в один типологический кейс. В частности, для этих стран характерны православно-византийская традиция и наследие османского владычества, способом создания национального права была имплементация иностранного права. Несмотря на отличительные особенности, развитие этих стран в период социализма характеризовалось рядом общих закономерностей. При этом отказ от коммунистического проекта не привел к полному разрыву с его наследием. Новая ситуация возникла после вступления Болгарии и Румынии в Европейский Союз в 2007 г. В статье представлена эволюция подходов к изучению процесса европеизации в странах Юго-Восточной Европы. Показано, что долгое время выделялись лишь позитивные последствия данного процесса, в редких случаях отмечались ограничения влияния Европейского Союза на правовые реформы в новых государствах-членах. Выявлено, что с середины 2010-х годов больше внимания стало уделяться «патологическим» аспектам воздействия механизмов и процедур Европейского Союза на трансформацию правовых институтов в Болгарии и Румынии, где на момент их вступления верховенство права было укоренено в недостаточной степени. На основании проведенного анализа сделан вывод, что быстрые темпы реформ привели скорее к формальному соблюдению, чем к подлинному следованию принципам верховенства права. Несмотря на то, что мониторинг Болгарии и Румынии Европейской комиссией в рамках Механизма сотрудничества и верификации был официально прекращен в 2023 г., в правовой сфере обеих стран по-прежнему сохраняется много проблем. Реформы в правовой сфере, проводимые извне, скорее закрепляют существующий социальный порядок и режим управления, основанные на маргинализации и инструментализации права. Подчеркивается, что создание системы верховенства права в данных обществах требует коренного изменения системы социальных отношений. В статье сделан вывод о том, что ситуация в Болгарии и Румынии отражает не столько локальную специфику, сколько некоторые общие тенденции в посткоммунистических государствах, связанные с патологическими ошибками при проведении реформ и выборе способов их осуществления.

Ключевые слова: социология права; правовые институты; судебная система; верховенство права; политика Европейского Союза; Болгария; Румыния.

Как цитировать

Масловская Е.В. Реформирование судебно-правовой системы в странах Юго-Восточной Европы: социокультурный контекст и последствия политики Европейского Союза // Российский журнал правовых исследований. 2025;12(2):9–18. DOI: 10.17816/RJLS679005 EDN: OCQLCX

Рукопись получена: 29.04.2025 **Рукопись одобрена:** 06.05.2025 **Опубликована online:** 28.06.2025

INTRODUCTION

Despite the rapid implementation of laws, procedures, and institutions of the European Union (EU, Union, or European Union), an effective legal framework has not been created in Bulgaria and Romania after joining the EU. In addition, pressures and incentives used by the EU have also not given the expected result. In the security and justice sector, the European integration of both countries has had more of an impact on the rate than the quality of transformation. Moreover, in the context of the processes taking place in Poland and Hungary, it is obvious that the case of Bulgaria and Romania was rather a manifestation of problems typical of all post-communist Eastern European countries than a reflection of local context as it initially seemed.

As a consequence of the ongoing rule of law crisis in Bulgaria and Romania (in particular, resulting from failures to combat systemic corruption), EU leaders understood the importance of an elaborate, institutionally supported policy for the protection of fundamental European values. Another important lesson learned by the EU from its long-standing attempts to use the Cooperation and Verification Mechanism as a roadmap to establish a rule of law system in Bulgaria and Romania was the recognition of the need to change the applicable Union Enlargement approach.

However, partially due to geopolitical situation, the EU could no longer openly acknowledge that its approach to creating a rule of law system in these countries had failed. As a result, the Cooperation and Verification Mechanism was abolished on September 15, 2023, and the countries became Schengen member states on January 1, 2025. At first glance, it may seem that by this step the EU recognized that Bulgaria and Romania met the requirements of the Cooperation and Verification Mechanism. However, a more detailed and in-depth study of this topic allows us to see that this bureaucratically conditioned decision was inevitable in the context of persistent justice issues in these countries.

Research on post-communist transitions in South Eastern Europe has largely relied on early versions of modernization theory providing that the transition to democratic political institutions and the rule of law is a linear process leading to a predetermined outcome. However, the transformation of this region has proven to be more complex. The paper analyzes the impact of EU policy on the development of legal institutions in Bulgaria and Romania. In particular, it identifies the causes and effects of unintended consequences of the EU's influence on the transformation of the judicial system. The first part analyzes various approaches to studying post-communist transformations, including modernization theory and the transitional paradigm. The second part describes the ambiguous outcomes of the legal reform in Bulgaria and Romania. The third part examines the differences in the EU's rule of law policy in South Eastern Europe and its controversial implications.

