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THE PERCEPTION OF JUSTICE IN WESTERN BALKANS COUNTRIES

The EU accession process is the main driver of judicial reforms in Western Balkan countries. The judicial reforms have been a continuous process for over 15 years, and each Western Balkan country adopted several strategies as a key policy document. As a result of reforms, all countries established new judicial bodies, transferred governance powers from executive to the judicial councils, introduced new judicial professions (notaries, bailiffs), adopted and strengthened rules and procedures for the appointment of judges and prosecutors, optimised court network, etc. Despite the fact that reforms were conducted with the aim to increase efficiency and integrity of judiciary, trust in the justice system across Western Balkans is still low, and position on international indices raises concerns on the impact of reforms. In the article, the author will analyse and compare the results of reforms in the Western Balkan countries in the key justice areas: efficiency, access and independence of the judiciary. The purpose of the analysis is to find out whether countries in the region are closer to the EU judicial standards and what has to be done to align the judiciary with EU standards.

Keywords: judiciary, independence, integrity, EU standards, judicial reform

1. INTRODUCTION

The relevance of justice for overall development is recognised in key international documents. At the heart of the 2030 UN Agenda for Sustainable Development lies a vision of a “just, equitable, tolerant, open and socially inclusive world in which the needs of the most vulnerable are met.”¹⁹ The justice gap undermines human development, reinforces the poverty trap, and imposes high societal costs.²⁰ Justice is a thread that runs through

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¹⁹ United Nations, *Transforming Our World: The 2030 Agenda for Sustainable Development*, New York, 2015.

²⁰ The World Justice Project, *Measuring the Justice Gap*, 2019, https://worldjusticeproject.org/sites/default/files/documents/WJP_Measuringpercent20thepercent20Justicepercent20Gap_final_20Jun2019.pdf

all 17 of the Sustainable Development Goals (SDGs) and is critical to end poverty, reduce inequality and promote peace and inclusion.²¹

On the regional level, the European values on the rule of law are relevant for EU member states and accession countries. Western Balkans countries continued to follow the EU accession process for more than two decades and the rule of law, as the common value specifically mentioned in the Treaty of European Union²², remains the foundation of the EU integration process. The core elements of the rule of law are reflected in the negotiation Chapter 23 of the *acquis*. European Commission expects of candidate countries to fully comply with EU principles related to the rule of law, specifically the principle of independent judiciary, fundamental rights and anti-corruption. In the field of judiciary, areas of focus of Chapter 23 accession negotiations relate to judicial independence, impartiality, accountability, professionalism and efficiency of the judiciary. The importance of the independent and efficient judiciary is twofold and relates to the rule of law and mandate of the national courts for the effective application of the EU *acquis* and upholding the rule of law within the EU (Lenaerts, 2020: 30).

In the process of justice sector reforms, Western Balkan countries strive to incorporate and achieve the European judicial standards on independence, quality and efficiency since it is an essential part of the overall enlargement process (Bobek, Kosar, 2014: 1275). Implementation of each standard requires numerous reforms that should lead to establishing an independent justice system resistant to any undue influence. In addition to the independence, the reforms are directed to the creation of the high quality judicial services, including an accessible judicial system and equality to all citizens before the court. Furthermore, the increase of efficiency is the goal that is focused on trial within a reasonable time as the right guaranteed in the European Convention on Human Rights.²³ However, in the previous waves of enlargement, the EU requirements for reforms mostly had an impact on the governance of the judicial branch and the governance of the courts, with divergent outcomes across countries (Sedelmeier, 2011: 19). As a lesson learned from previous enlargement processes, the Western Balkans countries need to present sustained efforts, track record and irreversibility of reforms in fundamental areas.²⁴

The aim of the article is to assess impact of the reforms in the Western Balkan based on triangulation of different sources (statistical data, analytic reports and survey on perception and experience). The comparative approach enables comparing of similarities and differences of impact of judicial reforms in Albania, Bosnia and Herzegovina, Kosovo,²⁵ Montenegro, North Macedonia, and Serbia.

