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Rule of Law and Justice in Croatia after the EU accession

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Policy Recommendations

1. An independent and professional judiciary stands as the cornerstone of strong democracies which are based on the rule of law. A reformed judiciary affects every segment of a society, and promoting judicial reform must remain at the heart of the EU accession process.
2. Independent watchdog organisations as well as well-funded and professional prosecution bodies have positively contributed to the implementation of judicial reforms in Croatia. These efforts must be continued towards a reform of the court system and overall professionalisation and depolitisation of the judiciary.
3. The EU enlargement process is not value-neutral and is not a one-way process. The EU focuses on the rule of law and order as to install strong, liberal democratic political systems in new member states, which, in return, strengthen the EU as a cohesive body. With this in mind, the EU's efforts in sanctioning member states that deviate from liberal democratic standards should be fully endorsed and sanctions against EU member states that violate the EU's rule of law standards should be applied.

Abstract

Every accession into political alliance is a matter of political negotiations. During the accession process Croatia advanced but did not completely execute a judicial reform that met the European Union (EU) rule of law standards. After Croatia's accession, the Croatian judiciary even regressed significantly towards the path of semi-liberal or illiberal democracies in the aspect of judiciary practice. In this Policy Brief recent and major court cases (the Mamić brothers, Horvatinčić,

ex-Prime Minister Sanader, and war criminals Glavaš and Jelić) are presented, demonstrating that Croatia has structural and fundamental obstacles in implementing the rule of law and delivering fair, efficient and just final decisions for all its citizens equally. The rule of law assumes that every person before the law is equal. In major cases, which are presented in this paper, it is evident that some people are more equal than others.



Rule of Law and Justice in Croatia after the EU accession

Introduction

It can often be heard in the Croatian public, especially in the media, that the problem of the Croatian judiciary is the root of all the problems in the society. However, this is not just a phrase used by various political actors — from ‘independent’ political analysts to new ‘challengers’ among populists — but a rather accurate analysis of Croatia’s socio-political situation. The judiciary is a system that, through enacted laws and its established bodies, should administer justice and thus correct injustice in society. Nevertheless, every day Croatian citizens witness that such a model of justice is not present in Croatia. The Croatian judiciary is neither independent of politics nor unbiased, especially when it is necessary to prosecute more powerful actors in major corruption cases and war crimes against undesirable ethnic minorities. Nor is the judiciary professional enough to handle cases without breaching judiciary ethics, and it is all too well known that court cases, even if they are ordinary and insignificant in nature, take an unreasonably long time to conclude and deliver justice. This acute lack of justice administration and injustice prosecution has persisted for decades and has remained essentially unchanged.

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During the 2000s when the Croatian government representatives expressed their interest in joining the European Union (EU), the hope emerged that this system would be changed. The EU, as the new political alliance of European states, presented itself to the world as the most liberal and prosperous political system. That entailed for EU candidate countries that they had to meet very high liberal standards in terms of the rule of law, free market

and human rights protection. In case of Croatia, the country could not join the EU without negotiating and implementing institutional reforms of its political system under what is called the Copenhagen criteria, especially by securing the rule of law as the core value of its judiciary. In principle, this was the state of affairs regarding the judicial reforms of this era and this mirage had been perpetuated throughout the years in the European Commission reports on Croatia’s progress with fulfilling the reforms stipulated in the accession agreement (from 2005) until the full membership in the EU that officially started on 1 July 2013. Leading Croatian politicians secured that the prevalent judicial reform paradigm in Croatia was expressed in a way that everything must be changed in order to keep everything as before. Even though progress needed to be seen or perceived in resolving corruption and organised crime (see the case of ex-Prime Minister Ivo Sanader,) the judiciary remained stubbornly dependent, biased, unprofessional and inefficient after the accession process. In 2013, joining the ranks of Bulgaria and Romania, Croatia became another new EU member state with dysfunctional institutions of liberal democracy.

“Leading Croatian politicians secured that the prevalent judicial reform paradigm in Croatia was expressed in a way that everything must be changed in order to keep everything as before.”



An unprofessional judiciary against the rule of law

“In terms of justice and rule of law the political establishment has never tried seriously to change the situation in the judiciary.”