Theoretical Framework For Studying Transformation Processes in Eastern Europe

In the 1990s, the transitological approach was very popular among researchers studying the social transformation processes in Eastern Europe. It is worth noting that this approach developed under the influence of modernization theory, primarily the concept proposed by the famous American sociologist Talcott Parsons. Arnason proposed an alternative approach to these phenomena. He emphasizes that the legacy of socialism is reduced by its supporters to some negative aspects, "including patterns of social development and human mentality that are poorly compatible with the market and continue to block the course of transformation" [1, p. 89]. In turn, in the modernization approach, the Western model is considered as a model, which is only possible to achieve through specific steps.

Arnason identifies the fundamental premise of transitology stating that "the current Western combination of capitalism, democracy, and the nation-state (the last factor allows for certain differences of opinion) is presented as a universal and complete model, which is destined to establish itself everywhere" [1, p. 90]. Moreover, transitology proponents did not consider the possible unintended consequences of the transfer of institutions and practices developed in Western countries, at the same time obviously interacting with the historical legacy of Eastern European societies and the dynamics of global processes, which leads to consequences that differ significantly from the proclaimed goals. The disregard for the special aspects of the history of countries outside the Western center, which distinguishes the proponents of transitology, even allowed this area to be defined as a type of intellectual neocolonialism [1, p. 90].

While recognizing certain differences between the countries of Eastern Europe, the followers of transitology nevertheless emphasized the homogenizing impact of the real socialism experience. However, the "return to Europe" had different meanings for countries whose historical pre-socialist legacies also differed significantly. In particular, it is required to consider the peculiarities of the countries of South Eastern Europe, where, before the communist parties came to power, the legacy of the Ottoman Empire and the Orthodox religious tradition were deeply rooted in contrast to the Central and Eastern Europe with their imperial Habsburg and Catholic heritage. Moreover, the structural and cultural patterns of the socialist period were also distinctive.

In this case, the analysis of the historical communist legacy in Eastern Europe by Kotkin and Beissinger [2] can be considered relevant. According to the scholars, this legacy is revealed through a complex interaction of historical

experience and new socio-economic conditions rather than linearly. The emphasis on dynamic interaction and multiple manifestations is determined by Kotkin and Beissinger wish to emphasize the causal relationships and mechanisms that unite the past and the present. They suggest that certain forms of historical heritage may not cover all parts of the former socialist bloc. In addition, different countries "may retain different types of heritage, including those that predate communism (Russian imperial, Habsburg, Ottoman)" [2, p. 7]. The empirical approach of these researchers largely coincides with Arnason's concept of multiple modernities, highlighting the variability and interaction of factors of socio-cultural change [3, p. 14].

The followers of the multiple modernities concept include Blokker [4], who is distinguished by his focus on the transformation of legal institutions in Eastern Europe. Describing this process, Blokker concludes that the approach to political and legal reforms in Eastern Europe, which prevailed in the 2000s, turned out to be fundamentally incapable of breaking away from the modernization logic. This logic suggests, "the extremely complex and tortuous political, social, economic, and cultural transformation processes were understood by modernization theorists as completely manageable and controlled. The followers of such engineering proceeded from the fact that democracy (and the rule of law) can be exhaustively represented as a clearly structured institutional constellation, which is rationally and consistently implemented in practice" [5, p. 166]. In turn, Blokker's position is distinguished by an understanding of the need to use an approach based on the historical trajectories of "democratic and legal development" that sees "processes and interactions occurring within society" in them [5, p. 172].

This approach has developed as a result of a certain evolution in the research of the transformation of legal institutions in Eastern Europe. Initially, studies of the Europeanization of Eastern European states, including establishing the rule of law, were dominated by overly optimistic rhetoric supporting the corresponding sentiments of EU politicians and officials. The lack of criticism and some timidity of researchers in revealing the limitations and defects of the EU accession requirements and their ambiguous (and, in some cases, harmful) consequences probably helped to legitimize and promote EU enlargement. However, the myth of the transformative and modernizing power of the EU has turned into false hopes and expectations of prosperity, good governance, and the rule of law, which can hardly be realized for all individuals in the Eastern European region [6, p. 347]. It became increasingly clear that a more realistic approach to Europeanization was required, which could only be developed through critical research. A discussion of the "limited influence" of the EU or the limits of the EU's transformative power has opened up in the literature [7, 8]. This view of limited impact has also been supported by scholars studying rule of law reforms [9–11], anti-corruption reforms [12, 13], and democratization [14].

