

Deficiencies in the Rule of Law in Slovenia in the Context of Central and Eastern Europe¹

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Purpose:

The article seeks to fill the gap in the existing research by first analyzing the interplay between the rule of law and its compliance in the CEE region in the context of the EU accession process; and second, by identifying key reform measures taken against corruption and clientelism in the CEE accession process; and third, by outlining the factors that have played a crucial role in this process and now affect the quality of the rule of law in the CEE region, particularly in Slovenia.

Design/Methods/Approach:

The methods employed include an analysis of EU documents and qualitative interviews carried out in Slovenia.

Findings:

In Slovenia, as well as in other CEE countries, informal institutions play an important role in a number of policy areas, but the majority of respondents find healthcare and the judiciary most affected.

Practical implications:

This article will probably be a valid source to those in search of more empirically based studies of informal intuitions in Slovenia, especially as regards corruption and networking. It will be of practical use to those in charge of corruption prevention and proper policy making.

Originality/Value:

This article presents one of the most in-depth analyses of Slovenian informal policy. It is enriched by views of external researchers.

UDC: 343.352(497.4)

Keywords: informal institutions, rule of law, corruption, Slovenia

Pomanjkljivosti delovanja pravne države v Sloveniji v primerjalnem kontekstu Srednje in Vzhodne Evrope

Namen prispevka:

Članek poskuša zapolniti vrzel v obstoječih raziskavah tako, da prvič, analizira medsebojni vpliv med pravno državo in spoštovanjem določil, podanih

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za Srednjo in Vzhodno Evropo v okviru pristopnega procesa EU; drugič, opredeli ključne reformne ukrepe proti korupciji in klientelizmu v pristopnem procesu; in tretjič, predstavi tiste dejavnike, ki so odigrali ključno vlogo v tem procesu in danes vplivajo na kakovost pravne države v regiji Srednje in Vzhodne Evrope, zlasti v Sloveniji.

Metode:

Uporabljeni metodi sta analiza dokumentov EU in kvalitativni intervjuji v Sloveniji.

Ugotovitve:

V Sloveniji, pa tudi v drugih državah Srednje in Vzhodne Evrope, neformalne institucije igrajo pomembno vlogo na številnih področjih, pri čemer so v intervjujih sodelujoči posebej izpostavili zdravstvo in sodstvo.

Praktična uporabnost:

Članek bo najbolj uporaben za tiste, ki iščejo bolj empirično zasnovane študije o neformalnih institucijah v Sloveniji, zlasti tistih, povezanih s korupcijo in mreženjem in tistih, ki se pojavljajo v vlogah preprečevalcev korupcije in oblikovalcev ustrezne protikorupcijske politike.

Izvirnost/pomembnost prispevka:

Prispevek prinaša eno najbolj poglobljenih analiz slovenskih neformalnih institucij, ki vključuje tudi prispevka zunanjih raziskovalcev.

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Ključne besede: neformalne institucije, pravna država, korupcija, Slovenija

1 INTRODUCTION

The rule of law can be defined as a functional framework for democracy (Linz, 1997; Lauth, 2011). In recent years, the concept of the rule of law has been used profusely in both theoretical literature and Western comparative research. Comparative studies often concentrate on new democracies, such as Latin America, Asia, and Central and Eastern Europe, using the rule of law as an indicator of the quality of democracy.

In Slovenia, as well as in the Central and Eastern Europe (CEE) as a whole, the most important factor accelerating the changes in the rule of law initiated in the transition was the accession process to the European Union (EU). The EU, as well as other international organizations (foremost is the Council of Europe), fostered major changes in the judicial sector, concentrating mainly on the reforms in the judiciary and anti-corruption (Sadurski, 2005; Sadurski, Czarnota, & Krygier, 2006). The EU conditionality, varied across the region, depending on contextual factors (such as cultural heritage), institutional factors (e.g., the institutional set-up, especially the functioning of the checks and balances system), and actors (their constellation) with their willingness to implement the proposed changes. As a result, it is necessary to concentrate on a comparative perspective on the identification of the key factors, and to assess the quantity and the quality of conditionality in individual cases across the CEE region (Mungiu-Pippidi, 2006).



