The Europeanization of the Countries in South-East Europe through Enhancement of the Rule of Law: A Mission in Progress

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In the context of the ongoing crisis, the EU must re-evaluate why enlargement has been successful in the past and understand the obstacles facing it today. Only then will the EU be able to reconceptualise enlargement for a new era and revive its founding soft power.

Luc-André Brunet

The rule of law promises to move countries past the first, relatively easy phase of political and economic liberalization to a deeper level of reform. But that promise is proving difficult to fulfill.

Thomas Carothers

1 Justification of the Problem Under Scrutiny

1.1 The Social-political Problem  
It is hardly questionable that the future of Europe – as a key player in world economic competition and as a key actor determining the agenda of international relations – depends on the capacity of European countries to build a common socio-economic space at the continental scale (Hix 2008). This inevitably requires a continuation of the process of EU enlargement. Thus, despite Jean-Claude Juncker’s firm declaration that there will be no further enlargement until 2019,
the accession of the candidate member states of Southeast Europe is imperative, regardless of how long it takes. It meets the interests of the citizens of those countries to the highest degree, as the road to solving the multiple problems in their internal and neighborhood relations requires maintaining an enduring stability for which their sustainable economic development is a precondition – and accession to the EU is the best way of achieving this development. But no matter how desirable their accession to the EU might be for both sides, a major question remains: how realistic is it to expect this will actually happen? Achieving this goal involves surmounting a number of challenging hindrances. The most general of these is related to the paradox of Europeanization: it is believed by national societies in the region to be a cause in the name of which it is worth investing the efforts to accede to the EU, yet it should in fact be an already achieved premise for accession to the European Union. This paradox lies at the root of all the difficulties that accompany the preparation for accession, and it is reproduced at every stage of the Enlargement process.¹

The theme of Europeanization is far too broad for the scope of this paper, as it concerns an enormous variety of different aspects of public life and different fields of policymaking (Sedelmeier 2011, 2012; Grabbe 2006; Hughes et al. 2005; Dimitrova 2004, among numerous others). Here, then, we are compelled to

¹ Many distinct problems grow out from this root, for example: the focusing of the pre-accession process on the acquis transposition is radically missing the point of the preparation for Europeanization because it does not take into account the fact that during previous enlargement rounds there has been no need for specific acquis for the acquis implementation (‘The fact is that democracy and the rule of law do not make part of the acquis and have never actually been covered by it. It means that in the course of the pre-accession assessment of the candidate countries a huge discrepancy existed between the application of conditionality in the areas covered by the acquis and those merely lying within the scope of the Copenhagen political criteria and thus falling outside the scope of acquis communautaire.’ Kochenov 2014: 11). The contractual character of West-European societies provides the grounds for the rule of law as a paramount value that does not need any deliberate strict codification. In Eastern Europe the societies are not based on contract relations to that extent and, hence, the rule of law could not be implemented there by sole acquis transposition. On the next level, the very same problem transforms to seem as a problem of endemic corruption plaguing the economy, the political institutions, and the judiciary. The problem of corruption in its turn appears as a universal one, as a problem that could be solved by the legal, institutional, and penal instruments that work in Western societies. The unproductiveness of such an approached could be foreseen in advance (Ágh 2008; Alegre et al. 2009; Andreev 2009; Börzel 2011; Buzogány 2012; Dąbrowski 2012; Dimitrov et al. 2014; Dimitrova 2010; Ekiert 2008; Ganev 2012; Gateva 2013; Kavrakova 2009; Mungiu-Pippidi 2011; Papadimitriou 2009; Papakostas 2012; Tanasoiu 2012; Toneva-Metodieva 2014; Toshkov 2012; Trauner 2009).