²¹ UN Taskforce on Justice, Justice for All: Report of the Task Force on Justice, April 2019.

²² According to the European Commission, the rule of law can be defined as “legality, which implies a transparent, accountable, democratic and pluralistic process for enacting laws; legal certainty; prohibition of arbitrariness of the executive powers; independent and impartial courts; effective judicial review including respect for fundamental rights; and equality before the law”. European Commission, Communication: A New EU Framework to Strengthen the Rule of Law, COM (2014) 158 Final, pp. 4.

²³ Article 6 of the European Convention on Human Rights.

²⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A credible enlargement perspective for and enhanced EU engagement with the Western Balkans, COM(2018)65 final, Strasbourg, 06.02.2018.

²⁵ Kosovo in line with UNSCR 1244(1999).

2. BACKGROUND OF JUDICIAL REFORMS

Success in the judicial reforms is important for the EU accession process, but also for the business sector and citizens due to the importance of creating an enabling business environment, as well as for economic growth and protection of rights. A sound system of commercial legal and regulatory frameworks and well-functioning public and judicial services are important contributors to economic growth.²⁶ The rule of law, justice and access to redress may support contract enforcement, reduce transaction costs and facilitate investments (Acemoglu, Johnson, Robinson, 2005: 397). Effective and equal access to justice for business also fosters good governance, legal certainty and predictability.²⁷ That is confirmed in the World Bank 2019 Regional Survey of How the Justice System Impacts the Business Climate in South East Europe, which concludes that across South East Europe, courts and existing laws are viewed as having the most significant negative impact on business operations, ahead of other institutions in the justice sector.²⁸

To achieve progress in the EU accession process, the Western Balkan countries have been implementing judicial reforms within their national strategic framework for more than 15 years following the EU-Western Balkan Summit in Thessaloniki in 2003 (van Meurs, 2003: 10). The EU is monitoring progress in the justice sector through the different mechanisms and tools since there is clear indication that the EU will not take the Western Balkans seriously if there is a continuation of political interference in judicial decisions (Mendelski, 2018: 116). While the achievement of some standards, such as efficiency, is easier to measure, other standards are more challenging to assess, such as access and independence of the justice system. While the accession status of Western Balkans countries differs, the EU requirements related to the rule of law are the same for all. The Commission identified Serbia and Montenegro as front-runners for EU accession and recommended that both countries be allowed to join the EU by 2025.²⁹ The accession negotiations were opened in June 2012 with Montenegro and in January 2014 with Serbia. North Macedonia and Albania are candidate countries. The Council decided in March 2020 to open accession negotiations with Albania and North Macedonia, however, accession negotiations have not been opened yet. Bosnia and Herzegovina, and Kosovo have the status of the potential candidate countries.

Key reforms included changes of the constitutional and legislative framework with the aim to strengthen the independence of the judiciary and ensure separation of powers. North Macedonia amended the Constitution in 2005 to introduce a judicial self-governance body and strengthen independence of judiciary in line with the Council of Europe

²⁶ OECD, What makes civil justice effective?, Economic Department Policy Notes, No. 18, 2013.

²⁷ OECD, Equal Access to Justice, Expert Round Table, Background Notes, 2015, available at: <http://www.oecd.org/gov/Equal-Access-Justice-Roundtable-background-note.pdf>

²⁸ Senderayi, R. G., Svircev, S., Skopljak, Z., Ilic, S., (2019) Understanding Barriers to Doing Business: Survey Results of How the Justice System Impacts the Business Climate in South East Europe, World Bank Group, available at: <http://documents.worldbank.org/curated/en/168701564080491520/Understanding-Barriers-to-Doing-Business-Survey-Results-of-How-the-Justice-System-Impacts-the-Business-Climate-in-South-East-Europe>

²⁹ European Commission Communication on a Credible Enlargement Perspective for an Enhanced EU Engagement with the Western Balkans, COM (2018) 65 final.