Corruption, clientelism and elite agreements (hereinafter referred to as bad informal institutions [BINIs]²), negatively affect democracy in various ways. Among other, they disable mechanisms of control set up against the abuse of power, limit transparency, disrupt competition and contribute to disproportional allocation of resources, narrow interest representation, reduce accountability, distort representation, and obstruct inclusion and legitimacy (Waggoner, 2008; Della Porta & Vannuci, 1999). BINIs distort all aspects of the rule of law (Lauth, 2011; Thiery, 2011), the system of checks and balances, and the independence of the judiciary, in particular.

The primary aim of this article is to provide an initial assessment and a systematization of the findings from the fieldwork conducted in Slovenia during the research project “The Rule of Law and Informal Institutions: Central Europe and Latin America in Comparative Perspective” between 2008 and 2010. The article proceeds as follows: first, it identifies a variety of approaches to the rule of law and their applicability in the CEE region; second, it analyzes the interplay between the rule of law and its compliance in Slovenia and, more generally, in the CEE region in the context of the EU accession process; and third, it puts forward initial answers to the questions regarding governance of bad informal institutions in Central and Eastern Europe as generalized by Lauth (2011). It also proposes measures for curbing of bad informal institutions.

2 THEORY

2.1 The Rule of Law and Bad Informal Institutions

The theoretical framework of this article is based on the interplay between the rule of law and informal institutions. The rule of law is defined as a universal legal order (O'Donnel, 1993) in terms of equality (laws apply to everyone), clarity (the meaning of the law is clear), and public awareness (the laws are made public) (Carothers, 1998; Della Porta & Vannuci, 1999; Waggoner, 2008; Lauth & Sehring, 2009). The rule of law is vital for the life of democracy; its institutions, the elites, and the citizens.

While the rule of law as such has been abundantly discussed in the theoretical literature, the particulars of its development have so far received much less attention. Lauth (2001) proposes to distinguish between a state with a deficient rule of law, on the one hand, and a hybrid legal system, on the other, and analyzes the primary reasons leading to such constellations. In his 2001 contribution, Lauth identifies three types of causes undermining the rule of law: insufficient administrative and financial capacities, the existing constellations of power and interests, and the existence of informal norm systems. Based on these, he designs a typology comprising three subtypes of a deficient rule of law, featuring (1) a lack

² *Therm BINIs – bad informal institutions, is defined by research project: Rule of Law and Informal Institutions, Central Europe and Latin America in Comparative Perspective, coordinated at the University of Würzburg and financially supported by the German Research Foundation (DFG).*



of capacities (based on the management approach and attributing the failure to comply with the existing rules); (2) powerful interests (associated with the rational choice approaches and attributing the non-compliance to powerful interests); and (3) high acceptance of alternative norms (related to normative approaches and ascribing the lack of compliance to high approval of alternative norms) (Lauth, 2001; Lauth & Sehring, 2009; Lauth, 2011).

Informal institutions shape behaviors of political actors, which create incentives and constraints outside the formal arena (Ristei, 2008; Burduja, 2006; Grzymala-Buse, 2008; Dobovšek & Meško, 2008). In this article, we follow the definition of Helmke and Levitsky who seek to distinguish between informal institutions, formal institutions, informal behaviors, informal organizations, and culture (Helmke & Levitsky, 2006). We accept their definition of informal institutions as “socially shared rules [...] that are created, communicated and enforced outside officially sanctioned channels” (Helmke & Levitsky, 2006: 5).

