



ORIGINAL PAPER

Peace-building, Europeanization and Local Self-Government Empowerment. A Cross-Country Constitutional and Democratization Indices Analysis in the Balkans

Cătălina Maria Georgescu*

Abstract

The literature on the Balkans' post-conflict reconstruction and democratization processes is enriched with studies centered either at presenting the post-conflictual political reform, the international organizations' intervention in domestic affairs and the quality of local self-government, or the democratization process and institutional guarantees of the rule of law, the processes of federal disintegration and government decentralization, or the European enlargement and Europeanization processes. This paper aims at correlating synthetic analyses of the Balkans' legal systems starting with the constitutions and statistical analyses of democratization indices gathered and calculated by international observers. The comparative analyses will focus on five dimensions – citizens' voice and public accountability, control of corruption, political stability and absence of violence and /or terrorism, government effectiveness, rule of law and regulatory quality –, applied to three Western Balkans states selected according to the European integration status criterion: Member States (Croatia), candidate countries (the former Yugoslav Republic of Macedonia) and potential candidates (Bosnia and Herzegovina).

Keywords: *Constitution, democratization, historical institutionalism, local self-government, post-Communism, Balkans*

* Lecturer, PhD, University of Craiova, Faculty of Law and Social Sciences, Political Sciences specialization, Phone: 0040251418515, Email: cata.georgescu@yahoo.com

Peace-building, Europeanization and local self-government empowerment as major themes in academic debates

The transition dynamics of the Balkans towards democracy and the rule of law is a well-debated and seminal theme of discussions. Researchers in the field contended on the possibilities of the former Yugoslav Federation for democratization and the installment of free market institutions. Instead, history has shown us a darker picture, with the region drenched in secession ethnic and political wars, shattered by ethnic-cleansing throughout the 1990s. The international community has reacted to these clashes, however, its intervention succeeded rather late to prevent the volatility of this region. The peculiarities of this space were analyzed throughout multiple dimensions.

A first relation can be drawn among post-conflictual political reform, international organizations' intervention in domestic affairs and the quality of local self-government. This relation was assessed in studies which aimed at outlining the discrepancies between international projects for democratization of the Western Balkans and the degree of self-government by civil society observance. Thus, it was argued that there is an indirect correlation between international involvement and the internalization of democratic institutions and citizens' participation in government (Pickering, 2007). In a similar view, Attila Agh (1999) discusses sovereignty-related issues and "forceful international intervention" before the fall of East Central and South-Eastern European (Balkan) communist regimes and during European accession (Agh, 1999: 163-279). The approach is comparative as the author discusses the cases according to four categories of states: (a) newcomers – the most democratized countries in the region during the post-communist transition phase include the Czech Republic, Hungary, Poland and Slovenia, (b) belated states – relate to Bulgaria, Croatia, Romania and Slovakia, (c) "*semi-protectorates*" – the author discusses the external intervention in Bosnia & Herzegovina and Macedonia, and (d) conflict unrest states – the cases of Albania and Serbia.

Within this line of thought and supported by intensive direct observations and interviews, Paula M. Pickering (2007) attaches a more profound meaning to the concept of peacebuilding by showing the manner in which this process has to be translated in people's perceptions and actions. The means to proceed with this process include international aid for the reform of political institutions and to create a sound infrastructure of democratic civil participation through non-governmental organizations. The idea behind this research is that ordinary citizens' outputs might differ the vision of internationally dwelt strategies for post-conflict reconstruction and democratization through the construction and imposition of formal institutions (Olimid, 2014: 73-84).

This idea is soundly attached to that of existing loopholes in the European forces capacities for conflict resolution and military intervention (Belloni, 2009). The researchers discuss the case of the boundaries of the "dual key command channels" in Bosnia and Herzegovina and the limitations they imposed to actions under the command of NATO and the UN, but also the EU's unpreparedness and inexperience to act both politically and militarily in the area (Belloni, 2009: 314-315). Thus, the literature asserts the Western Balkans bloody experiences as an incentive for the EU to develop its conflict management mechanisms and institutions together with its political conditionality force claiming the countries in the Western Balkans as "potential candidates for membership" (Belloni, 2009: 317).

Peace-building, Europeanization and Local Self-Government Empowerment...

European integration was assessed as a means for ensuring “peace, stabilization and development” for the EU neighborhood, thus countries passing through violent systemic change exploring their post-communist possibilities opted for “their return to Europe”. Aspiring to membership status, Europeanization impacted the countries exiting the communist bloc in Central and Eastern Europe guiding them towards a successful union with Europe. The Balkans, however, had multiple streams in their transformations, and the outbreak of the civil wars derailed the countries from democratization and market liberalization (Demetropoulou, 2002). For some states, democratization and enforcing institutional guarantees of the rule of law, establishing and consolidating economic development and market institutions within the whole process of federation dissolution, the establishment of sovereign and independent regimes, decentralization of civil services and local self-government had to be correlated with the end of the Yugoslav wars (Soyaltin, 2013: 599-601). Through its democratization conditionality, gaining EU membership thus became a vector for triggering systemic transformations (Keil, 2013: 343-353). The CEE countries’ transitions from centrally-planned economies and state socialism towards market-oriented liberal democracies and rule of law were closely monitored by European bodies. The Western Balkans had to assume a peace-building stage (Hlavackova, 2013: 81-106), to safeguard their people and their countries from the ravages of war and extreme nationalism (Dyrstad, 2012: 817) before coming to terms with adaptation to the conditions imposed for their European integration (Avdic, 2013: 67-79; Veremis, 2008: 121-128), the “rule transfer” towards the membership aspirants (Renner, Trauner, 2009: 449-465; trainer, 2009: 65-82). This is why one has to correlate the economic, political and social “confining conditions” that characterized the Balkans in the early post-conflict years. In this key we have to read the fundamental laws of those countries and the amendments that were adopted several years after (Elbasani, 2008: 293-307; Pranger, 2011: 1-14). The structural configuration of Balkan societies in the interwar period (Bărbieru, 2014: 106-115), during communism and post-communism, after the civil wars, the challenges of the transitions towards market economies and rule of law (Cabada, 2013: 29-50; Șerban, 2012), the relations between national minorities and the majority as forged by the juridical framework within the social and political system within the wider context of international recognition of the new sovereign and independent republics (Kentrotis, 2010; Bauerova, 2013: 51-65). Democratization theories sometimes use explanations on democratization arguing in favor of political actors (Mungiu-Pippidi, 2003; Mungiu-Pippidi, 2006) versus structural components, such as history, culture, religion and geography/ proximity, or the old center-periphery paradigm (Petrovic, 2008).

Launching hypotheses and preparing case-studies

Through the hypotheses we subsequently launch we plan to test the existence of a causality relationship between the constitutions’ claims of the principles in question and the actual resonance and manifestations measured as citizens’ perceptions. The methodology behind the study implies content analysis of the constitutional articles brought in view through the Constitute Project (<https://www.constituteproject.org>), while the democratization indices were quantified using data correlated from the Worldwide Governance Indicators database (<http://info.worldbank.org/governance/wgi/index.aspx#home>).

Citizens' Voice and Public Accountability

Through this hypothesis we aim at validating the idea of voice and accountability as interrelated concepts that enforce the establishment and consolidation of democratic institutions. Citizens are thus empowered to participate while the democratic establishment is enhanced (Olimid, 2014: 73-84).