In March 2021, the Supreme Court of the Republic of Croatia confirmed the verdict by the Osijek municipal court in the case of Zdravko and Zoran Mamić and others, finding them guilty of embezzlement in the amount of €15.4 million from the transfers of football players from CFC Dinamo Zagreb and €1.6 million of tax evasion in the business dealings of CFC Dinamo Zagreb, which made the final decision¹. The convicted Zdravko Mamić was sentenced to six and a half years in prison; however, he has been on the run from the Croatian judiciary in the neighbouring state of Bosnia and Herzegovina (BiH) since 2018². After the confirmation of his sentence by the Supreme Court, Zdravko Mamić addressed the public at a press conference, and in a speech that lasted several hours he described in detail exactly how, when and where he bribed the Croatian judges who handled his court case. For a convict to claim that he bribed the judges who had just convicted him is an extremely unusual situation³. However, the runaway manager Zdravko Mamić had numerous authentic pieces of material evidence, such as photographs and videos of the unethical practices of judges, which he explained during the press conference and later published on social media. He also told the public that he already has sent the evidence on a USB stick to

the State Attorney's Office in October 2020⁴. Since then, the media have not stopped with coverage of the discrepancy between the obligation to execute rule of law and unusual practices of the Croatian judiciary, and the Croatian public has become more aware of the extremely unprofessional behavior of Croatian judges. After exposing judges for their unethical behavior with undeniable evidence, Zdravko Mamić is now being perceived in some parts of public opinion as a key-actor in promoting judicial reform. Furthermore, the secondly accused Zoran Mamić, along with his brother Zdravko, was clearly allowed to evade serving his sentence by escaping to the neighbouring state of BiH⁵. In this case it is evident that the more powerful citizen can avoid justice and that the rule of law does not apply to all citizens equally. To make matters worse, there are yet more judicial cases in Croatia that demonstrate the situation in the Croatian judiciary as even more absurd. In terms of justice and rule of law the political establishment has never tried seriously to change the situation in the judiciary.

The inefficiency and bias of the Croatian judiciary

In August 2011, the entrepreneur Tomislav Horvatinčić killed two Italian citizens in a maritime accident with his yacht. During the long trials at the Municipal Court in Šibenik, various unfavorable outcomes for the rule of law occurred in Horvatinčić's case: in the first trial Horvatinčić was sentenced to probation; in the second trial he was even acquitted on the grounds that at the moment the accident happened he suffered the so-called syncope (sudden loss of consciousness), although the defense did not include a syncope scenario in

1) Croatian Supreme Court Confirms Prison Sentences for the Mamić Brothers, Vrbanović. <https://www.total-croatia-news.com/sport/51423-mamic-brothers>

2) Zdravko Mamić, Croatian football's Mr Big, given jail term. <https://www.bbc.com/news/world-europe-44381167>

3) Zdravko Mamić Press Conference in Mostar: "Lovren and Modrić are Accomplices!". <https://www.total-croatia-news.com/sport/51445-zdravko-mamic-press-conference>

4) Supreme Court: All accusations against judges need to be investigated. <https://hr.n1info.com/english/news/supreme-court-all-accusations-against-judges-need-to-be-investigated/>

5) Convicted Dinamo Zagreb coach Zoran Mamić joins fugitive brother in Bosnia. <https://hr.n1info.com/english/news/convicted-dinamo-zagreb-coach-zoran-mamic-joins-fugitive-brother-in-bosnia/>



the first trial⁶. At last, in 2019, Horvatinčić was finally convicted to a four years and ten months prison sentence⁷. However, even to this day Tomislav Horvatinčić has not served this prison sentence, justified by his bad health condition, which the prison hospital confirmed with the opinion that Horvatinčić's treatment cannot be provided within the prison system⁸. The picture that speaks more than words about the rule of law in Croatia is that of Tomislav Horvatinčić, convicted of a serious crime and regularly seen in city cafés drinking coffee and enjoying the sun, far away from his prison cell⁹. In the meantime, since the first draft of this Policy Brief, Horvatinčić has been finally imprisoned but only due to the fact of the very intensive public opinion pressure.

The lack of an independent judiciary

“The trial in the case of the former Prime Minister Sanader is clear evidence of the inefficiency and lack of independence of the judiciary from the ruling political party HDZ.”