We focus on three key elements of informal institutions: (1) *shared expectations*: the weakness of formal institutions (to which bad informal institutions contribute) gives rise to uncertainty, so the actors aim to protect themselves by introducing loopholes and lacunae into the laws in order to allow for future procedural arguments; (2) *the subjects that informal rules apply to*: a group of powerful actors including high level politicians, state administration, business people and the media; (3) and *enforcement of informal rules*: informal rules are enforced by informal pressure. In the CEE countries under study, the positive incentives include preferential access to public procurement (as well as to the EU funds), and appointments to boards of state-owned or semi-state-owned companies. Failure to comply with the goals shared by bad informal institutions (e.g., accumulation of campaign funds by acquiring a certain percentage skimmed from awarded contracts) results in exclusion from bad informal institutions, i.e., loss of power, position, and/or access (Helmke & Levitsky, 2006; Ristei, 2008).

Both formal and informal institutions are key elements of democracy because they reduce uncertainty and create constraints within which individuals make rational decisions (Ostrom, 1991: 240). Applying Ostrom’s typology of four interaction models between formal and informal institutions (complementary, substitutive, competing and accommodating) to the three CEE countries under study, we find that the majority of the existing bad informal institutions are competing and substitutive, which highlights the key factor contributing to the persistence of bad informal institutions in the countries under study: the lack of effectiveness of formal institutions.

Gradual changes in the countries under study can be attributed to exogenous factors, such as the changes of formal institutions due to EU leverage, as well as endogenous ones (the less influential), such as those in shared beliefs and collective expectations which may be, for example, integrated in the 2008 Slovenian elections, where the winning political party’s main programme was to address corruption. Similarly, stagnation in effectively implementing rule-of-law reforms can, in part, be attributed to the persistence of bad informal institutions aiming at preserving the status quo.



2.2 The Key Informal Institution in the Central and Eastern Europe

In the Central and Eastern Europe, corruption due to weakness of formal institutions is the most crucial problem of the rule of law. In this section, we will briefly outline the conceptual interplay of corruption with the rule of law.

In recent years, both researchers and policy-makers have paid more and more attention to corruption. This is particularly true of political corruption in the context of democratization processes (Moreno, 2002; Montinola & Jackman, 2002; Balmaceda, 2008). The term is often related to the nature and viability of a political system (Williams, 1999), regime legitimacy (Etzioni-Halevy, 1985; Seligson, 2002), and trust (Rothstein & Uslaner, 2005). Corruption is a highly relevant and amply researched topic, yet it suffers from rather vague and often contradictory conceptualizations. Along with the conceptual elusiveness of the term, one of the critical problems associated with it is its measurement, for researchers often rely on indices assessing the perceived corruption, and a certain case of corruption might be attributed to political corruption just due to the absence of too fuzzy a definition of the concept.

Regarding the rule of law and democracy in general, approaches to corruption are rather contradictory. On one hand, some researchers highlight a limiting impact of corruption on the rule of law (Leff, 1964) and point out the complexity of political corruption, both a cause and an effect of poor government performance also affecting the citizens trust in their government's capacity and their reliance on informal networks to gain access to decision makers (Della Porta, 2000: 205). On the other hand, other authors see corruption, especially that in emerging democracies, as a contributing factor in establishing political competition (Huntington 1968: 64). Ambiguity of this debate is best summarized by Seligson as the "sand versus grease in the wheels of democracy" debate (Seligson, 2002).

In order to explain the impact of corruption and bad informal institutions on democracy and the rule of law, two types of endogenous factors can be identified; the structural and the contextual (Burduja, 2006). Structural factors explain the lack of internal incentives on behalf of the political elites to curb bad informal institutions. Burduja points out that corruption establishes a vicious circle in which it leads to private gains due to ineffective mechanisms of punishment (Burduja, 2006: 55-56). We can broaden this circle to include bad informal institutions (in addition to corruption, there are clientelism and elite agreements) as actors of power that lower transaction costs, provide for private and group gain, and render mechanisms of punishment ineffective.