The shift in the study focus in the early 2010s was called the "pathological turn." The concept of "pathologies of Europeanization" was first introduced in the paper by Börsel and Pamuk. The authors exposed the "dark side of Europeanization," arguing that "EU policies and institutions do not only empower liberal reform coalitions, to the extent that they exist in the first place, but can also bolster the power of incumbent authoritarian and corrupt elites" [12, p. 81]. Another researcher, Slapin, also concludes that "international pressure may create perverse incentives for governments to draft laws that both they and their citizens have no intention of obeying" [15, p. 628]. He explained this pathological effect by the fact that in some countries laws transferred and imposed by the EU (e.g. acquis communautaire) do not enjoy much demand, legitimacy, and support from citizens, legislators, and law enforcement officers, and that this lack of demand and understanding tends to reduce respect for the rule of law [15].

Thus, it can be stated that the legal reform was much more complex and controversial than it was initially assumed, largely non-linear and context-dependent, i.e. historically, socially, and politically conditioned. It may be for these reasons that liberal practices and standard recipes often fail in Eastern Europe. Whether the EU's influence is negative (pathological) or positive (transformative) depends on domestic conditions, which are unfavorable in most countries in this region [7]. The overall conclusion is that the logic of modernization has faced serious problems, especially in South Eastern Europe, which will be the focus of our further analysis. The historical legacy of Romania and Bulgaria in particular has some distinctive features. The long-standing historical tradition of regulating public life associated with the marginalization of law and law enforcement makes the sociological conceptualization of judicial and legal reforms in these countries in recent decades relevant.

Judicial Reforms in Bulgaria And Romania: Institutional Innovations in the Context of Instrumentalization of Law

The early 1990s were characterized by the adoption of new Constitutions in Bulgaria and Romania to institutionalize the judiciary independence and a new judicial structure. They took some general steps to reform legal institutions, but they mainly came to nothing. However, in the later 1990s, in the context of accession to the EU, candidate countries both had to overcome the socialist legacy and to align their judicial and administrative structures with EU requirements. One priority was the adoption of new laws implementing

DOI: https://doi.org/10.17816/RJLS679005

the principle of judicial independence. The introduction of the Council of Judges was seen as the most important institutional arrangement for achieving independence.

Initial efforts to reorganize judicial institutions in Eastern Europe were motivated by concerns about the judicial independence, which was supposed to be a prerequisite for the implementation of the rule of law. Later changes driven by EU accession have had the added objective of giving the regional judiciary the institutional capacity to enforce the EU acquis communautaire if it conflicts with domestic law. Indeed, in its current form, the EU exists due to the decisions of both domestic and supranational courts [16]. However, the expansion to the East threatened the integration driven by the courts. According to studies, judges, accustomed to subordination to the establishment in the context of a socialist state in the post-communist era, do not possess, for example, personal and institutional autonomy, which is an essential prerequisite for upholding principles of supranational law before the nation-state if it conflicts with domestic law [17]. It is therefore not surprising that the creators of the roadmap of institutional legal reform focused on empowering the judiciary in Eastern Europe by granting it institutional autonomy, which consists both in isolation from checks and balances by the elected branches of power and delegating self-government powers to the judicial system.

After the fact, we can identify two models of judicial reforms in Eastern Europe. The principle of judicial independence in the Czech Republic, Poland, and Hungary was implemented bottom-up. On the contrary, in Romania and Bulgaria, where the Councils of Judges were legally endowed with a large scope of powers, reforms were implemented top-down. According to researchers, after joining the EU, both countries formally have the most independent judiciaries in the region [17, p. 61]. However, the reputation of the Councils of Judges, conceived as an institutional solution to the problem of judicial politicization [18], is deteriorating and the number of complaints of their irresponsibility is gradually growing. In the 2010s, a view got widespread that the radical reforms in Hungary, Poland, Romania, and Bulgaria only resulted in the transfer of power and undue influence from one bureaucratic institution (Justice Ministry) to another (the Judicial Council of Magistrates) [19].