During the accession negotiations for the membership of the Republic of Croatia to the EU, it truly seemed that progress was being made in implementing the rule of law and creating an independent, impartial and professional judiciary. The European Commission, among other points, persistently emphasised the reform of

the Croatian judiciary as a key Europeanisation process, promoting the fight against corruption and organised crime in order to establish the rule of law and an independent judiciary¹⁰. Croatia seemed to be moving in a positive direction towards strengthening the rule of law and fighting corruption, as the Croatian Prime Minister Ivo Sanader resigned at the time and was soon indicted in five corruption cases. In one case even, the ruling political party Croatian Democratic Union (HDZ)¹¹ was charged with participating in organised crime¹². In December 2011, proceedings were initiated against the former Prime Minister Sanader and other accomplices, and against the HDZ as a legal entity. However, the process had been going on for years, with extremely different decisions and the sidelining or backtracking of the case to the beginning of the trial. Finally, in 2020, after nearly 9 years, a non-final decision was passed and the defendants were found guilty¹³. The trial in the case of the former Prime Minister Sanader is clear evidence of the inefficiency and lack of independence of the judiciary from the ruling political party HDZ.

Croatian political parties are currently engaged in a battle for the influence on the judiciary through the election of the President of the Supreme Court. In order to prevent the HDZ from influencing the work of the judiciary, especially the courts, the newly-elected President Zoran Milanović currently seeks to use his constitutional authority to nominate a candidate for the President of the Supreme Court by deliberately

6) Što je to sinkopa koja je Horvatinčića spasila od zatvora? <https://www.tportal.hr/vijesti/clanak/sto-je-to-sinkopa-koja-je-horvatincica-spasila-od-zatvora-foto-20171013>

7) Final Verdict Delivered in Case of Businessman Tomislav Horvatinčić. <https://www.total-croatia-news.com/politics/40032-tomislav-horvatincic>

8) Horvatinčiću opet odgođen odlazak u zatvor, ali ne baš toliko koliko je tražio. https://www.novolist.hr/novosti/crna-kronika/horvatincicu-opet-odgoden-odlazak-u-zatvor-ali-ne-bas-toliko-koliko-je-trazio/?meta_refresh=true

9) Što radi pravomoćno osuđeni Horvatinčić? Pije kavu i šetucka po Cvjetnom. <https://www.telegram.hr/politika-kriminal/sto-radi-pravomocno-osudeni-horvatincic-pije-kavu-i-s-etucka-po-cvjetnom/>

10) Barroso cools down Croatia's accession fervour. <https://www.euractiv.com/section/enlargement/news/barroso-cools-down-croatia-s-accession-fervour/>

11) HDZ – Hrvatska demokratska zajednica (eng. Croatian Democratic Union).

12) Croatia jails ex-PM Sanader for 10 years over graft. <https://www.reuters.com/article/us-croatia-sanader-idUSBRE-8AJ12F20121120>

13) Sve što trebate znati o aferi Fimi Media. <https://hr.n1info.com/vijesti/a575075-sve-sto-trebate-znati-o-aferi-fimi-media/>



refusing to confirm an HDZ party's candidate¹⁴. In turn, President Milanović demands that Zlata Đurđević, publicly recognised as an independent expert and a university professor of criminal law at the Faculty of Law in Zagreb, be elected to serve as President of the Supreme Court¹⁵. Despite the President's request and the indisputable expertise of the candidate Đurđević, the HDZ government persistently refuses to accept Đurđević's candidacy, which suggests that the government does not intend to reform the judiciary to become independent from the ruling political party.

“Croatian political parties are currently engaged in a battle for the influence on the judiciary through the election of the President of the Supreme Court.”

Political unity against the rule of law

In the case of the election of the President of the Supreme Court, it may seem that President Milanović cares very much about promoting and protecting the rule of law, after all he pledged to respect the Constitution and declared himself several times before and recently as an ombudsman of the Constitution¹⁶. However, in other situations the scenario is completely different. Particularly, the formerly convicted war criminal Branimir Glavaš, charged with war crimes of murdering seven Serb civilians and torturing others, committed under his command responsibility, was due to the final verdict stripped of his rank and war honours by the former

President Ivo Josipović¹⁷. In the meantime, Glavaš was hiding from imprisonment in the neighbouring state of BiH until 2015, when the Constitutional Court overturned Glavaš's verdict for war crimes and decided to revert the court case back to the beginning. Since then, Glavaš demanded all incumbent presidents to give him back his rank and war honours because he was now formally legally innocent again (in spite of being once convicted as a war criminal), but former President Kolinda Grabar-Kitarović did not show the political will to do so. However, the incumbent President Milanović, who regularly invokes the Constitution, and expresses his will to act according to the law, has carried out Glavaš's request to give him back his rank and honours. President Milanović explained his decision by only having respected the legal norms of the Republic of Croatia¹⁸, even though President Milanović's act was not constitutionally binding¹⁹.