The elite's lack of internal motivation to curb bad informal institutions or the authorities' failure to effectively implement measures to do so can be attributed to five types of factors: political, habitual (a heritage of the past), international, and temporal, not to mention weak sanction mechanisms, both the judicial and the electoral (Burduja, 2006; Dimitrova & Pridham, 2004; Sandholz & Gray, 2003; Ledeneva, 2008; Hellman, Jones, & Kaufmann, 2000). Before briefly highlighting the individual factors, we would like to emphasize the role of sanction mechanisms. Sanction mechanisms and their application overlap, while crosscutting and



affecting the above outlined factors to a varying degree (Hutchcroft, 1997; Herreros & Criado, 2007).

In terms of political factors in the CEE region, small majority coalition governments with severe internal differences undermine their own capacity to deliver the necessary reforms (Dimitrova & Pridham, 2004; Knack, 2007). Cultural and habitual factors encompass both the heritage of the past and the prevailing acceptance of bad informal institutions (in particular of corruption and clientelism) as effective mechanisms to achieve desired goals. In terms of weak sanction mechanisms, these encompass both the judiciary, largely ineffective in the CEE region and striving for independence in prosecuting BINIs, and the electoral. In these countries, it is necessary to sanction politicians through electoral mechanisms, but because the citizens lack relevant information (or interest), they do not punish them. However, as noted above, this changed with the 2008 Slovenian elections which saw the incumbent lose its office and the challenger win with the anti-corruption ticket.

Two other factors are highly relevant in the Central and Eastern Europe: a combination of temporal and international factors strongly manifested in the processes of European integration, and the accession to the European Union. These two dimensions and their interplay are crucial as it highlights the impact of Europeanization on the changes in the rule of law and corruption in the CEE region. In their 2003 study, Sandholtz and Gray present a thesis that the greater the degree of international integration, the lower the levels of corruption. They conclude that international integration increases the costs of corruption, and the research shows that participation in international organizations reduces corruption (Sandholz & Gray, 2003: 787). Therefore, it is a general hypothesis of our research that due to the increased costs of bad informal institutions corruption in the countries under study will be reduced after the EU accession.

2.3 Europeanization

The process of European integration is defined as “the formation of a whole out of parts, increasing interaction of member states with one another, removal of obstacles to flows of goods and factors, emergence of an independent entity at the supranational level” (Caporaso, 2004). Ongoing Europeanization is, in both quantitative and qualitative terms, a source of transfer of power and of legislative activities from the national to the supranational level.

One of the most important effects of Europeanization is the adaptation pressure the process exercises over individual member states in all of the above mentioned areas. The comprehensive enlargement programme based on the Copenhagen criteria helped the candidate countries prepare for EU membership by adopting and implementing the *acquis communautaire*. Greater attention was paid to the *acquis* provisions related to the performance of state institutions and economic actors in the internal EU market (i.e., competitiveness) than to those regarding democratic criteria. Furthermore, the measurement of compliance was based on the adoption of the legislation rather than on its implementation and enforcement (Dimitrova in



Vachudova, 2009; Vanderhill, 2009). The failures were criticized, and the pressure intensified; yet in general, the failure to comply was not sanctioned. The accession itself was conditioned not only on adoption but also on successful implementation of crucial reforms, especially of the measures combating corruption (ibid).

Based on the outlined theoretical perspectives and drawing on the interplay between the rule of law, corruption, and Europeanization literature, the general hypothesis of this article states that after the EU accession, corruption will be reduced in the countries under study due to the increase of costs for bad informal institutions. Second, we intend to answer the questions whether one prevailing type of deficient *Rechtsstaat* can be identified in the countries under study, and what the effect of BINI's on the democratic order in Slovenia is. Third, we wish to determine the extent to which political, cultural, habitual, international and temporal factors, as well as contextual issues, play a role in curbing corruption and bad informal institutions in the countries under study.