recommendations.³⁰ However, challenges in implementation and poor results implicated the drafting of new Constitutional amendments (Preshova, 2018: 5). Montenegro amended Constitution in 2013 in the part related to the judiciary with the aim to strengthen independence and enable country-wide recruitment and merit-based promotion.³¹ Albania in 2016 adopted changes of more than one-third of its Constitution to strengthen the integrity of the judiciary and enable the vetting process as a major precondition to the opening of accession talks with the EU (Hoxhaj, 2020: 251). Kosovo in 2016, following the recommendation of the Venice Commission and the European Commission for other countries,³² adopted a constitutional amendment on the composition of the judicial council.³³ Serbia opened discussion for the constitutional amendments in 2017 within the framework of the implementation of interim benchmarks and the Action plan for Chapter 23 with the aim to reduce political influence over the judiciary.³⁴

It could be concluded from the constitutional reforms that within the EU accession conditionality framework particular focus was on the judicial governance and independence. Although across Europe judicial governance systems differ since they have a historical background, over the past few decades, it is noted that the standards regarding judicial governance have evolved and promoted strong and independent judicial councils and training academies as a key indicator of progress in judicial reforms (Preshova, Damjanovski, Nachev, 2017: 13).

At the institutional level, all Western Balkan countries introduced judicial councils as guarantees of independence of the judiciary.³⁵ In line with European standards and recommendations, judicial councils were created to take over tasks previously handled by the ministries of justice. The main competence of the councils across the Western Balkans is to decide on status matters of judiciary, namely appointment, evaluation, promotion and dismissal. The composition of the councils is regulated differently, but in all countries the members of the judiciary present at least a slight majority.

At the end of the 90s and the beginning of the 2000s, across Western Balkans the relevance of judicial training institutions was recognized.³⁶ The EU accession process accelerated the transformation of judicial training institutions into a crucial factor for

³⁰ European Commission for Democracy through Law – Venice Commission, Opinion on Draft Constitutional Amendments Concerning the Reform of the Judicial System in “The Former Yugoslav Republic of Macedonia”, CDL-AD (2005)038, para 38-54.

³¹ European Commission, Montenegro 2013 Progress Report, SWD(2013) 411 final.

³² European Commission, Kosovo 2016 Report, SWD(2016) 363 final, November 2016.

³⁵ Amendment of the Constitution of the Republic of Kosovo No. 05-V-229 24 February 2016, Official Gazette of the Republic of Kosovo, No. 9 / 11 March 2016.

³⁴ European Union Common Position Chapter 23: Judiciary and Fundamental Rights, AD 20/16, Brussels, 8 July 2016.

³⁵ Albania introduced the High Judicial Council in 1992, Bosnia and Herzegovina introduced the High Judicial and Prosecutorial Council in 2004, in Kosovo the Judicial Council was established by UNMIK Regulation in 2005, Montenegro established the Judicial Council in 2008, North Macedonia established the Judicial Council by constitutional amendments in 2005, and Serbia introduced the High Judicial Council by law in 2008.

³⁶ In Albania, the School of Magistrates was established in 1996 for the organisation of initial training of candidates for judicial and prosecutorial positions and continuous training of judges and prosecutors. In Bosnia and Herzegovina, training for the judiciary is provided by the Judicial and Prosecutorial Training Centres

raising the capacities of the judiciary.³⁷ Specifics of the transformation is the establishment of training institutions as independent bodies competent for both initial and continuous training of judges and prosecutors.³⁸

In addition, new judicial professions were introduced in all Western Balkan countries with the aim to strengthen the efficiency of the judicial procedures and remove the administrative burden from the court administration and judges. While notaries were introduced in some countries already in the 90s of the XX century, the introduction of private bailiffs was more challenging and happened over the last decade.³⁹

The main driver of the reforms remains the European Union integration process through annual reports and assessment of the results. However, despite Western Balkans remaining on the EU integration path, its constant failure to adhere to the recommendations of the European Commission, GRECO, and the relevant EU and Council of Europe bodies might be a sign that the perspective of EU integration is not a strong motivating factor (Vachudova, 2019: 64). The problem might be two-fold: on the one hand, Western Balkan countries have been on the EU path for almost two decades without having an accession date in the foreseeable future (or opening negotiations). On the other hand, the constant incapability of Western Balkans to deal with issues such as corruption, independence of judiciary, and accountability of officials, demonstrate a lack of the political will to undertake substantial reforms.