For example, according to studies, in Romania, "the Council no longer performs its mandate as the representative of judges but rather as someone who owns the judiciary, makes the rules for the judiciary, and rules the judiciary." [19, p. 647]. Moreover, the Romanian experience shows the full-fledged corporate judicial autonomy paradoxically poses a risk of indirect politicization, as judicial self-government becomes a kind of independent government with a political core and preconditions for the development of uncontrolled internal pathologies. For this reason, the choice of the optimal institutional structure should be the subject of debate, assuming that the borrowed models and principles shall be primarily used based on local characteristics and the socio-economic context. Instead, the Justice Ministry was replaced by a Council of Judges concerned with centralizing and bureaucratizing its internal structure rather than acting as an external representative of the legal corporation.

According to researchers, the performance of the judicial system in South-Eastern Europe is increasing in certain areas, but it is steadily decreasing in such important areas as the impartiality and independence of judges [6]. In Bulgaria, this trend is manifested, on the one hand, in the role of the Supreme Judicial Council as a self-governing body and in the appointment of judges on meritocratic grounds, increasing salaries, and the introduction of a new system of administrative courts. However, on the other hand, the monitoring by European structures shows that the indicators of a worsening situation are successful attempts at political (and sometimes administrative) pressure on the judicial system and the ambiguous outcome of disciplinary and criminal cases in relation to judges. That said, within the country, EU monitoring has both generated criticism and resistance from the government and positive response and support from liberal media and civil society [6].

Borrowed Western models of institution building incorporated into the usual practices of instrumentalization of law very quickly turn out to be substantively exhausted and new institutions are politicized. Although the Bulgarian Constitution grants the judiciary considerable independence protected by the Supreme Judicial Council, the significant political influence on the judiciary proves that the Supreme Judicial Council alone cannot be a guarantor of the judicial independence and impartiality [18]. To eliminate this defect, the Constitution was amended four times (2003–2015) to further guarantee the judicial independence. The latest amendment (2015) changed the Supreme Judicial Council structure by creating separate chambers for prosecutors and judges. A new ratio of quotas for judges and prosecutors elected by peers and deputies was also introduced to improve independence, increase the transparency of decision-making (on personnel matters and the election of members of the Supreme Judicial Council), and reinforce the inspection function. However, legislative reforms aimed at ensuring transparency and efficiency of the judicial system, especially in procedural law, are delayed or sabotaged by the actions of administrative and oligarchic structures affiliated with political parties. As a result, unreformed procedural law hinders the effective operation of the judiciary, primarily in protecting economic entities and human rights.

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Despite certain typological similarities between Bulgaria and Romania, including the model of legal and public administration adopted by the ruling groups, we can identify significant differences between the two countries. Whenever Romania turned to Western models, it sought to imitate France, which was reflected both in the legal heritage of the pre-socialist era and its legal policies after 1990. The French governance model suggests a more limited role for the Constitutional Court and a lesser degree of judicial activism than in Germany after 1949. For constitutional courts, the experience of post-WWII Germany had a greater influence on Bulgaria and Central-East Europe than on Romania. This has had a significant impact as the role of the judiciary in Romania after 1990 was less visible compared to Bulgaria.

In Romania, even the very idea of creating a Constitutional Court caused conflicts during the discussion of the new Constitution. A distinctive feature of the Romanian judicial system was a certain tradition of judicial review by the Supreme Court of Cassation. Thus, according to the opponents of the creation of the Constitutional Court, there could be an overlap and duplication of powers between the created Constitutional Court and the existing Supreme Court. Ioan Muraru, the President of the Constitutional Court of Romania in the 1990s, stated that "in our country, during the debates in the Constituent Assembly, it was difficult to convince even lawyers that we needed a separate authority of this kind" [13, p. 27]. Thus, it is not surprising that the Constitutional Court was not considered the final arbiter in constitutional matters, but played a small part at least until 2003. In the 1990s and early 2000s, Romania had some form of parliamentary sovereignty as the 1991 Constitution allowed Parliament to overrule Constitutional Court judgements with a two-thirds majority. Ideally, parliament's power to review laws declared unconstitutional would facilitate parliamentary and public debate on the constitutionality of laws and constitutional principles in general. In fact, this potential remained unlocked, as the attitude of the parliament toward the Constitutional Court (and the Constitution) was not determined by the desire to provoke a public debate on constitutional norms. However, it was aimed at achieving certain political interests, "Every time political parties or members of parliament appeal to the Constitutional Court, this is used to validate their own opinion, which in most cases has nothing to do with the Constitution, rather than caused by a sincere interest in clarifying the status of the law" [20, p. 293].