3 METHODOLOGY³

The methods employed here are two: 1) analysis of EU documents, and 2) qualitative interviews in Slovenia. Regarding the former, we have analyzed a wide range of the EU accession reviews and reports of the Central and Eastern European applicant countries from 1997 until their respective accessions, 2004 in the case of Slovenia. Where available, additional reports, documents and evaluations are included in the analysis. The main goal was to detect the impact of EU leverage on the countries under study over time.

As to the latter, we have conducted 14 semi-structured in-depth interviews in Slovenia (between June and September 2009). All interviews were conducted face-to face, mostly in English, except in Slovenia where one interview was conducted in Slovenian. The respondents included the following types of actors: judges and attorneys, police officers, government officials and members of state administration, representatives of civil society including international watchdog organizations' representatives, reformers-politicians, whistle-blowers (journalists), and scientific experts (political scientists, sociologists, legal scholars).

Each interview consisted of six parts: a general understanding of the rule of law, functioning of informal institutions, corruption, organized crime/threats of violence, elite agreements, and structural issues. Most of the questions were open-ended, giving the respondent a chance to fully express their opinions. The

3 The authors would like to thank Dr. Tatjana Evas of the Jean Monnet Centre for European Studies at the Bremen University for her valuable insights on the legal aspects and her help in finalizing this article, and to the colleagues Dr. Peter Thiery and Dr. Wolfgang Muno for their comments, as well as to all members of the DFG project for our discussions which helped to shape this paper in a most significant way. An earlier version of this paper was presented at the Joint Workshop of CIDE DEP and Würzburg University "Rule of Law and Informal Institutions", Mexico City, on March 11. 2011. The authors would like to thank the discussants Lenka Bustikova and Prof. Andreas Schedler for their insightful critical assessment, and the participants of the workshop for their questions.



duration of the interviews varied between 30 minutes and 3 hours, with an average interview length of about one hour.

Most respondents provided the researcher with further materials in the form of information about the organization represented by the respondent, reports, as well as publications on related topics. This material was included in the analysis. Within the research project “The Rule of Law and Informal Institutions: Central Europe and Latin America in Comparative Perspective”, similar interviews using an identical interview guide (in Spanish and in English) were conducted by the members of the research team between 2009 and 2010 in Argentina, Chile and Mexico, as well as in Poland and Romania.

4 ANALYSIS

4.1 The Rule of Law in the Central and Eastern Europe and the EU Accession Process: Analyzing the Effects of the Co-operation and Verification Mechanism

In the countries of Central and Eastern Europe, the major incentive in adopting the rule of law was the fact that it was included in the Copenhagen criteria. The Copenhagen European Council, based on Article 6 of the Amsterdam Treaty enshrining the constitutional principle as ‘The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law’, stated that ‘membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights, and the respect for and protection of minorities’ (Briefing no. 23/1999 of the European Parliament on legal requirements of accession). So rather than specifying what exactly these criteria mean, it is combined with other basic criteria, such as democracy, human rights, respect for and protection of minorities, the existence of a viable market economy, the ability to respond favorably to competitive pressures and market forces within the Union.

Having analyzed the reviews of the applications of the CEE countries from 1997 until their respective accessions, we see only slight initial specification in defining the rule of law: it is connected with democracy as a single category with two distinct features. While democracy relates to the existence and functioning of the legislative and the executive branches, the rule of law element encompasses the structure and functioning of the judiciary.

Further specification of the rule of law can be found as late as 2005, in the monitoring report assessing the Copenhagen criteria in Bulgaria and Romania (COM 2005/534, 2005). In this report, the EU moved from an abstract to a more concrete understanding of the rule of law in negatively connecting corruption to the rule of law: corruption is understood as a failure to successfully implement the rule of law. Additional aspects include organized crime (negatively related), a justice system, and public administration (positively related and defined as safeguards for the functioning of the rule of law).