Integrity and independence issues of judicial stakeholders, alongside the lack of effective monitoring and accountability of the work of judicial professionals, are preventing the Western Balkan countries from improving their rankings at the relevant international lists and indexes. At the World Justice Project 2020 Rule of Law Index, Western Balkans countries had score range from 0.54 to 0.50 out of 1.0⁴⁰ and they were

(JPTC) of the two Entities – the Federation of Bosnia and Herzegovina and Republika Srpska, in line with laws establishing the training institutions in 2002. In Kosovo, the Judicial Institute was established in 2000 with the mandate to organize initial and continuous training for future and sitting judges and prosecutors. The Kosovo Judicial Institute was transformed in the Judicial Academy by law in 2017. In 1999, the Centre for Continuous Education for the organisation of professional training of judges and prosecutors was established in North Macedonia. In 2005, the Centre was transformed into academy for the training of judges and prosecutors. A similar situation was in Montenegro, where the Judicial Training Centre was established in 2000 and transformed in 2015 in the Centre for Training in Judiciary and State Prosecution Service.

³⁷ CCJE, Opinion No. 4 on appropriate initial and in-service training for judges at national and European level, 27.11.2003.

³⁸ In accordance with paragraph 2.3 of the European Charter on the Statute for Judges, any authority responsible for supervising the quality of training programme should be independent of the executive and the legislature and at least half of its members should be judges. The CCJE Opinion No. 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges recommends that the same authority should not be responsible for training and appointments, promotion and disciplinary proceedings against judges.

³⁹ Private bailiffs and notaries were introduced in Serbia in 2014; in Montenegro notaries were introduced in 2011 and private bailiffs in 2014; in North Macedonia notaries were introduced in 1997 and private bailiffs in 2006; in Albania notaries were introduced in 1994 and private bailiffs in 2010; in Kosovo notaries were introduced in 2011 and private bailiffs in 2014; in Bosnia and Herzegovina notaries were introduced in 2007, while the enforcement is conducted only by the court enforcement agents.

⁴⁰ 2020 data are available at: <https://worldjusticeproject.org/rule-of-law-index/global/2020>

The World Justice Project (WJP) Rule of Law Index is the world's leading source for original, independent

ranked in the second part of the list, from 54th to 78th position out of 128 countries. A similar situation is with other international rankings, such as Transparency International Global Corruption Index, or World Bank Worldwide Governance Indicator.

3. PERCEPTIONS AND EXPECTATIONS FROM JUDICIAL REFORMS

Although significant legislative and institutional changes were introduced over the two decades as a part of the EU accession process, citizens in all Western Balkans countries but Kosovo are not convinced that the previous reform efforts resulted in meaningful improvements in the judiciary.⁴¹ However, businesses see the positive impact of the previous judicial reforms. In addition, many citizens and businesses are of the opinion that the previous reforms did not have an impact on the situation in the judiciary. Lawyers side with citizens and businesses, however, their overall assessment of the previous reforms is slightly better.