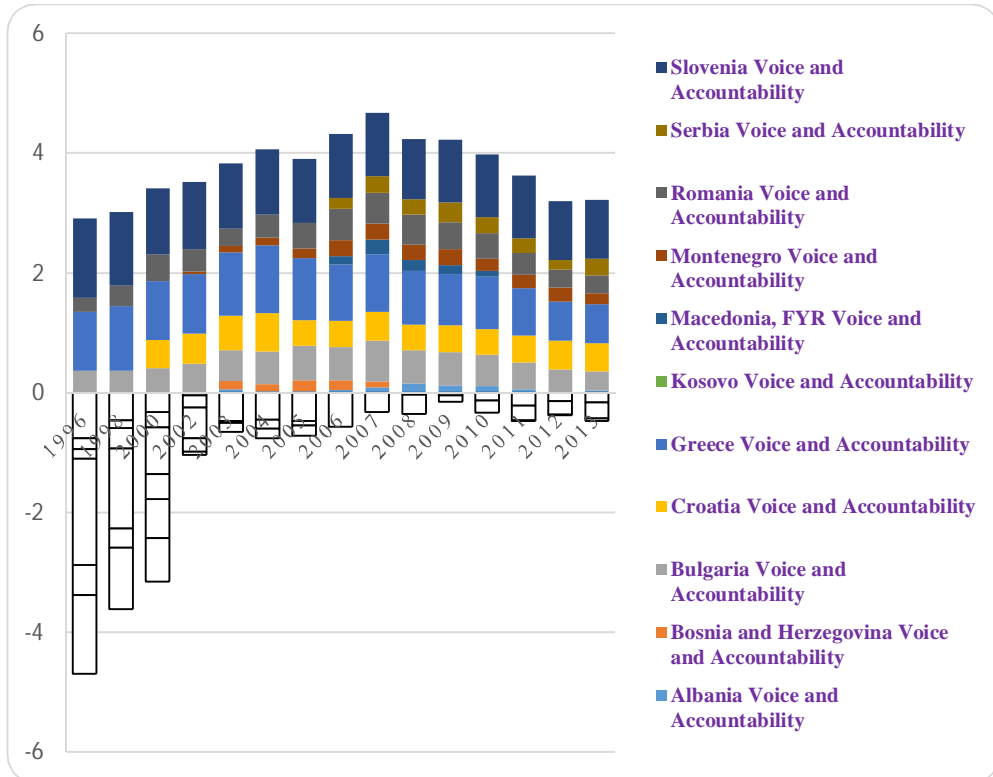


Figure 1. Reflections on citizens' voice and public accountability for the Balkan region
 Source: Author's analysis based on data from database: Worldwide Governance Indicators

Consequently we outline the first work hypothesis *H1: The empowerment of citizens through voice and accountability mechanisms lead to greater government responsiveness and deeper democratization.* The indicator deals with citizens' reflections on the legality of general and local elections, the provisions of direct democracy, the *de facto* exercise of the freedom of expression and of the means of information, of the right to associate and of the right to form political parties aggregated in values ranging within the interval -2.5 to 2.5 . In this sense, the constitutional analysis will address the interpretation of articles through which the law-maker ensured the strengthening of voice and accountability, thus providing the selection of government, the regulations of general and local elections, direct participation through referendum, citizens' initiative, or other instruments, the guarantees for the freedom of expression, freedom of association, freedom of assembly, freedom of media, freedom of thought, opinion and conscience, and the right to form and join political parties.

Peace-building, Europeanization and Local Self-Government Empowerment...

Political stability and absence of violence and/or terrorism

The political stability and absence of violence and/or terrorism variable accounts the reflections on the domestic security climate, on the perceived possibility of unconstitutional government change. The indicator is calculated within the interval -2.5 to 2.5. Thus the hypothesis can be outlined as *H2: The more secure, politically stable and violence and/or terrorism free a country is, the closer it is to a stable democracy.* The constitutions' content analysis surprises the constitutional provisions that guarantee government stability and establish a legal framework for the address in case of (violent) demonstrations, social and political conflicts and unrest, external conflict and terrorist threat. The next figure outlines the situation for countries in the Balkans.

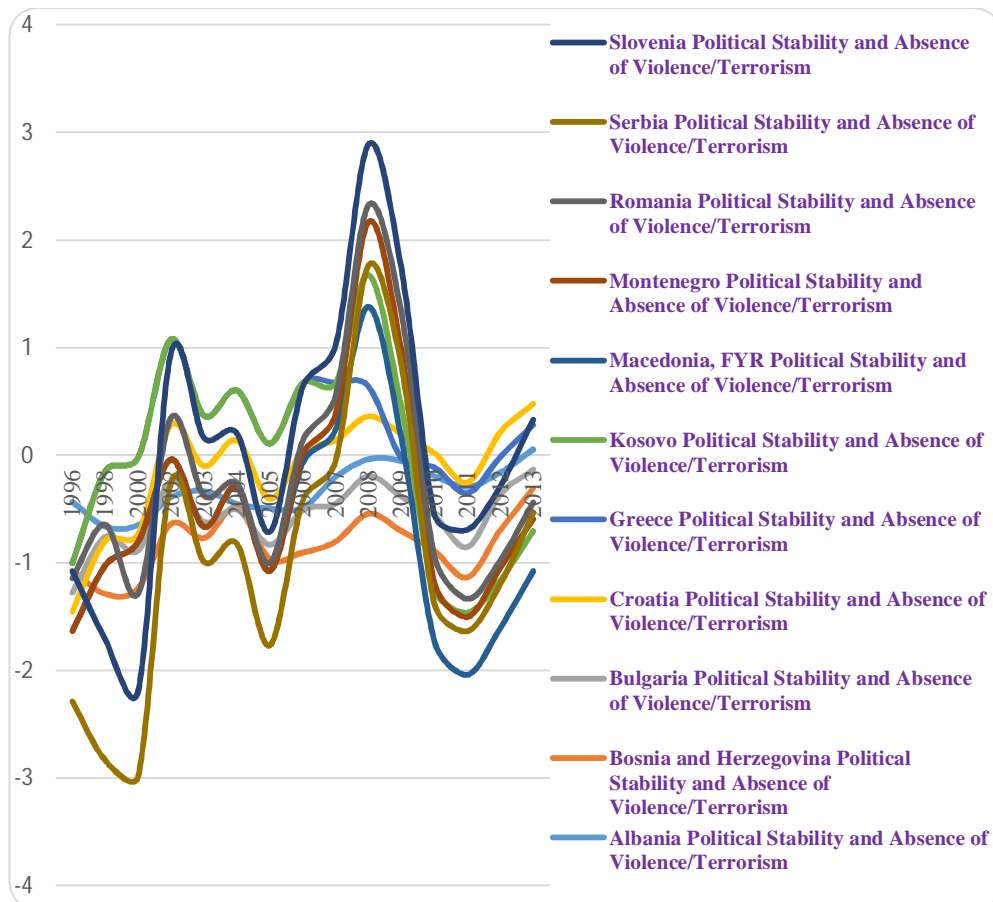


Figure 2. Reflections on political stability and absence of violence and /or terrorism for the Balkan region

Source: Author's analysis based on data from database: Worldwide Governance Indicators

Government Effectiveness

Democratization relies heavily on the central and local authorities' organization and functioning according to the rule of law and democratic principles, to their capacities to enforce legislation and provide quality public services. Thus, the decentralization of government and the consolidation of local institutional structures

serve the purposes of democratization. Consequently, we will rely on the fourth hypothesis H3: *the deeper the decentralization process, the higher the government effectiveness*. Government effectiveness variable renders the citizens' reflections on public services provided at local and central levels of government, on the politics-administration relations, on the issuance and implementation of decisions, legislative initiative, relations between parliament and government and parliament control over government. As in the other cases, the interval in which the value of the calculated indicator varies is -2.5 to 2.5. Aimed at validating the democratization as decentralization thesis, the constitutional content analyses deal with the constitutional recognition of the rule of law and the guarantee of local self-government, the claim of local governments' financial de-centralization, guarantee of competences transfer to local communities, the claim of subsidiarity, and the right of local communities to associate.