“This and the following event suggest that President Milanović's respect for the rule of law is arbitrary.”

This and the following event suggest that President Milanović's respect for the rule of law is arbitrary. In case of Zlatan Mijo Jelić, Milanović demonstrated his interpretation of justice. In January 2016, General Jelić was indicted in BiH for killing and wounding at least 40 prisoners of war during the 1993 Mostar conflict. According to the indictment, Jelić, as a general of the HVO military police²⁰,

17) Croatia Strips Glavas War Honours. <https://balkaninsight.com/2010/08/20/croatia-strips-glavas-war-honours/>

18) President Milanović: Glavaš Asked for his Decorations To Be Returned, I'm not a Judge, but the President of the Republic. <https://www.predsjednik.hr/en/news/president-milanovic-glavas-asked-for-his-decorations-to-be-returned-im-not-a-judge-but-the-president-of-the-republic/>

19) Documenta: Milanovićeva odluka o Glavašu neprimjerena i etički neprihvatljiva. <https://www.jutarnji.hr/vijesti/hrvatska/documenta-milanoviceva-odluka-o-glavas-u-neprijemljiva-i-eticki-neprihvatljiva-15076941>

20) HVO (Hrvatsko vijeće obrane – Croatian Defence Council) is an acronym for the the official military formation of the Croa-

14) President Milanović: Government Is Absolutely Unconstitutionally Interfering in Election of Supreme Court President. <https://www.predsjednik.hr/en/news/president-milanovic-government-is-absolutely-unconstitutionally-interfering-in-election-of-supreme-court-president/>

15) Election of Supreme Court president in Croatia sparks debate. https://www.euractiv.com/section/politics/short_news/election-of-supreme-court-president-in-croatia-sparks-debate/

16) Milanović: Idemo u drugi krug, a ne u rat. <https://vijesti.hrt.hr/hrvatska/milanovic-idemo-u-drugi-krug-a-ne-u-rat-705813>



was the director of the Heliodrom concentration camp in Mostar, where about 200 prisoners were detained on an ethnic basis for being Bosniaks and enslaved to be subjected to forced labour on the front line, by which at least 50 victims were killed, 188 were seriously and lightly injured, while about 40 victims were tortured and physically abused by HVO members²¹. In December 2015, just before the announcement of the indictment, Jelić escaped from BiH to Croatia. Jelić has been evading BiH's judiciary for five years now, and President Milanović has not said a single word about his evasion of justice, moreover, in 2020 he awarded Jelić with a medal of honour for his participation in the operation Storm²², thus symbolically making Jelić and his unit war heroes, not alleged war criminals²³.

Conclusion

Recent cases mentioned in this Policy Brief clearly prove that Croatia has a long way to go to achieve the rule of law, an independent judiciary and a political leadership with the will to create a more just legal and political system. In order to implement and secure the rule of law in the judiciary, all relevant actors in Croatia and the institutions of the European Union need to recognise this state of affairs, and must act to promote and facilitate liberal democratic values in Croatian politics and society. One more illiberal democracy in the Western Balkans would seriously damage the Europeanisation process of the whole region, and undermine the EU as a peace-building project across Europe.

tian Republic of Herzeg-Bosnia during the war in Bosnia and Herzegovina 1992-1995.

21) [Tko je general Zlatan Mijo Jelić kojeg Milanović planira odlikovati? - Index.hr](#)

22) Operation Storm (Operacija Oluja) is a last military operation of Croatian army and their allies in wars in Yugoslavia which had ended war in Croatia in 1995.

23) [Croatian President awarded Mijo Jelic, indicted for War Crimes in Bosnia and Herzegovina - Sarajevo Times.](#)



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