Judges and prosecutors in Western Balkan countries speak highly about the success of past reforms, except in North Macedonia and Serbia, where they are very critical and have negative opinion about the previous reform efforts. The negative perception of judges and prosecutors in Serbia could be explained by two significant reorganisations of the court network in 2010 and 2014, re-election of judges in 2009 when 30 per cent of judges and prosecutors were not re-elected, and many other actions that were not carefully planned and implemented (Rakić Vodinelić, Knežević Bojović, Reljanović, 2012: 96). In North Macedonia, judges and prosecutors' negative perception is a result of shortcomings and abuses of appointment process that was susceptible to the considerations of the affiliation of a candidate with the ruling parties, obstructions of the work of the Special Public Prosecutor's Office and abuse of the Constitutional Court (Ali, Ramić Mesihović, 2016: 111).⁴²

Moving forward, citizens in all Western Balkan countries report low expectations concerning the impact of current and future reforms. In fact, there are more citizens in all countries, except in Serbia and Montenegro, who believe that the current reform is going in the wrong direction than those believing that it is moving in the right direction. Though slightly more positive in their overall assessment, great number of businesses are also not convinced that there will be any meaningful improvements in the court system in the future. In Albania, Kosovo and Montenegro, business sector representatives are significantly more positive than citizens. In Albania, the positive opinion might be

data on the rule of law. Now covering 128 countries and jurisdictions, the Index relies on national surveys of more than 130,000 households and 4,000 legal practitioners and experts to measure how the rule of law is experienced and perceived around the world. Performance is assessed through 44 indicators organized around eight themes: constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice, and criminal justice. Scoring is from 0 to 1, where 1 is for the best results.

⁴¹ 2021 Regional Justice Survey Albania Country Report, Bosnia and Herzegovina Country Report, Kosovo, Country Report, Montenegro Country Report, North Macedonia Country Report, Serbia Country Report, World Bank.

⁴² European Commission, Urgent Reform Priorities for the FYROM, 2015, available at: https://eeas.europa.eu/sites/default/files/urgent_reform_priorities_en.pdf

result of expectations from the vetting process. Among lawyers, those from Albania and Montenegro believe that current reforms will result in a positive change. Their peers from other Western Balkan countries are slightly more sceptical.

Judges and prosecutors in all Western Balkan countries are divided in their opinions. While judges in Albania, Kosovo and Montenegro support current reforms to a large extent, the majority of their colleagues in Bosnia and Herzegovina, North Macedonia and Serbia do not believe that reforms are going in the right direction. Prosecutors in Bosnia and Herzegovina by large are the most sceptical about the success of current reforms, probably due to challenges caused by lack of any adequate safeguards as well as by being exposed to pressure and interferences in the ongoing cases.⁴³

Survey results clearly show differences in perception of citizens and businesses on one hand, and of judges and prosecutors, on the other. These discrepancies in perception might be explained by different information challenges and lack of communication of judiciary with the public.⁴⁴ While citizens and businesses are informed through informal means, such as TV, various portals and friends, judges and prosecutors are informed via formal means, such as official web pages and official correspondence.

In most Western Balkan countries, long court delays are common, and efforts to reduce time frames have been incorporated in reform strategies. To improve the efficiency of judiciary, all Western Balkan countries took numerous measures, including amendments to procedural laws, such as criminal procedure law, civil procedure law, bankruptcy law, law on administrative procedure, law on non-contentious proceedings, law on enforcement, etc. Furthermore, the introduction of an automatic case management system in all countries contributed to the improvement of performance monitoring and reporting, including monitoring of old cases and the introduction of an age list to have oversight of the age structure of cases. Some of the countries, like Serbia and Montenegro, introduced the Law on Protection of the Right to a Trial within a Reasonable Time,⁴⁵ however the substantial improvements are yet to be achieved (Nenezić, Vukčević, 2019: 33).

Despite all reforms, the length of court proceedings continues to exist as a common problem in most countries, especially in Bosnia and Herzegovina and Kosovo. Some of the reasons for the delays are poor management of cases by judges, especially in ensuring the presence of parties in the court,⁴⁶ complex procedures, limited use of new technologies, etc. World Bank Regional Justice Survey results confirm that almost half of the hearings did not contribute to the case resolution. Lawyers are the most critical, and in North Macedonia they stated that only 37 per cent of hearings contributed to the resolution of case compared to 60 per cent of their peers in Albania. This perception is confirmed by the time needed for case resolution. Moreover, the 2020 CEPEJ Report (2018 data) indicates that disposition time in civil and commercial litigations in first instance courts in Bosnia

⁴³ Expert Report on Rule of Law issues in Bosnia and Herzegovina (*Priebe Report*), December 2019, para 42-52, available at: <http://europa.ba/wp-content/uploads/2019/12/ExpertReportonRuleofLawissuesinBosniaandHerzegovina.pdf>

⁴⁴ 2021 Regional Justice Survey, Country Reports, World Bank.