Throughout the accession process, it was the judiciary that was viewed as the major challenge of the CEE region in complying with the Copenhagen criteria. While courts were generally seen as independent, their heavy workload has still been highlighted as critical, together with the length of proceedings (which generally exceeds three years and is one of the most challenged rule-of-law aspects at the European Court of Human Rights). The underlying reasons for the poor performance of the judiciary are inadequate experience and qualifications of the judges, as well as understaffing and inadequate facilities in the courts.

Overall, the EU pre-accession reports enumerate the reforms in the area while rarely addressing their implementation; however, some respondents pointed out that the laws are adopted top-down and are thus not based on social agreement, which negatively affects their implementation and social acceptance. They also report that the issue of integrity brings back the 'ghosts of the past'. Even when in effect, there are a number of high-level actors that do not abide the law.

In general, within the annual reports, both abstract and concrete aspects of the legal/constitutional dimension of the rule of law, such as the overall reform process of the judiciary and the amendments to the constitution, were regularly evaluated. Battling corruption and organized crime was often seen as insufficient and ineffective (COM 2003/67, 2003). The reports addressed both the need for legislative action and the implementation of the necessary legislation in this area. Nonetheless, in most countries including Slovenia, some further progress tackling the problems of judicial backlogs was deemed necessary.

Unlike the relatively positive evaluation of changes within the judiciary, the fight against corruption was viewed critically by the European Union. While the countries implemented the anti-corruption strategies, reinforced the anti-corruption bodies, and made progress in the areas such as public procurement, financing of political parties, and awareness rising, there were still strong indications that in a number of CEE countries popular awareness of the dangers of corruption was still relatively low. On a regular basis, further encouragements were made in the attempt to support further development in the areas of transparency, accountability, and efficiency of the public administration (COM 2002/700, 2002).

We may conclude that the primary problem of the reforms enforced by the EU was that some lacked contextual knowledge and that some steps or partial solutions that were successful in other countries and other legal systems were transplanted; but as a whole, the system is overwhelmed and overloaded. Furthermore, the EU pre-accession reports fail to tackle key cultural issues, which were confirmed by our research and interviews. Given the prevailing cultural patterns and political culture in the countries under study, the political elites often feel they need not abide the laws they themselves create. This creates a vicious circle of disrespect of the law: citizens feel no need to follow the laws for the political elites do not act accordingly, either.



4.2 Evaluating the Key Factors Affecting The Rule of Law in the Central and Eastern Europe

The case of CEE countries demonstrates how closely the concepts of the rule of law and corruption interlink with the processes of democratization. In assessing the role of the European Union and its leverage in the countries under study in the pre-accession period, we can sum up the role of the key aspects as follows.

Until 2006, in terms of cultural factors, the European Union failed to recognize a substantial variation in quality of democracy among the CEE countries. Our research points out that a particular regime type prior to democratization plays a crucial role in persistence of informal institutions. Furthermore, cultural heritage together with structural conditions played a crucial role both in the regime change and in the shaping of political competition in the transition era. The cultural and habitual reasons for the elite's weak responses to the persistence of bad informal institutions can be, according to our respondents, partially traced back to the historical legacy of the Ottoman empire (for similar arguments, see also Burduja, 2006).

The narrow political elite combined with relatively ineffective scrutiny by media, troublesome media ownership, low intensity citizenship, and weak civil society, resulted in atomization of society and in the persistence of strong bad informal institutions. As a result, the new democracies in the CEE region are facing wide-spread rent-seeking practices among the relatively narrow political elite which, both in pre-accession and post-accession, continues to target EU structural funds and aims at gaining and maintaining control of the redistribution process: the research points out that public procurement is the area most often targeted by bad informal institutions, for political corruption, clientelism, and elite agreements prevail in redistribution of the European structural funds.