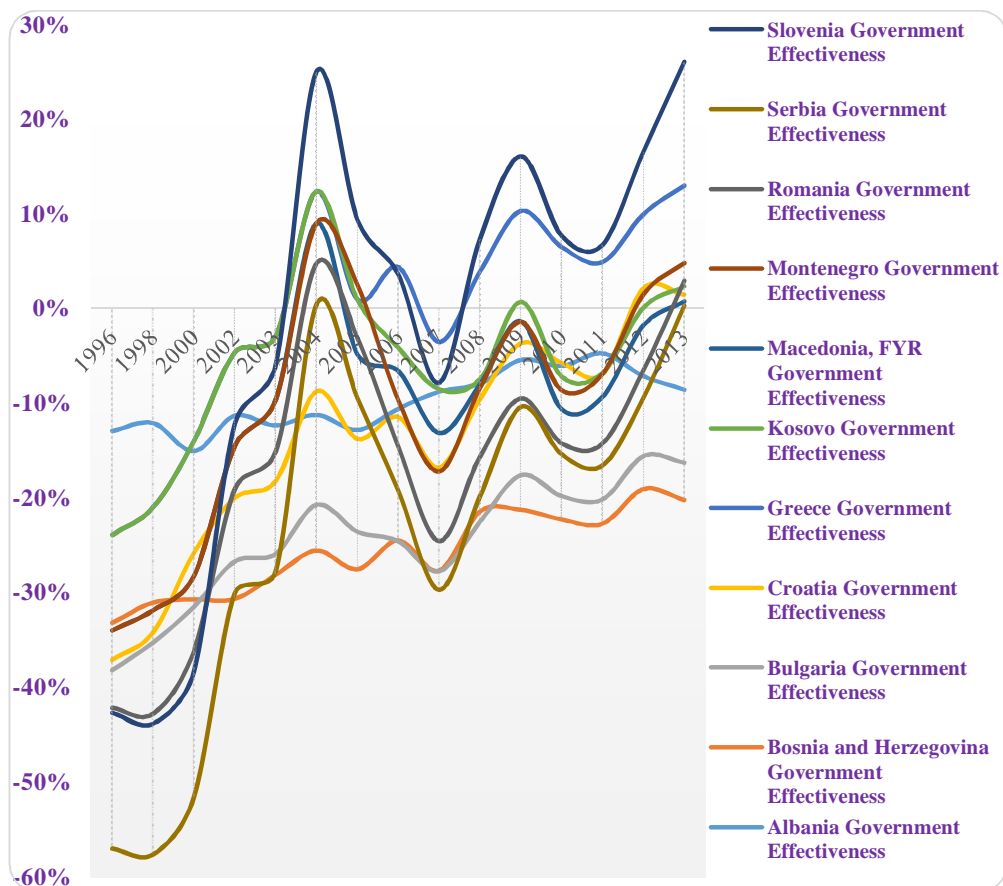


Figure 3. Reflections on government effectiveness for the Balkan region

Source: Author's analysis based on data from database: Worldwide Governance Indicators

Rule of law and regulatory quality

Rule of law and regulatory quality aims at gathering reflections of civil society on government ability to issue and implement public policies directed at private sector growth within the legal framework making a clear statement on the relations between

Peace-building, Europeanization and Local Self-Government Empowerment...

the constitutional guarantee of the rule of law and regulatory quality. The correlated value of the aggregated indicator varies between -2.5 and 2.5. The constitutional articles content analysis seeks the provisions directed at favoring economic growth (i.e. guaranteeing economic rights, economic initiative, fiscal relaxation etc.).

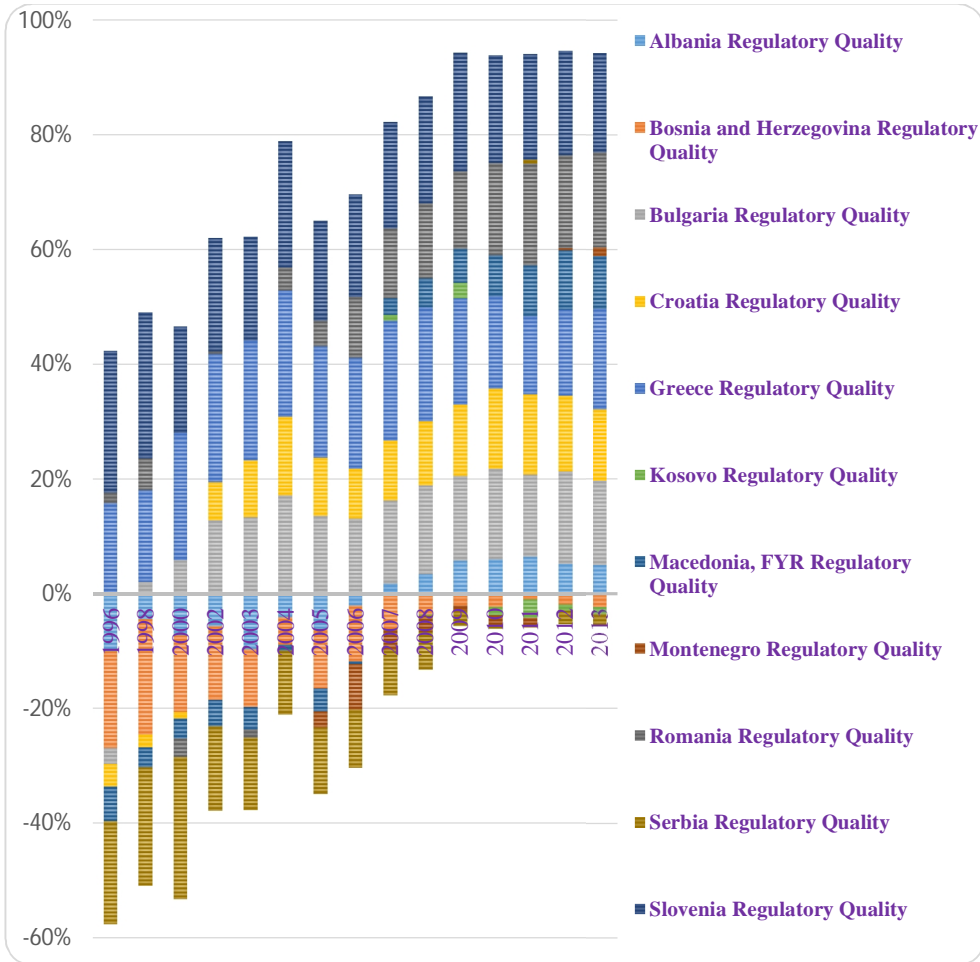


Figure 4. Reflections on rule of law and regulatory quality for the Balkan region

Source: Author's analysis based on data from database: Worldwide Governance Indicators

Control of corruption

Control of corruption variable addresses the legal bounds to integrity and transparency. This is why we outlined the fifth hypothesis *H5: The more institutionalized anti-corruption mechanisms are, the more likely is for the corruption indices value to shrink*. Control of corruption outlines the society's reflections on corruption discretion calculated as an aggregate indicator correlated within the interval -2.5 to 2.5.