⁴⁵ In Montenegro, the Law was adopted in 2007, Official Gazette of Montenegro, No. 11/2007. In Serbia, the Law entered into force on January 1, 2016, Official Gazette of RS, No. 40/2015.

⁴⁶ OSCE, Trial Monitoring of Corruption Cases in BIH – Second Assessment, 2019.

and Herzegovina amounts to 483 days and is significantly higher than the European average of 201 days.⁴⁷ Similarly, in Kosovo citizens are facing a long duration of cases with 947 days for the first instance decision in civil and commercial litigations. Serbia's disposition time is closer to the European average with 225 days for the first instance decision in civil and commercial litigations, while in Montenegro is 229.

Some reforms were received positively by the public, while others were criticised and perceived as a burden for citizens. The introduction of notaries was received positively, except by lawyers in Serbia (Živković, Živković, 2013: 440), while controversies and challenges followed the establishment of private bailiffs.⁴⁸ While notaries and administrative court services are generally positively rated by citizens and the business sector, bailiffs are rated negatively. A combination of several factors can explain this perception: the fact that laws that regulate the work of bailiffs are still with flaws, lousy implementation of normative acts related to the work of bailiffs, poor monitoring, scarce disciplinary reactions, and several affairs of former presidents of the Bailiffs' association.⁴⁹

Despite the fact that many important reforms were conducted with the aim to increase court's efficiency, citizens, business and lawyers still believe that there is a need for improvement. Both citizens and businesses across all Western Balkan countries are generally not satisfied with the efficiency of courts in their respective countries. However, actual experience with courts positively impacts on both citizens and businesses, resulting in a significant increase of satisfaction shares in Albania, North Macedonia and Serbia.

In contrast, judges and prosecutors across Western Balkans are very satisfied with the courts' efficiency. Despite a high number of judges across all Western Balkan countries, except in Albania, judges and prosecutors supported further increasing of human resources as a measure to improve court efficiency. In the CEPEJ report of 2020 (2018 data), the average number of judges per 100,000 inhabitants was 21, while the Western Balkan countries average ranged from 24.6 in North Macedonia to 50 in Montenegro.⁵⁰ Notwithstanding judges' perception, increasing the efficiency of the Western Balkans judicial system is unlikely to be achieved by additional staffing, and the focus should be on other elements that can raise efficiency, such as processes, good practices, training, as suggested, for example, by lawyers (Dimitrova Grajzl, Grajzl, Sustersić, Zajc, 2012: 22). Further, judges point to improved working conditions through better court infrastructure to contribute to higher efficiency, whereas prosecutors name better cooperation with other government agencies as an important point.

⁴⁷ European Judicial Systems CEPEJ Evaluation Report, 2020 Evaluation Cycle (2018 data), European Commission for the Efficiency of Justice.

⁴⁸ Since its introduction, the institute of bailiffs in Montenegro has been a constant issue with regards to adherence to professional standards, accountability, independence, and integrity. Two former presidents of the Chamber of Bailiffs were arrested, putting an additional doubt on the independence and *bona fidei* work of the Chamber and its members. See: <https://m.cdm.me/hronika/uhapsen-javni-izvrsitelj-sinisa-mugosal/>, <https://m.cdm.me/hronika/falsifikovanim-presudama-stranke-zloupotrebljavaju-izvrsitelje/>

⁴⁹ Javni izvrsitelji u Crnoj Gori, CEMI, Podgorica, 2017.