It was only under pressure from an extrinsic stimulus—the need to meet the conditions for joining the EU—that amendments were made to the Constitution in 2003, reinforcing the Constitutional Court's status as the final arbiter. The Constitutional Court's status had improved by the mid-2000s resulting in increased number of appeals and, as the scholars pointed out, "many public and political disputes were suddenly conducted within the framework of constitutional norms" [21, p. 187]. Thus, following the Constitutional Courts of other Eastern European states, the Romanian Constitutional Court began to act in accordance with its new status, issuing more and more judgements on major political matters. One of the most problematic and controversial judgements, including from the perspective of the Court's intervention in such matters and possible political bias, was its order on the proposed judicial reform in light of EU accession in July 2005. Having considered the appeals of the political opposition, the Constitutional Court rejected the legislative package supported by the government, which was a clear example of the political bias of constitutional review in Romania. Some provisions of this legislative package were declared unconstitutional, which was seen by the executive branch as a way to block reforms and jeopardize accession to the EU. Therefore, it can be concluded that a one-sided emphasis on legal constitutionalism, i.e. the exclusive responsibility of the Constitutional Court to interpret and depoliticize individual areas of democracy (e.g. those related to fundamental rights), is rather counterproductive.

External Factor of Institutional Legal Reforms in Bulgaria And Romania: Issues And Contradictions of EU Policy

Bulgaria and Romania joined the EU in 2007, three years later and under stricter conditions than the post-communist states of Central and Eastern Europe. However, by that time, both states still did not meet all the criteria for EU membership and were significantly lagging behind in ensuring transparency of law enforcement and accountability of legal actors. In the run-up to accession, EU pressure faced resistance from successive governments in the two states, where political parties showed reluctance to implement reforms. As Bulgarian scholars Dimitrov and Plachkova emphasize, both countries "continued to act like 'pupils', pretending to follow the teacher's instructions, and not as contractual partners implementing EU norms because of the responsibilities they have as part of the Union; instead, they expected to be rewarded for conform behavior" [22, p. 175]. In this case, the focus on compliance with EU criteria has resulted in increased dependence on external endorsement. The authors also emphasize that the decision to accept Bulgaria and Romania in the EU was based on "geo-political considerations" rather than their readiness for effective membership [22, p. 175]. In addition, EU policy prioritized the preparation for participation

DOI: https://doi.org/10.17816/RJLS679005

in the EU free market mainly and the rule of law was of a lower rank of practical importance and lacked specific instruments for enforcement [22, p. 176]. The implementation of some membership requirements was postponed until after the accession of Bulgaria and Romania to the EU. However, after their accession, those requirements were no longer considered significant by the political and legal establishment of the two states. The contemporary literature on Europeanization recognizes that the inefficiency of the pre-accession conditionality derives from the fact that the pre-accession work was mostly on paper only [22, p. 175–176]. This type of Europeanization could not bring about any substantial socio-structural changes that would guarantee respect for the rule of law and bring about changes in the political behavior.

When Bulgaria and Romania were preparing to join the EU, the judicial reform and the fight against corruption had obvious defects in both countries. The European Commission decided that the two countries could join the EU, but the implementation of reforms would be monitored within the framework of the Cooperation and Verification Mechanism during the first years of membership. It was expected that the Mechanism would help to establish the rule of law in both countries, which was to be closely connected with democratic accountability procedures. EU policy was characterized by the belief that the borrowed institutions and laws would enable Bulgaria and Romania to create a rule of law system similar to that of Western European states. Efforts to fight systemic corruption were monitored through the annual Cooperation and Verification Mechanism progress reports. Initially, the reports had a significant impact on the legal sector in Bulgaria and Romania. However, they gradually became more routine and the situation in the countries did not improve significantly.