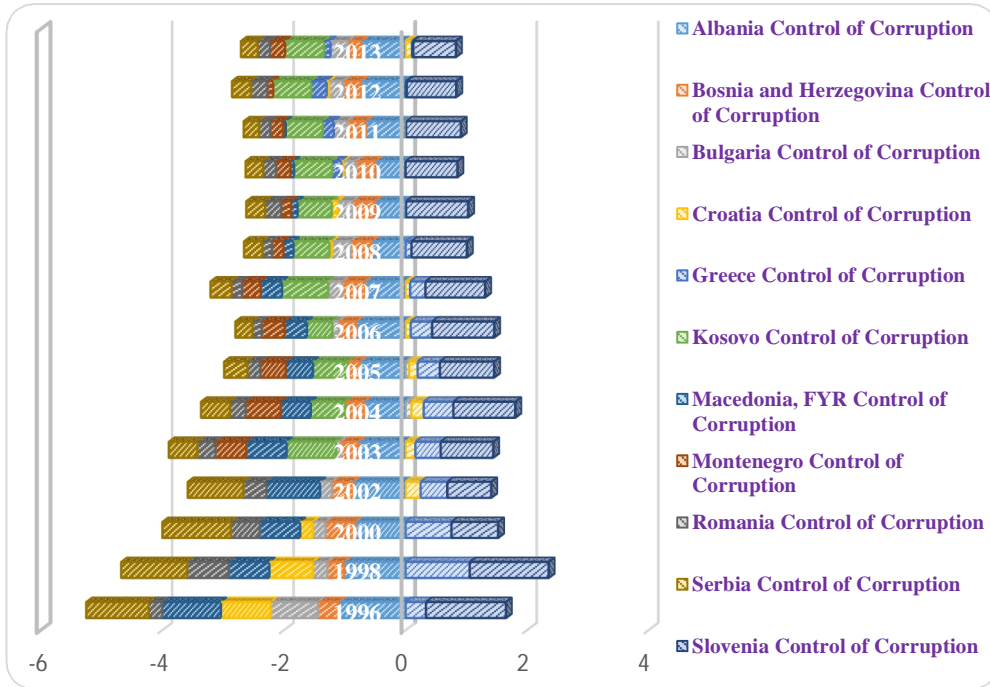


Figure 5. Reflections on control of corruption for the Balkan region

Source: Author’s analysis based on data from database: Worldwide Governance Indicators

The case of Croatia

The Croatian Constitution (1991, amended in 2010) lays the basis for its democratic transformation laying its legitimacy to claim the state sovereignty by invoking the historical legacy and democratic traditions of the Croat people since the nationhood formation until the context within which the new post-communist legal system was established based on the first democratic elections held in 1990 and propelling Croatia’s “Homeland War” (1991-1995) as “the just, legitimate and defensive war of liberation”.

Citizens’ Voice and Public Accountability

The Croat Constitution recognizes as national minorities the “Serbs, Czechs, Slovaks, Italians, Hungarians, Jews, Germans, Austrians, Ukrainians, Rusyns, Bosniaks, Slovenians, Montenegrins, Macedonians, Russians, Bulgarians, Poles, Roma, Romanians, Turks, Vlachs, Albanians and others who are its citizens and who are guaranteed equality with citizens of Croatian nationality and the exercise of their national rights in compliance with the democratic norms of the United Nations and the countries of the free world”. Article 11 explicitly points out the equality of all national minorities in Croatia. Out of the three Constitutions under analysis, the Croat fundamental law is the only one that makes explicit reference to secession and accession, though this option has to be understood in the wider historical civil war context of its sovereignty and self-determination right gain. As regards the structure of the state, the

Peace-building, Europeanization and Local Self-Government Empowerment...

constitution claims that “the Republic of Croatia is a unitary and indivisible democratic and social state” (Article 1), power being exercised indirectly through representatives designated in universal, secret, equal, directly expressed ballots (Article 45) called by the President (Article 98) and “through direct decision-making” in national referenda. In fact, the Constitution reserves the participation in general elections (legislative, presidential, European elections and in national referenda) on grounds of nationality and age (Article 45). As regards direct participation, the Croatian fundamental law recognizes the possibility of citizens to be consulted and directly decide through national referenda initiated by the legislative (Article 81) “on a proposal for the amendment of the Constitution, on a bill, or any other issue within its competence” (Article 87), however, the Constitution does not provide citizens’ competence to initiate legislation. The Constitution also provides that the issuance of constitutional laws “or any other issue which he [the President] considers to be important for the independence, unity and existence of the Republic of Croatia” is conditioned by citizens’ support through national referenda called by the President as a Government initiative backed by the Prime Minister (Article 87). Constitutional guarantees of citizenship are introduced in Article 9 which bans the exile, deprivation of citizenship and extradition “except in case of execution of a decision on extradition or surrender made in compliance with international treaty or the *acquis communautaire* of the European Union”.

Freedom of expression is provided by the fundamental law in Article 38 which expressly invokes the freedom of all media and institutions of public communication, free access to information and to public expression, including the right to manifest one’s convictions as provided in Article 40 and minorities’ right to express their cultural identity as provided in Article 11. However, the Constitution invokes limitations to these democratic rights provided that firstly, the measure is proportionate and secondly, that is “necessary in a democratic society”. Still the fundamental law guarantees freedom of thought and conscience regardless the size of the “threat to the existence of the State” (Article 17). Moreover, the Constitution bans press censorship (Article 38) and any form of hate speech or instigation to war or violence (Article 39). The fundamental law also provides freedom of assembly (Article 42), freedom of association (Article 43) and does not restrict in any way the formation of political parties provided that their internal establishment respects the fundamental Croatian constitutional democratic principles and that their sources of financing are made public. The right of petition is also guaranteed by the fundamental act which introduces in Article 93 every person’s right to file a complaint to the Croatian Ombudsperson if they believe that their “constitutional or legal rights have been threatened or violated as a result of any illegal or irregular act by governmental bodies and the civil service, local and regional self-governmental bodies and bodies vested with public authority” (Article 93).

Political stability and absence of violence and/or terrorism

The constitutional provisions that secure the (constitutional) government are introduced in Article 42 which explicitly claims citizens’ right to protest peacefully. The nature and activities of political parties is verified by the Constitutional Court of the Republic of Croatia that is empowered to rule on their constitutionality (Article 129) and consequently suppress their existence in case “their programs or violent activities aim to demolish the free democratic order and endanger the existence of the Republic of Croatia” (Article 6). This provision is further strengthened in Article 43 which provides a limitation to freedom of association in case “of any violent threat to the

democratic constitutional order and independence, unity and territorial integrity of the Republic of Croatia”.

Government effectiveness

Although, as we previously mentioned the Croatian Constitution does not provide citizens’ legislative initiative, the fundamental law recognizes the right to local and regional self-government exercised directly through “meetings, referenda and other forms of direct decision-making meetings” and indirectly “through local and/or regional representative bodies, composed of members elected in free elections by secret ballot on the grounds of direct, equal and general suffrage” (Article 133). Recognition of the transfer of competences to local communities and the subsidiarity principle is a major theme of reform in accordance with the organization and functioning of democratic public administrations as prescribed in the European Charter on Local Self-Government. The Constitutions thus prescribe regarding the relations between national and local legislation and lawmaking powers. Self-government and fiscal decentralization are introduced in Article 138 of the Constitution which states that “units of local and regional self-government shall have the right to their own revenues and have them on their free disposal in performing affairs within their jurisdiction” and provides the correlation between local and regional incomes and Constitutional and legal competences. The Constitution regulates in Article 135 municipalities and towns as units of local self-government, while regional self-government is established at county level. Moreover, in Article 135 the fundamental law prescribes the competence areas of local administrations: “localities and housing, area and urban planning, public utilities, child care, social welfare, primary health services, education and elementary schools, culture, physical education and sports, technical culture, customer protection, protection and improvement of the environment, fire protection and civil defence”. Another measure of local self-government is the Constitutional provision to allow, along with the Croatian language and the Latin script, the *official* use of “another language and the Cyrillic or some other script” certain local units according to special conditions provided by the law (Article 12).