Regarding institutional factors, the institutional set-up was firmly established prior to commencement of the accession process. However, in certain periods of time prior to the EU accession (in Slovenia also after the EU accession), separation of powers was problematic in all countries under study: in the case of Slovenia, this is particularly true of the relationship between the President and the Prime Minister. In the accession process, the main aim of the EU leverage was to improve the performance of CEE institutions. The stable institutional set-up was presumed, yet in all the countries under study the judicial branch was the weakest institution throughout the process, in addition to being the one the most resistant to systematic change.

Furthermore, the major weakness of the judicial branch in all the countries under study is both structural (i.e., related to the unfinished and inconsistent legal order), in other words to a lack of legal certainty, as well as to a lack of capacity due to resource and personnel constraints. Another issue related to the judiciary is its independence. We should also point out that individual aspects of the rule of law reforms were fragmented, since various experts of different backgrounds (in terms of law as well as of legal traditions) contributed to the formalization of the new legislation.



According to Sedelmeier (in Vachudova, 2009), the eight post-communist states in 2004 outperformed older members in adoption of the EU legislation and in dealing with infringements. The external pressure led to a higher level of general compliance among the CEE countries in comparison to the old member states (*ibid.*); however, our research shows that the key problems lie in the lack of political will for implementing extensive rule of law reforms and in the low capacity of absorbing the changes. In this respect, several intervening endogenous factors aggravated the situation and pointed to the need to concentrate on the implemented rather than (only) on the adopted reforms.

In all countries under study except Slovenia, insufficient administrative and financial capacities and a lack of legal personnel played an important role. Among all the rule of law reforms, the EU was most successful in addressing this issue and providing assistance including support in establishing the system of education of judges and attorneys. However, our Slovenian respondents pointed out that while the newly educated judges and state attorneys do bring about the change in the judiciary, the executive branch continues to significantly influence nomination procedures, thus administratively dominating the process. Namely, due to severe understaffing of the courts, the majority of newly appointed judges did not take part in said educational activities. Furthermore, the judges and attorneys appointed outside the official nomination procedures are more vulnerable to political pressure, corruption, and clientelism.

The factor withstanding the EU pressure prior to accession and contributing to the perseverance of the BINIs was the existing constellations of power and interest. This, in turn, led to limiting the implementation or, in some cases, to reversing the reforms made under the EU guardianship. The one issue in which the EU involvement and leverage had no impact in the CEE countries under study is the existence of alternative systems of norms. This was most prominent in Romania, a country with a deeply imbedded culture of commonplace corruption penetrating all levels of life and politics, or in Slovenia with its deeply imbedded system of clientelism.

All of the causes described above effect the overall quality of the rule of law, citizens' trust in law, and a low ability of the CEE formal institutions to effectively fight BINIs. Namely, particularly high level corruption cases involving politicians tend not to produce any outcomes, due to legal suits being prolonged and ending in lacunae of formal legal aspects, without delivering outcomes. Furthermore, particularly in Slovenia, the anti-corruption agencies are sometimes suspected to be a part of the political struggle, for the majority of the prosecuted cases target the politicians of the opposition parties.

Another key element in improving the rule of law in the CEE countries under study is ensuring the independence of the courts and the functioning of the system of checks and balances; namely, after the EU accession in numerous CEE countries governments attempted to influence the due process of law in high profile cases (including Slovenia).

As to actor constellations, the regime change in the CEE region resulted in the emergence of the relatively narrow political elites, as the former nomenclature dominated the initial transformation phase. These actors joined their efforts to shape



the rule of law during the transformation, as well as during the EU enlargement process. Their constellations of blocks of political, business and media actors of similar interests continued to shape the legal systems, individual laws and, in some cases, hindered the implementation of reforms which could harm elites' interest or threaten to implement effective mechanisms of prosecution. Among political actors we find low commitment to pursuing the democratic reforms: due to small governing majorities and unstable governing coalitions, the political actors concentrate on short-term electoral gains rather than on the implementation of long-term reforms.

Areas most affected by bad informal institutions include political parties (i.e., their finances, and their financing of electoral campaigns by either providing the funds or advertising space and services, particularly their relationship with private media groups), healthcare, education, regional governments, and traffic police.

