

Monitoring the EU Accession Process:

Judicial Independence

COUNTRY REPORTS

BULGARIA
CZECH REPUBLIC
ESTONIA
HUNGARY
LATVIA
LITHUANIA
POLAND
ROMANIA
SLOVAKIA
SLOVENIA

2001

Monitoring the EU Accession Process:

Judicial Independence

COUNTRY REPORTS

BULGARIA
CZECH REPUBLIC
ESTONIA
HUNGARY
LATVIA
LITHUANIA
POLAND
ROMANIA
SLOVAKIA
SLOVENIA

2001

Published by

CENTRAL EUROPEAN UNIVERSITY PRESS

Nador u. 15
H-1051 Budapest
Hungary

400 West 59th Street
New York, NY 10019
USA

© OSI/EU Accession Monitoring Program, 2001
All rights reserved.

EU ACCESSION MONITORING PROGRAM

Oktober 6 u. 12
H-1051 Budapest
Hungary

Website
<www.eumap.org>

ISBN: 1-891385-20-8

Library of Congress Cataloging-in-Publication Data.
A CIP catalog record for this book is available upon request.

Copies of the book can be ordered from the CEU Press.

Printed in Budapest, Hungary, September 2001.
Design & Layout by Createch Ltd.

Table of Contents

Acknowledgements	7
Preface	9
Foreword	11
Judicial Independence in the EU Accession Process	13
Judicial Independence in Bulgaria	69
Judicial Independence in the Czech Republic	109
Judicial Independence in Estonia	147
Judicial Independence in Hungary	185
Judicial Independence in Latvia.....	225
Judicial Independence in Lithuania.....	267
Judicial Independence in Poland	307
Judicial Independence in Romania.....	349
Judicial Independence in Slovakia	395
Judicial Independence in Slovenia	431

Acknowledgements

The EU Accession Monitoring Program of the Open Society Institute would like to acknowledge the contribution of the following individuals in researching and drafting our monitoring reports. Final responsibility for the content of the reports rests with the Program.

Bulgaria	Alexander Arabadjiev	<i>Former Member of the Constitutional Court of Bulgaria</i>
Czech Republic	Lucie Atkins	<i>Central European University</i>
Estonia	Jaan Ginter	<i>University of Tartu</i>
Hungary	Zoltan Fleck	<i>ELTE Eotvos Lorant University of Sciences</i>
Latvia	Anita Usacka	<i>Constitutional Court of Latvia</i>
Lithuania	Linas Sesickas	<i>Bernotas & Dominas GLIMSTEDT</i>
Poland	Hanna Suchocka	<i>Member of Parliament</i>
Romania	Horatiu Dumitru	<i>Musat & Asociatii</i>
	Monica Macovei	<i>Romanian Helsinki Committee</i>
Slovakia	Jan Hrubala	<i>Center for Enviromental and Public Advocacy</i>
Slovenia	Ales Zalar	<i>Slovenian Judges Association</i>

We would like to thank the following individuals for their review and critique of earlier drafts of these reports:

Aija Branta, Bill Burke-White, Venelin Ganev, Zdenek Hraba, Daiga Iljanova, Matjaz Jager, Peter Kresak, Ants Kull, Ieva Morica, Wiktor Osiatynski, Peep Pruks, Cornelio Sommaruga, Balazs Toth, Renate Weber, Marek Zubik

The Constitutional and Legal Policy Institute also made a significant contribution to the reports.

Advisory Board Members: Judicial Independence

Giuseppe Di Federico	<i>University of Bologna</i>
Lech Garlicki	<i>Constitutional Tribunal of Poland</i>
Ernst Markel	<i>Supreme Court of Austria; European Association of Judges</i>
Andras Sajo	<i>Central European University</i>
Stefan Trechsel	<i>University of Zurich</i>

OSI also held roundtable meetings in many candidate States to invite expert critique and commentary on the draft reports from representatives of the governments, the Commission Delegations, and civil society. Lists of participants from these meetings are available from the EU Accession Monitoring program <euaccession@osi.hu>.

The EU Accession Monitoring Program

Rachel Guglielmo	<i>Program Director</i>
Karoly Bard	<i>Legal Consultant</i>
Henrikas Mickevicius	<i>Legal Consultant</i>
Timothy Waters	<i>Legal Consultant</i>
James A. Goldston	<i>Deputy Director, Open Society Institute</i>
Andrea Gurubi Watterson	<i>Program Assistant</i>

Preface

The EU Accession Monitoring Program of the Open Society Institute was initiated in 2000 to encourage independent monitoring of the process by which the European Union is considering applications for membership from the ten candidate States of Central and Eastern Europe. The Program aims to contribute to this historic process by producing monitoring reports to complement the evaluations already being conducted by the European Commission, as reflected in its annual “Regular Reports” on candidate States’ progress towards meeting accession criteria. The enlargement of the European Union is a positive development, and independent monitoring is one means of magnifying its beneficial effects, both within the candidate States and in the EU itself.