Rule of law and regulatory quality

The Croatian Constitution fundamentals the whole establishment of the democratic state unto the values of “Freedom, equal rights, national equality and equality of genders, love of peace, social justice, respect for human rights, inviolability of ownership, conservation of nature and the environment, the *rule of law*, and a democratic multiparty system” (Article 3). It also introduces in Article 4 “the principle of separation of powers into the legislative, executive and judicial branches, but limited by the right to local and regional self-government guaranteed by the Constitution”. Moreover, the Croatian Constitution recognizes the autonomy and independence of the Croatian National Bank reporting to the Croatian legislative and guiding its establishment according to the law (Article 53). The principle of separation of powers can be also mentioned with the introduction of the National Judicial Council which “ensures the autonomy and independence of the judicial branch in the Republic of Croatia” gathering eleven members, out of which “two members of Parliament, one of whom shall be from ranks of the opposition” (Article 124). Another autonomous and independent body is the Ombudsperson commissioned by the Croatian Parliament to deal with “the promotion and protection of human rights and freedoms enshrined in the

Peace-building, Europeanization and Local Self-Government Empowerment...

Constitution, laws and international legal instruments on human rights and freedoms ratified by the Republic of Croatia” (Article 93).

Control of corruption

As regards incompatibilities, the Constitution bans in Article 123 cumulating a judicial office with an office or work “defined by law as being incompatible with his judicial office”.

The democratization indices for the period 1996-2013 show the Croat society’s perceptions on the variables we outlined above. We observe that 1996-1998 marked the period of the Croatian Democratic Union (HDZ), President Franjo Tudjman’s supporting popular movement shifting towards the extreme right. Following the urges for reform from the international community – between 1998 and 2000 – Croatia adopted the Constitutional Law on the Freedoms and Rights of National and Ethnic Communities or Minorities (2000, amended 2002), laws on litigation and court procedure, electoral legislation (especially amending regulations regarding different treatment for national minorities electorate) - Law on Amendments to Parliamentary Election Law (April 2003), Law on Constituencies (1999), Law on Elections of Representatives of the Croatian State Parliament (1999), Law on Local and Regional Self-Government (2001), Law on the Election of Members of Representative Bodies of Units of Local Self-Government and Units of Local Administration and Self-Government (2000), Law on the Election of the Representative Bodies of Local and Regional Self-Government (2001), Act on National Statistics (2003), legislation on the control of corruption as the Act on preventing of the conflict of interest in exercise of public office (2003, amended in 2004 and 2005), Civil Servants Act (2005), the Criminal Code and the Criminal Procedure Code (1998, amended in 2003).

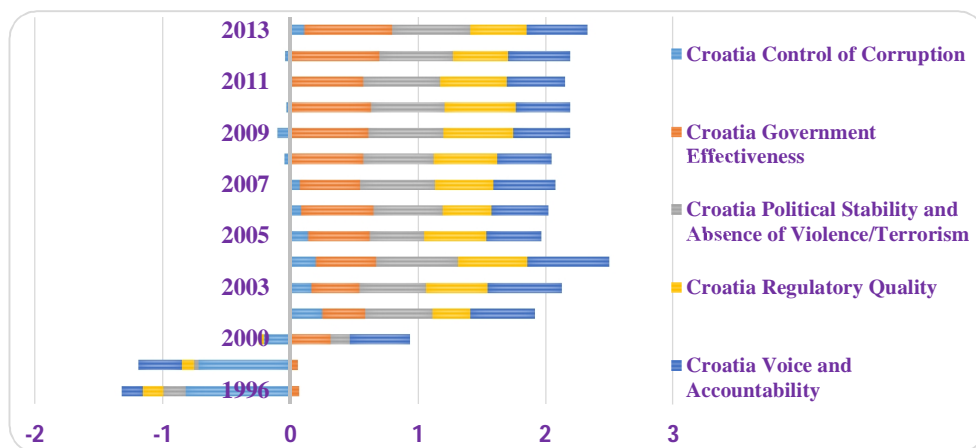


Figure 6. Reflections on democratization indices. Case-study: Croatia

Source: Author’s analysis based on data from database: Worldwide Governance Indicators

The case of the Former Yugoslav Republic of Macedonia

The Constitution of the Former Yugoslav Republic of Macedonia (1991, amended in 2011) introduces the principles of sovereignty (“indivisible, inalienable and non-transferable”), independence, democracy and social in relation to the Macedonian

state (Article 1). The constitution recognizes in its Preamble the “Albanians, Turks, Vlachs, Romanies and other nationalities living in the Republic of Macedonia” as “co-existing with the Macedonian people”.

Citizens’ voice and public accountability

According to the Macedonian fundamental act, citizens are entitled to politically participate in state affairs either directly, or indirectly. Direct participation of citizens is ensured through referenda (Article 2) and citizens’ initiatives (Article 71). In this case we have to note that legislative initiative belongs “to every Representative of the Assembly, to the Government of the Republic and to a group of at least 10,000 voters”. The Constitution does not discriminate among minorities, “group of citizens, institutions or associations”. The indirect participation requires the election of representatives in free elections using secret ballots. The access to general and local elections is “equal, universal and direct”, still the Constitution limits this right on grounds of citizenship, age (18 years) and court rulings; in this case “persons deprived of the right to practice their profession by a court verdict do not have the right to vote” (Article 22). Moreover, citizens can directly participate and express their political will: at least 150,000 Macedonians can initiate a referendum by directly applying their initiative to the Assembly (Article 73). “The freedom of personal conviction, conscience, thought and public expression of thought” are stipulated in Article 16 which also provides the interdiction of censorship and the freedom of the media. Moreover, the Constitutional Court of the Republic of Macedonia “protects the freedoms and rights of the individual and citizen relating to the freedom of conviction, conscience, thought and public expression of thought, political association and activity as well as to the prohibition of discrimination among citizens on the ground of sex, race, religion or national, social or political affiliation” (Article 110). The fundamental law also guarantees citizens freedom of assembly by stating in Article 21 that “right to assemble peacefully and to express public protest without prior announcement or a special license”. Moreover, the Constitution also guarantees freedom of association and the right to form political parties (Article 20). This right can only be limited provided that the activities developed through these forms of association are directed against the constitutional order of the state. The Constitution provides the protection of “the constitutional and legal rights of citizens when violated by bodies of state administration and by other bodies and organizations with public mandates” by the Public Attorney elected by the legislative meeting the majority votes of national minorities for a mandate of eight years renewable once (Article 77 Amendment XI).

Government effectiveness

In order to label the FYROM political system and analyse the constitutional leverage that would ensure government effectiveness we will focus our analysis on Article 68 which introduces the role and functions of the Assembly of the Republic of Macedonia. The Assembly was rendered the competences in the Macedonian political system to issue and amend the fundamental law, to issue laws, to issue the quantum of taxation, to adopt the state budget and approve the budget exercise. The Assembly also “ratifies international agreements”, “decides on war and peace”, has competence to decide to modify the Macedonian territory, and decides on association or secession on com-unions with other states. We have to note that the Article also introduces the Assembly’s political and monitoring control in relation to the Government. In this

Peace-building, Europeanization and Local Self-Government Empowerment...

respect, the relations between the Assembly and executive are regulated by authorizing the Assembly to call referenda by majority vote (Article 73), to “elect the Government of the Republic of Macedonia”, “carries out political monitoring and supervision of the Government and other holders of public office responsible to the Assembly” and proclaims amnesties (Article 68). In relations with the judiciary, the Assembly offers the juridical meaning by interpreting legislation in case of conflict, “elects judges to the Constitutional Court of the Republic of Macedonia; [and] carries out elections and discharges judges”.