⁵⁰ European Judicial Systems – CEPEJ Evaluation Report, Council of Europe, 2020 available at: <https://rm.coe.int/evaluation-report-part-1-english/16809fc058>

In addition to improving efficiency, access to justice was also set as a priority in the reform strategies of Western Balkan countries. Access to justice encompasses all the elements needed to enable citizens to seek redress for their grievances and to demand that their rights are upheld regardless of their economic, social, political, migratory, racial, or ethnic status or their religious affiliation, gender identity, or sexual orientation (Lima, Gomez, 2020:1). Access to justice elements include the existence of a legal framework granting comprehensive and equal rights to all citizens in accordance with international human rights standards, availability of affordable and quality legal advice and representation and availability of accessible, affordable, timely and effective dispute resolution mechanisms. To advance access to justice, all Western Balkan countries took numerous measures aiming to improve access to information through establishing websites of all courts and prosecutors' offices, including the availability of relevant information online (addresses and phone numbers, navigation through the system, electronic versions of relevant legislation), the establishment of judicial portals to ease access to information on a specific case (*i.e.* e-board with information on date and time of the hearing) and affordability of judicial system (*i.e.* legal aid).

To understand the survey results, it is important to point to limited experience with the court system among citizens with shares around 20 per cent across Western Balkans, ranging from 19 per cent in Kosovo to 37 in Serbia. Among those citizens who have gone to court, most have either hired a private lawyer or opted for self-representation before the court. Despite limited experience with the court system, at least half of all citizens across the five countries perceive courts to be accessible, while in Albania satisfaction with accessibility is lower and only 37 per cent of citizens perceive courts as accessible. However, citizens assess the financial accessibility of courts as the least favourable dimension. That is in direct correlation with free legal aid availability. Despite the existence of free legal aid in all Western Balkan countries,⁵¹ the awareness on free legal aid among citizens is still very low. Half of the citizens across Western Balkans do not know if free legal aid is available or not, while less than 10 per cent are familiar with details of free legal aid scheme. In addition to lack of awareness, it is important to mention that free legal legislation across Western Balkans needs to be improved. For example, in Bosnia and Herzegovina free legal aid is available only to the very limited category of judicial system users who are natural persons with the very low-income threshold. Thus, many individuals above the set income threshold, but still with low income, do not have access to the free legal aid.⁵² Therefore, even if public awareness on the availability of legal aid is in place, the free legal aid system will still remain unavailable to individuals who do not fall under the threshold. Both Serbia and Montenegro are facing challenges regarding the type of procedures covered by legal aid, potential users and providers, and control of the quality of free legal aid (Palačković, Čanović, 2020: 73; Raonić, Radović, Vujičić, 2019: 57).

⁵¹ Law on Free Legal Aid is applied in Albania since 2017, in Bosnia and Herzegovina since 2016, in Kosovo since 2012, in Montenegro since 2012, in North Macedonia since 2012 and the new Law since 2019, in Serbia since 2019.

⁵² Amnesty International, Report on Bosnia and Herzegovina to the UN Human Rights Committee, 2017.

4. TRUST IN THE JUSTICE SYSTEM

An independent judiciary, as the rule of law requirement, implies protection of citizens against the arbitrary use of power by the state and that judges act freely and impartially without political pressure, influences and biases.⁵³ The independence of the judiciary need to be guaranteed, and the judges shall be able to decide matters before them impartially, based on facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.⁵⁴