In keeping with the larger aims of the Open Society Institute, the Program is monitoring compliance with the political criteria for membership as defined by the European Council in Copenhagen in 1993:

Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.

In order to determine specific topics for monitoring, the Program looked to the Regular Reports to identify certain aspects of the political criteria frequently highlighted by the Commission itself: minority rights, judicial independence, and corruption. Monitoring was also initiated on a fourth topic of importance to both the Commission and OSI: equal opportunities for women and men.

Monitoring reports were elaborated by independent experts and/or organisations in each of the ten candidate countries on the basis of a methodology developed by OSI with the assistance of an international advisory board. This methodology draws upon existing international and European standards for judicial independence to provide a framework for analysis of corresponding legislation, institutions and practice in the candidate States.

First drafts of each report were reviewed by a national expert and the international advisory board. Subsequently, round-table meetings were organised in nine candidate

States to invite critique of the drafts from government officials, civil society organisations, judicial representatives, and from the Commission itself. Where it was not possible to organise a round-table, the draft was submitted for comment by mail. The final reports underwent significant revision on the basis of the comments and criticisms received during this process. The Program assumes full editorial responsibility for their final content.

Foreword

Since 7 November 2000 the European Union has its own Charter of human rights. Although this document lacks legal force, it is a banner professing the Union's allegiance to the fundamental values of the modern world, and a statement of its member States' common purpose. It may be seen as an affirmation of this commitment that in considering candidate States for membership an assessment is made of their progress in the area of human rights.

I do not hesitate to affirm that the independence of the judiciary is a cornerstone, not only of respect for human rights, but also of the rule of law. Yet in international instruments for the protection of human rights, the independence and impartiality of the judiciary have an inconspicuous place. They are almost hidden in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 14 of the International Covenant on Civil and Political Rights.

The actual importance of judicial independence is, however, of a different category from other – individual – rights. We are faced here with a fundamental principle of the organisation of a State, the basic “stuff that constitutions are made of”. It is neither the legislative nor the executive branch that ultimately prevents a descent into totalitarianism. An independent judiciary sustains the rule of law without pursuing the aims of a particular political party, and does not hesitate to decide in favour of the weak.

Modern democracies cannot function without a minimum amount of co-operation from their citizens. They must be given the feeling of “*tua res agitur*” (“this is all about *you*”) with regard to the political entities in which they live, whether it be the commune or town, the province or the State. This requires a fundamental trust in the correct functioning of the institutions – with “correct” meaning according to the law.

There are very good reasons to apply an increased degree of scrutiny with regard to countries that have lived under communism for two generations. The role of the judiciary in those times is well known: “judgement by telephone” is the widely known expression for their “method of interpretation”. When, following the fall of the Iron Curtain, the first seminars on fair trials were organised for lawyers from Central and Eastern Europe, some participants had no idea what an independent judiciary involved. I was asked, “How is the judge supposed to know which way to decide?”

In attempting to answer such fundamental questions, members of the Union have discovered that simply transferring technical knowledge or providing financial assistance for judicial infrastructure, while necessary, is not sufficient. Even more, they need, and properly ought, to clarify their common values and standards – to identify and articulate what judicial independence means for democratic States in 21st century Europe.

Considerable progress has been achieved over the last ten years. Yet, the process certainly is not completed, and beyond the candidate States, there are further challenges. Practising lawyers from the accession region have told me that there is still quite a way to go, in part because of the difficult economic circumstances that make reform on even basic matters such as ensuring decent salaries for judges so hard to sustain.

The present study, prepared by the Open Society Institute, is an excellent beginning, and a provocative challenge. The study has been undertaken with extraordinary care; very detailed questionnaires were prepared, competent national reporters were engaged and their work was also supervised by an international advisory board. It presents no doubt by far the most elaborate and accurate picture of the independence of the judiciary in the countries covered. Perhaps it will serve as an example for further studies of similar questions, not only in candidate States, but also in the present EU member States. By raising important questions, and setting forth fact-based findings, these reports may assist the strengthening of the independence of the judiciary and the rule of law in the whole Union. What more could one ask?

Stefan Trechsel
Professor of Criminal Law and Procedure at the University of Zurich,
former President of the European Commission of Human Rights