Political stability and absence of violence and/or terrorism

The interdiction of political violence is introduced in Article 20 which bans all activities of political parties “directed at the violent destruction of the constitutional order of the Republic, or at encouragement or incitement to military aggression or ethnic, racial or religious hatred or intolerance”. Moreover, the same article bans “military or paramilitary associations which do not belong to the Armed Forces of the Republic of Macedonia”. Issues between minorities are regulated by a Council for Inter-Ethnic Relations elected by the Assembly and presided by the President of the Assembly (Article 78). Amendment XII of the constitution introduced a mandatory composition of the Council granting seven mandates each to the Macedonian and Albanian parties in the Assembly and “a member each from among the Turks, Vlachs, Romas, Serbs and Bosniaks”. Constitutional guarantees of citizenship are prescribed in Article 4 which bans extradition, expulsion and deprivation of citizenship, in Article 9 which expresses constitutional guarantees of the equality principle and non-discrimination, in the Constitutional Preamble which establishes the foundation of the democratic, independent and sovereign republic on the historical legacies of the integration of ethnic communities. Article 48 further guarantees national minorities’ right “to express, foster and develop their identity and national attributes” and safeguards “the ethnic, cultural, linguistic and religious identity of the nationalities”.

Government effectiveness

Relations between national and local legislation and local lawmaking powers are provided in Chapter V of the Constitution recognizing the principle of local self-government and fiscal de-centralization in Article 114. Moreover, citizens’ direct and indirect participation is introduced in the fields established by the fundamental law: “particularly in the fields of urban planning, communal activities, culture, sport, social security and child care, preschool education, primary education, basic health care and other fields determined by law” (Article 115). The Constitution also recognizes the subsidiarity principle in the relations between the central level and the municipality (Article 115) and stipulates that the Constitutional Court has the right to rule on issues of authority between the two levels mentioned above (Article 110). The capital city of Skopje was initially granted a special status deemed “autonomous in the execution of its constitutionally and legally determined spheres of competence” (Article 117). Later on, this special status was removed through the constitutional amendment XVII.

Institutional guarantees of local self-government are also granted through the possibility provided in the Constitution that a second language spoken by a national minority be *officially* used in the administration besides the official Macedonian language and Cyrillic alphabet. In order to further secure national minorities’ rights as guaranteed through the Constitution, the law-maker introduced Amendment XVIII

which required a double supermajority in the legislative: “a two-thirds majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives who belong to the communities not in the majority in the population of Macedonia”.

Control of corruption

Constitutional guarantees over the independence of central agencies and commissions are a means of ensuring the integrity foundation of civil services. Thus the fundamental law introduces the autonomy of the National Bank of the Republic of Macedonia (Article 60), the functioning of the Republican Judicial Council, an apolitical elected body initially by the Assembly for a mandate of six years renewable once (Article 104) authorized to nominate judges for election and discharge in the Assembly and to evaluate the issues attracting legal liability in judges' positions (Article 105). The apolitical nature of the Judicial Council was preserved, still, the fundamental law was amended in order to safeguard the independence and autonomy of the judiciary by introducing the provision that part of the judges to be elected by the judges, part by the Assembly “insuring that equitable representation of citizens belonging to all communities shall be observed” and one member elected by national minorities (Amendment XXVIII). Other measures to counter private interests against the public good are the claims of incompatibilities; thus the position of President of the Assembly is “incompatible with the performance of other public offices, professions or appointment in a political party” (Article 67). The same prescriptions must be met by the President of the Republic (Article 83), the members of the Republican Judicial Council (Article 104), judges (Article 100) and judges of the Constitutional Court (Article 111), the Public Prosecutor (Article 107). The law further interdicts members of Government, including the Prime Minister to occupy “other public offices or professions” (Article 89).

Rule of law and regulatory quality

The rule of law principle is explicitly laid down in the Preamble of the constitutional law “as a fundamental system of government”. This formula was not repeated in the Constitutional amendments, still Amendment IV highlighted the supreme purpose of the new establishment to consolidate the rule of law. Rule of law was further enlisted as one of the “fundamental values of the constitutional order of the Republic of Macedonia” among civil rights, separation of powers, economic and social rights, and local self-government (Article 8).

Legal reform was directed towards laws on litigation and court procedure - Law on Academy for Training of Judges and Prosecutors (2006), Law on Courts (2006), Law on the Judicial Council (2006) and the Law on the Public Prosecutor's Office (2004). In terms of electoral reform we have to note the adoption of the Electoral Code, the Law 45/2004 on Local Elections (25 June 2004), the Law No. 42/2002 on Election of Members of Parliament, the Law No. 46 on Local Elections (1996), the Law on Presidential Elections in the Republic of Macedonia (2004), the Law on Electing Representatives in the Assembly of the Republic of Macedonia, the Law on Election of MPs, the Law on Electoral Districts, the Law on Local Elections, the Law on Political Parties, the Law on Polling Stations, the Law on Referendum, the Law on Voters List, also administrative law - Act on Citizenship (1992), Act on Movement and Residence of Aliens (1992), Law 45/2004 on Local Elections (25 June 2004), the Law On General

Peace-building, Europeanization and Local Self-Government Empowerment...

Administrative Procedures, the Law on Administrative Fees, Law on Amending and Supplementing the Law on State Aid 70/2006, Law on Asylum and Temporary Protection (2003), Law on Denationalization, Law on Foreigners, Law on Protection of Cultural Heritage, Law on Protection of Cultural Heritage Changes and amendments 115/2007, Law on Public Procurement 136/2007 and the Law on Public Procurement 19/2004, Law on Secondary Education, Law on State Aid 2003, Law on prevention of conflict of interests, the Ombudsman Law (2003), Law On Public Administration, the Public Procurement Law, Rulebook on Procurement Plan, Rulebook on Public Bid Opening, Rulebook on Single Procurement Registry, Rulebook on Solvency Document, Rulebook on appointment of experts, Rulebook on estimating the value of procurement, Rulebook on the Type and Manner of Using the Electronic System for Public Procurements. In terms of criminal law we have to mention the adoption of the Criminal Code and the Code of Criminal Procedure, the Law on execution of sanctions, the Law on misdemeanours, the Law on money laundering prevention and other proceeds from crime and the law on preventing corruption.

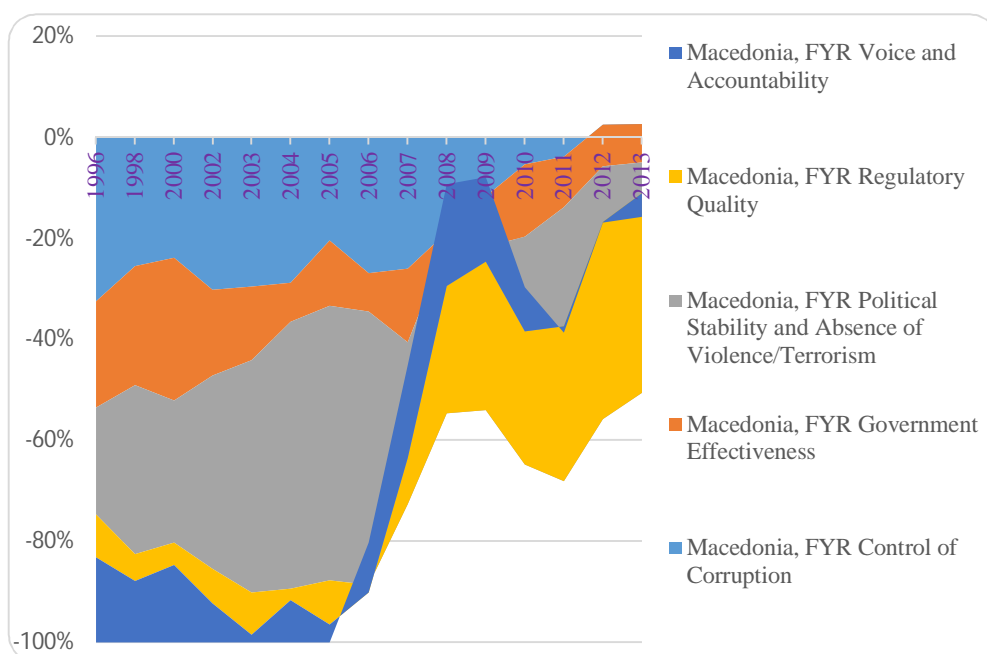


Figure 7. Reflections on democratization indices. Case-study: FYROM

Source: Author's analysis based on data from database: Worldwide Governance Indicators