5 RESULTS AND THEIR IMPLICATIONS

In Slovenia, as well as in other CEE countries, informal institutions play an important role in a number of policy areas; however, the healthcare, together with the judiciary, was ranked by the majority of respondents as the one most affected. The role of bad informal institutions in the form of corruption, clientelism, and elite agreements is evident on all levels of the healthcare system.

Pursuant to the typology of the three subtypes of deficient Rechtsstaat proposed by Lauth and Sehring (2009), we can conclude that none of the countries under study established one single distinct type, for all three types of factors occur simultaneously, albeit with different strength. Their impact can be summed up as follows.

Regarding the lack of capacities, the factors contributing to these types of weaknesses are (a) a compromised or an uncompleted making of the constitution (a number of judges among our respondents attributed their difficulty in applying the law to the lack of underlining constitutional principles; (b) a lack of coherent reform strategies; (c) the need for long term strategies, as well as for structuring the reform into individual tangible steps; and (d) sequencing and prioritizing. Moreover, the lack of coherent training and educational programmes shapes and undermines the quality of law in the countries under study and in the CEE region as a whole (see also Samuels, 2006).

In respect to interests, we find that in a number of occasions, said limitations of the rule of law reforms as well as the politically biased drafts of laws with internal formal issues and lacunae are in the interest of some powerful actors aware that they do not comply with these laws. These gaps in laws provide them with insurance against future prosecution and application of sanction mechanisms. Second, the political actors tend to prioritize their own interest, which is documented by a number of international arbitration cases lost by the CEE countries in recent years. By their reasoning, most of the decisions against the CEE states cited a lack of legal certainty, a weak legal environment, and high-level political corruption, which distorted market competition.



As for alternative norms, we find (a) dominance of informal and traditional rules over formal ones; (b) a lack of domestic actors of change, and (c) a lack of political will and compromise to be the most crucial factors undermining the quality of the rule of law in the countries under study.

In terms of the varying strength of the factors outlined in the theoretical overview, we may note that political, cultural and contextual issues (both exogenous and endogenous) play a key role in determining the impact of reform attempts aimed at curbing bad informal institutions and improving the rule of law in newly established democracies under study. Furthermore, our field-work detects only limited change in the situation over time. To sum up, in Slovenia and the Central and Eastern Europe as a whole, bad informal institutions influence and shape the democratic social order.

Our research findings falsify the general hypothesis based on Sandholz and Gray (2003): the processes of Europeanization have strengthened formal features of the rule of law in the countries under study while exercising only limited impact on curbing corruption. The primary reasons are that, in terms of the rule of law, the accession process was selective in accentuating economic performance and overestimating the democratic capacity of the accession countries. The crucial weakness of the accession criteria was the evaluation of formal compliance that was based on adoption of laws rather than on their implementation and enforcement. In connection with the vast amount of EU legislation, some countries adopted 'shortened procedure' mechanisms that weakened effective control of the legislative process in which bills of laws were sometimes insufficiently debated, but simply expediently adopted mostly on the grounds of their presumed urgency in terms of EU accession requirements. Moreover, some laws were adopted just in time, and in these circumstances it was difficult to evaluate their implementation aspects.

Regarding other implications of our research, we can state that bad informal institutions continue to negatively affect democracy by undermining the trust in the rule of law, narrowing the interest representation process, reducing accountability, distorting the representation circle, as well as by favoring unfair selection of public service providers. The situation is most critical in Romania, of which we may speak in terms of state capture. While both Poland and Slovenia face these issues to a lesser extent and are more successful in implementing the rule of law reforms, our research points out that after the EU accession, the three countries have faced some important issues: high level corruption cases, attempts to politically control anti-corruption agencies, not to mention the unsuccessful attempt to dissolve the Commission for the Prevention of Corruption in Slovenia.

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