The judicial systems of the Western Balkans are negatively affected by the politicisation of the judiciary and undue influences (Anastasi, 2018: 3). Although the establishment of an independent judiciary across Western Balkan has been part of the EU accession process, institutional and legislative changes, such as the establishment of judicial councils and academies without adequate internal reform, has led to the emergence of new channels of political interference (Fagan, 2016: 3). These conclusions are also confirmed through the World Bank Regional Justice Survey that identified integrity and independence as the major problems of the judicial systems of the Western Balkans. Citizens across Western Balkan countries have divided opinion on trust in the judiciary. In Albania, Bosnia and Herzegovina, and North Macedonia, citizens report low levels of trust, with the lowest expressed in Albania where less than one-fifth of citizens tells that they have trust in their judiciary. Citizens in Kosovo and Montenegro report the highest shares of trust, with around 60 per cent of general population having trust in the judiciary. In Serbia population is divided and 50 per cent of citizens express trust in the judiciary. Similarly, citizens in all Western Balkan countries have divided opinion on the independence of the judiciary in their countries. In contrast, the majority of judges believe that they and the court system are independent. Prosecutors are more critical, but a relatively high share of prosecutors believe that system is independent.

All six countries are ranked relatively low on Transparency International's Corruption Perceptions Index (CPI), ranging from Montenegro in 67th place to Kosovo and North Macedonia in 111th out of 179 countries.⁵⁵ The latest EC progress reports assessed each of the six Western Balkan countries' fight against corruption as being at some level of preparation. Also, corruption is reported by the majority of citizens across all countries to be present in the judiciary.⁵⁶ However, when asked if they have resorted to informal means and corruption to gain an advantage in their court case, the vast majority of citizens

⁵³ Venice Commission, CDL-AD (2010)004-e, Report on European Standards as Regards the Independence of the Judicial System: Part I, Venice, 12-13 March 2010), par. 6.

⁵⁴ Basic Principles on Independence of Judiciary, General Assembly Resolutions 40/32 of 29 November 1985 and 40/146, 13 December 1985, principle 2. Some common criteria to assess whether a court could be considered as independent are: 1) the manner of appointment of judges; 2) the duration of their term of office; 3) the existence of guarantees against outside pressure; and 4) whether the court presents an appearance of independence. See, e.g. *Campbell and Fell v. UK*, App. No. 7819/77; 787/77, ECtHR, 28 June 1984, para. 78.

⁵⁵ Transparency International, Corruption Perceptions Index 2020, available at: <https://www.transparency.org/en/cpi/2020/index/mne>

⁵⁶ 2021 Regional Justice Survey, Country Reports, World Bank.

reported that they had not had such experience. Judges also believe that corruption is present within their court system, however, the range significantly differs, from 67 per cent of judges in Albania to 13 per cent in Montenegro. It is important to highlight that most of judges report that pulling strings and influence on career are the most often forms of corruption they experienced.

Lack of independence and low trust in the justice system affects perception of the level of fairness. Most citizens in Albania, Bosnia and Herzegovina and North Macedonia believe that the judicial system in their country is not fair; only in Kosovo just above 60 per cent of citizens believe that the court system is fair. According to citizens, the main factor that contributes to a lack of fairness is a difference in economic status and party membership that can result in favourable treatment before the courts.

5. CONCLUSIONS

The assessment showed that although the legislative framework is closer to the EU requirements, the impact of reform in Western Balkans is still lacking. Newly established institutions did not meet expectations due to limited resources and lack of clear vision and strong leadership. In addition, the selection of senior members on key positions in the transitional societies is challenging since those with more experience are more likely to adhere to the old system and other values than those that the current reforms are trying to achieve, especially in relation to independence and integrity area (Bošković, 2015: 185).

More than two decades of reform of the justice sector have not resulted in an increased trust of citizens in the judiciary. On the contrary, citizens do not see the impact of previous reforms, nor they believe that current reforms are heading to the right direction.

Efficiency has improved in some countries and is closer to the Council of Europe average in the first instance cases, but citizens still perceive the judiciary as inefficient. A significant number of inefficient hearings might contribute to such perception of citizens, as well as remaining challenges in the enforcement of court decisions.

Independence remains the key challenge for judicial reform and alignment with the rule of law standards. Constitutional amendments and review of the regulatory framework have not led to the strengthening of independence and separation of powers but have resulted in the emergence of the new channels of political interference. To strengthen integrity and independence, it is important to change the culture among members of judiciary, but also among citizens.

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