The initial unfavorable domestic conditions characterized by weak rule of law and relatively low levels of economic development in Bulgaria and Romania were the result of previous historical periods and the distinctive features of the post-communist transition. Still, these structural preconditions have not been overcome through externally initiated reforms and, according to a number of researchers, the EU's approach to reforms became "pathological." One of the reasons for the failure of the EU's civilizing mission could be the fact that the EU's enlargement policy originally bore the imprint of a "modernization mindset." For example, the inherent inconsistency of this policy lies in the general assertion that "the judicial independence should, in theory, be seen as just one tool to ensure the rule of law." However, in the European Commission's annual reports, "the progress of applicants for accession is often supported solely by the standard of judicial independence and an unambiguous interpretation of the rule of law" [5, pp. 168–169]. Moreover, they are focused "on the rule of law as an institutional asset that can be identified and measured" [5, p. 170].

The rule of law itself is evaluated by indices based on expert opinions rather than a systematic analysis of the specific activities of legal institutions in different countries. Thus, abstract "legal rationality" comes to the fore rather than the "existent rule of law." Moreover, "the exclusive focus on legal and judicial institutions leads to the reduction of the rule of law to a predominantly functional concept, which, serving further development of the EU's legal and hierarchical architecture and the continued integration on a given basis, results in a complete disregard for the democratic and social aspects of the rule of law on the ground" [5, p. 173]. However, the rule of law is not limited to legal and formal aspects. If we only focus on the technical and formal dimension, i.e. on the operation of specific institutions and compliance with specific EU laws, the definition of the rule of law may be too narrow. It is very important to consider the rule of law an interdisciplinary concept based on the fact that the rule of law both refers to ideal, typical, and normative ideas about law and their embodiment in existing legal and political institutions and includes law as a "social fact" [23, p. 125]. Basically, the deepest conditions and consequences of the rule of law are not found within legal institutions. For this reason, it is important to identify the extent to which different populations recognize and support formal law and how social actors interact with, interpret, and use the law by developing their own "social definition" and understanding of the rule of law.

In addition, the difference of the EU approach to the implementation of the rule of law consisted in the persistent demand for formal judicial independence. However, this demand was not supported by an in-depth analysis of the actual operation of such independence in an effort to solve various socio-political issues in South Eastern Europe, e.g. corruption. The EU officials responsible for the mechanism of observing and verifying the EU accession conditionality lack understanding that the rule of law requires a fundamental change in the system of social relations in Romanian and Bulgarian societies, i.e. a lack of understanding of the true situation in these countries. The fundamental problem was that "a remote technocracy was trusted to determine and assess on short deadline complex, politics- and history-laden local value-questions" [24, p. 40]. In this case, the European Commission could not make a decision based on local context either as its officials possessed fragmentary and selective information and were predetermined by their own institutional biases.

Some scholars have noted the inconsistent and selective application of EU membership criteria to candidate countries. The inconsistent and selective approach during the evaluation and monitoring process has already been

noticed by several scholars. It was noted that the support of local "change agents," who had vested interests in the status quo, wish to weaken domestic opposition (including critical journalists and judges) or either "corrupt or… employ non-democratic means of reform" can actually weaken the rule of law [6, p. 337].

For the ruling groups in both countries, accession carried with it, in legal terms, "a constitutional legitimization bonus." However, the formal nature of the reforms required and monitored by the European Commission has also provided legitimacy for a newer local strain of legal instrumentalism, entrenching and perpetuating old practices of clientelism and patronage. A novel arsenal of ready-made ideological arguments derived from the rule of law was used to defend the new status quo. "Post- Communist legal professional elites are used to rule of law instrumentalism. From their standpoint, distorting constitutional principles (separation of powers, judicial independence, the rule of law, academic autonomy) into clichés and manipulating them as slogans for self-serving corporate purposes has simply represented adapting to a new environment. They substituted a new for an old set of stereotypes" [24, p. 43], exacerbating the existing social tensions. In turn, the EU's "top-down" and bureaucratic approach to democratization and the accession of South-Eastern European countries to the EU has caused discontent in various groups, contributed to the rise of populist sentiments, and served as fertile ground for manipulation by ruling groups.