The case of Bosnia and Herzegovina

Structure of the state

Following the end of the civil conflict through the Dayton Agreement which also serves as the state's fundamental law, Bosnia and Herzegovina (BiH) has a complex and unique political system uniting two top administrative structures (Federacija Bosna i Hercegovina and Republika Srpska) and one "internationally supervised district" with special regulated status (Brcko Distrikt) according to its Constitution which forcefully

ended the hostilities began in 1991 (The Dayton Agreement, 1995). The State of Bosnia and Herzegovina is run according to a political and ethnic principle: at central level the political system brings together the bi-cameral parliamentary assembly (the House of Representatives and the House of Peoples), the rotating tripartite presidency, and the council of ministers. The constitution provides the allocation of seats for both chambers according to the ethnic criterion (for Bosnians, Serbs and Croats). Both the Federation and the Republic have their own national assembly, a president and a vice president and the government chaired by the prime minister. The Federation has institutions at the entity level, canton level (10 units), and municipal level (73 municipalities). However, the Republic has only two levels; at local level the Republika Srpska recognizes the right of the 64 municipalities to issue local legislation. Notwithstanding the basis for local self-government, the Constitution also provide the necessity that all important matters must be coordinated at federal level and with EU representatives. The structure multiplies for each municipality, the Constitution acknowledging their right to form free assemblies and administrative institutions. The area distribution between the Republic and the Federation is 49% to 51%. Still the constitution provides for the Parliamentary Assembly two thirds of the elected seats in the House of Representatives and also two thirds of the designated seats in the House of Peoples to the Federation, the remaining one third from both chambers being granted to the representatives and delegates of the Republic (Article IV).

Citizens' voice and public accountability

Constitutional guarantees of citizenship preclude the denial by the state to recognize Entities' citizenship, and the denial by Entities of the states' citizenship, no matter the grounds raised (Article 7). At the same time, the Constitution claims the equality principle and non-discrimination for all people regardless their "sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status" (Article 4). A Human Rights Commission for Bosnia and Herzegovina was provided in Article II Paragraph 1 in order to "ensure the highest level of internationally recognized human rights and fundamental freedoms" as regulated in Annex 6 to the General Framework Agreement.

Government effectiveness

Lawmaking powers and the relations between national, regional and local legislation are enshrined in the fundamental law. In the Bosnian Serb Entity (Republika Srpska) the principle of local self-government is ensured through the creation and functioning of a Ministry of Local Self-Government in charge with the supervision of the 64 municipalities, while in the Federation a Law on Local Self-Government multiplied at cantonal (regional) level regulates the permeability of subsidiarity among the three layers of government. A separate structure of executive and legislative authority regulated by a constitutional order was imposed through the voice of the High Representative (European supervisor) in 2000. As regards the recognition of the transfer of competences to local communities and the subsidiarity principle, the Constitution regulates the juridical relations, attributions and powers between the state of Bosnia and Herzegovina and the two Entities (the Federation and the Republic) according to the principle of subsidiarity, awarding the Entities "all governmental functions and powers not expressly assigned (...) to the institutions of Bosnia and Herzegovina". In case of conflict of unconstitutionality or conflicting competences between the two Entities or

Peace-building, Europeanization and Local Self-Government Empowerment...

between Bosnia and Herzegovina and one of its Entities, or between structures of Bosnia and Herzegovina the fundamental law authorizes the Constitutional Court to decide. The subsidiarity principle is moreover nuanced by the Constitutional Court's mandate to rule on the constitutionality and compatibility of any law with the "Constitution, with the European Convention for Human Rights and Fundamental Freedoms and its Protocols, or with the laws of Bosnia and Herzegovina".

Rule of law and regulatory quality

Institutional guarantees of the rule of law adopted at this level and to the supremacy of the state's Constitution and laws for the entities and all their structures and compliance to the international law are introduced in the fundamental law. The fundamental law recognizes local self-government and fiscal decentralization of their Entities' structure. The rule of law principle is essentially enshrined in the Constitution being clearly stated in Article 2 under democratic principles "Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law and with free and democratic elections".

Control of corruption

Aiming at discussing whether the Constitution introduces provisions regarding central agencies and institutions' independence; for the first six years after the adoption of the fundamental law the decisions of the Central Bank of Bosnia and Herzegovina to extend credit had to be supported by the legislative, while the first mandate of Governor of the Governing Board of the Central Bank had to be nominated by the International Monetary Fund, after consultation with the Presidency (Article VII).

In terms of the reform of the judiciary and corruption control, the international community noted the adoption of the Law on Transfer of Cases amended, the Law on the Court of Bosnia and Herzegovina amended, the Law on the Transfer of Cases from the International Criminal Tribunal for the Former Yugoslavia to the Prosecutor's Offices of Bosnia and Herzegovina and the use of evidence collected by the International Criminal Tribunal for the Former Yugoslavia in proceedings before the Courts in Bosnia and Herzegovina, the Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina, the Law on the Attorney's Profession of the Federation of Bosnia and Herzegovina and the Law on the Centre for Judicial and Prosecutorial Training of the Federation of Bosnia and Herzegovina. In terms of electoral reform, attention was drawn to the successive amendments of the Electoral law, the adoption of the Law on Party Financing (2000, amended in 2004). In terms of corruption control within the administration and civil services, the Archives of the Federation of Bosnia-Herzegovina Act, the Law on Asylum in Bosnia and Herzegovina, the Law on Conflict of Interest in Governmental Institutions successively amended, the Law on Administrative Disputes amended and the Law on Administrative Procedure, the Law on Civil Service in the Institutions of Bosnia and Herzegovina amended, the Law on Public Procurement for Bosnia and Herzegovina, the Law on Movement and Stay of Aliens and Asylum, Law on Citizenship of Bosnia and Herzegovina, the Law on Filling a Vacant Position of the Member of the Presidency of Bosnia and Herzegovina, the Law on Humanitarian Activities and Organisations of Bosnia and Herzegovina (1998), the Law on Identity Cards of Citizens of Bosnia and Herzegovina, the Law on Immigration and Asylum 1999, the Law on Ministries and Other Bodies of Administration of Bosnia and Herzegovina, the Law on Movement and Stay of Aliens and Asylum, the Law on

Permanent and Temporary Residence of Citizens of Bosnia and Herzegovina (2002), the Law on Public Procurement for Bosnia and Herzegovina, the Law on Succession of a Bosnia and Herzegovina Presidency Member, the Law on Travel Documents, the Law on the Amendments to the Law on Citizenship of Bosnia and Herzegovina (2005), the Law on the Civil Service in the Federation of Bosnia and Herzegovina, the Law on the Intelligence and Security Agency and the State Ombudsman Law.