CONCLUSION

For a long time, studies of the Europeanization emphasized only its positive effects and, at most, noted the limitations of the EU's influence on legal institutional reforms in the new member states [18]. However, at least since the mid-2010s, the "pathological" influence of the EU mechanisms and procedures [6, p. 341–342], including on Bulgaria and Romania, have become increasingly evident. This acknowledged that the EU's "civilizing mission" toward these countries had largely failed and in fact contributed to strengthening the existing form of governance. The EU has not changed the fundamental logic of the behavior of political and legal actors; there has been no "paradigm shift." Moreover, the identified pathologies should be viewed both as short-term, temporary side effects of judicial reforms implemented under external and administrative pressure and as long-term, systemic pathologies repeated in each new wave of reforms. Thus, despite going through several waves of reforms, the systemic defects of governance and reform remain largely intact. The constant pathological cycle of reforms and subsequent opposition to them is a kind of vicious circle preventing the creation of an impartial court and formal legality, i.e. the most important elements of the rule of law. In the premises, legal institutional reforms implemented from outside consolidate the existing social order, a form of governance based on the marginalization and instrumentalization of law.

Nevertheless, as Dimitrov and Plachkova emphasize, some lessons were learned from the Bulgarian and Romanian case. For example, Croatia was saved the trouble of undergoing post-accession conditionality, given that the country's socio-economic and political indicators were not significantly different from those in the Bulgarian and Romanian case. This appears to be a result of the recognition that the Cooperation and Verification Mechanism had proven incapable of inducing rule of law improvement after accession. Dimitrov and Plachkova also argue that the EU adopted a new approach to enlargement applied toward the Western Balkan countries and Turkey mainly based on the lessons learned from Bulgaria and Romania. This approach concerns the great attention focused on establishing rule of law as a precondition for successful accession to the EU and "the inclusion of the public at large, and not only the political elite, as a partner in the course of preparation for EU" [22, p. 177].

The latest European Commission reports on Bulgaria and Romania were published in 2019 and 2022, respectively. The decision to terminate the Cooperation and Verification Mechanism is related to the introduction of a monitoring system for all EU Member States in 2019. The European Commission's monitoring of Bulgaria and Romania under the Mechanism officially ended on September 15, 2023. However, this does not mean that the scholars' critique have become irrelevant. Apparently, legal issues in the two countries persist. In addition, the rise of illiberalism in Central and Eastern Europe, including Hungary, suggests that the case of Bulgaria and Romania was not so much specific as it reflected some more general trends in post-communist states associated with pathological errors in the implementation of reforms and the choice of relevant methods. It should also be noted that Bulgaria and Romania have been of strategic importance for the EU lately. As was the case with the EU accession of both countries, geopolitical considerations were a major driver of the termination of the Cooperation and Verification Mechanism. Thus, the abandonment of the Mechanism was caused by some reasons beyond the allegedly successful implementation of legal reforms in Bulgaria and Romania. .

ADDITIONAL INFO

Author contribution: E.V. Maslovskaya: conceptualization; investigation; writing—original draft, writing—review & editing. The author approved the version of the manuscript to be published and agrees to be accountable for all aspects of the work, ensuring that questions related to the

accuracy or integrity of any part of the work are appropriately investigated and resolved.

Funding source: No funding.

Disclosure of interests: The author has no relationships, activities or interests for the last three years related with for-profit or not-for-profit third parties whose interests may be affected by the content of the article.

Statement of originality: The author did not use previously published information to create this paper.

Generative AI: Generative AI technologies were not used for this article creation.

Provenance and peer review. This work was submitted to the journal on its own initiative and reviewed according to the usual procedure. Two internal reviewers participated in the review.

ДОПОЛНИТЕЛЬНАЯ ИНФОРМАЦИЯ

Вклад автора. Е.В. Масловская — определение концепции, сбор, анализ и обобщение литературы, написание черновика, пересмотр и редактирование рукописи. Автор одобрил рукопись (версию для публикации), а также согласился нести ответственность за все аспекты настоящей работы, гарантируя надлежащее рассмотрение и решение вопросов, связанных с точностью и добросовестностью любой ее части.

Источники финансирования. Отсутствуют.

Раскрытие интересов. Автор заявляет об отсутствии отношений, деятельности и интересов за последние три года, связанных с третьими лицами (коммерческими и некоммерческими), интересы которых могут быть затронуты содержанием статьи.

Оригинальность. При создании настоящей работы автор не использовал ранее опубликованные сведения.

Генеративный искусственный интеллект. При создании настоящей статьи технологии генеративного искусственного интеллекта не использовали.

Рассмотрение и рецензирование. Настоящая работа подана в журнал в инициативном порядке и рассмотрена по обычной процедуре. В рецензировании участвовали два рецензента.

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