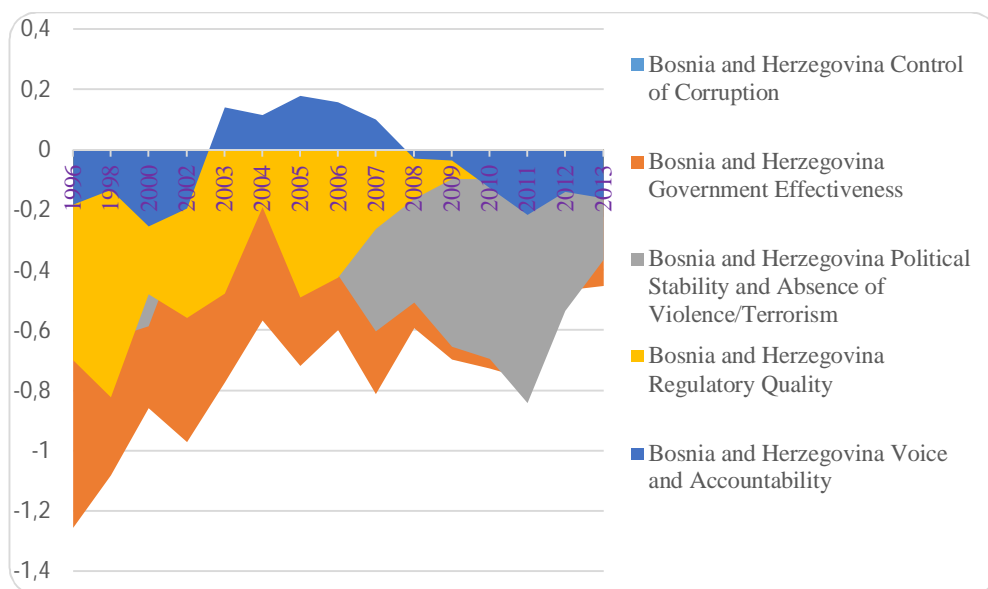


Figure 8. Reflections on democratization indices. Case-study: Bosnia and Herzegovina
 Source: Author's analysis based on data from database: Worldwide Governance Indicators

In terms of criminal law, the Criminal Code and the Criminal Procedure Code were successively amended. As regards corruption control we have to note the adoption of the Law on Protection of Witnesses under Threat and Vulnerable Witnesses, the Law on Special Witness Identity Protection in Criminal Proceedings in the Federation of Bosnia and Herzegovina (1999), the Law on the Prevention of Money Laundering, the Law on Witnesses Protection Program in Bosnia and Herzegovina, the Law on the Execution of Criminal Sanctions (1998) and Law on the Human Rights Ombudsman of Bosnia and Herzegovina.

Acknowledgement

This work was supported by the strategic grant POSDRU/159/1.5/S/133255, Project ID 133255 (2014), co-financed by the European Social Fund within the Sectorial Operational Program Human Resources Development 2007 – 2013.

References:

Agh, A. (1999). Processes of democratization in the East Central European and Balkan states: sovereignty-related conflicts in the context of Europeanization, *Communist*

Peace-building, Europeanization and Local Self-Government Empowerment...

- and Post-Communist Studies*, 32, 263–279. Retrieved from: www.elsevier.com/locate/postcomstud
- Avdic, A. (2013). European Integration in the Western Balkans: Is Serbia on the Road to EU Accession?, *Politics in Central Europe*, vol. 9, no. 2, pp. 67-79.
- Bauerova, H. (2013). European Integration as a challenge for Bosnia and Herzegovina, *Politics in Central Europe*, Vol. 9, No. 2, pp. 51-65.
- Bărbieru, M. (2014). The political diplomacy of Romania and Yugoslavia in the international context of the period between the two world wars. Projects and unions in this area. *Revista de Stiinte Politice. Revue des Sciences Politiques*, (43), 106-115.
- Belloni, R. (2009). European integration and the Western Balkans: lessons, prospects and obstacles, *Journal of Balkan and Near Eastern Studies*, 11:3, 313-331.
- Cabada, L. (2013). European Union and the Western Balkans: a Problematic Partnership?, *Politics in Central Europe*, vol. 9, no. 2, pp. 29-50.
- Demetropoulou, L. (2002). Europe and the Balkans: Membership Aspiration, EU Involvement and Europeanization Capacity in South Eastern Europe, *Southeast European Politics*, vol. III, no. 2-3, pp. 87-106.
- Dyrstad, K. (2012). After ethnic civil war: Ethno-nationalism in the Western Balkans, *Journal of Peace Research* 2012 49: 817 originally published online 17 September 2012. <http://jpr.sagepub.com/content/49/6/817> DOI: 10.1177/0022343312439202 .
- Elbasani, A. (2008). EU enlargement in the Western Balkans: strategies of borrowing and inventing, *Journal of Southern Europe and the Balkans Online*, 10:3, 293-307.
- Hlavackova, H. (2013). Stabilization in Kosovo as a Way towards the European Union, *Politics in Central Europe*, vol. 9, no. 2, pp. 81-106.
- Keil, S. (2013). Europeanization, state-building and democratization in the Western Balkans, *Nationalities Papers: The Journal of Nationalism and Ethnicity*, 41:3, 343-353.
- Kentrotis, K. D. (2010). The European Union and the Balkans: between symbiosis and integration?, *Romanian Journal of European Affairs*, vol. 10, no. 3.
- Mungiu-Pippidi, A. (2003). Of Dark Sides and Twilight Zones: Enlarging to the Balkans, *East European Politics and Societies*, 17: 83.
- Mungiu-Pippidi, A. (2006). Democratization Without Decommunization in the Balkans, *East European Democratization*, Published by Elsevier Limited on behalf of Foreign Policy Research Institute, Fall 2006, pp. 641-655.
- Olimid, A. P. (2014). Civic Engagement and Citizen Participation in Local Governance: Innovations in Civil Society Research. *Revista de științe politice. Revue des sciences politiques*, (44), 73-84.
- Petrovic, M. (2008). The role of geography and history in determining the slower progress of post-communist transition in the Balkans, *Communist and Post-Communist Studies*, 41, 123-145. Retrieved from: www.elsevier.com/locate/postcomstud.
- Pickering P. M. (2007). *Peacebuilding in the Balkans: The View from the Ground Floor*, Cornell University Press.
- Pranger, R. J. (2011). The Milosevic and Islamization Factors: Writing Contemporary History in the Balkans, *Mediterranean Quarterly*, vol. 22, no. 1, Winter 2011, pp. 1-14. Retrieved from: <http://muse.jhu.edu/journals/med/summary/v022/22.1.pranger.html>.
- Renner, S., Trauner F. (2009). Creeping EU Membership in South-East Europe: The Dynamics of EU Rule Transfer to the Western Balkans, *Journal of European Integration*, 31:4, 449-465.
- Soyaltin, D. (2013). European integration and transformation in the Western Balkans Europeanization or business as usual?, *Southeast European and Black Sea Studies*, 13:4, 599-601.

Cătălina Maria Georgescu

- Șerban, I. V. (2012). International context and Romanian causes in the initiation and affirmation of the revolution of 1989. *Revista de Științe Politice. Revue des Sciences Politiques*, (35), 393-400.
- Trauner, F. (2009). Deconstructing the EU's Routes of Influence in Justice and Home Affairs in the Western Balkans, *Journal of European Integration*, 31:1, 65-82.
- Veremis, T. (2008). The Balkans in transition and the great powers, *Eur View*, 7, 121–128.

Article Info

Received: August 13 2015

Accepted: September 10 2015
