

ADVOCATING A • TRUE REFORM OF • THE EUROPEAN • UNION'S • ENLARGEMENT • PROCESS •

Andi Mustafaj

Advocating a true reform of the European Union's enlargement process

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Under the management of Ramona Bloj & Stefanie Buzmaniuk
Translated by Helen Levy

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We can think of the European project and the enlargement of the Union as an old couple. From the very beginning and until recently, they have always had a close, almost passionate relationship, both for themselves and for their admirers and detractors, one has always relied on the other. One has always complemented the other.

Unable to define the third stage of the European project (after peace and the economy)¹, a large number of Brussels officials have exposed it to stagnation despite ideas having largely become a reality. Gradually, the European project has been diluted by enlargement to such an extent that they have become synonymous in the public and political arena.

In Brussels and in most European States, the need to unite and reunite the peoples of Europe has been hammered home. Reference is made to historical error and injustice when the opening of new negotiations is postponed for a few months. All this whilst we forget that human beings unite around common causes and common horizons. The stronger the cause, the broader the common horizon, the stronger the resulting union.

Candidate States speak of unfulfilled promises, which include the quasi-automatic nature of a self-sustaining process. For them, the Union is a due, an Eldorado. Comforted by the silence of those with whom they have negotiated, they forget to reflect on their own country's contribution to the European project.

Enlargement has gradually emptied itself of its substance to become nothing more than a technical, mechanical and, when implemented and applied, absurd question. A State's ability to join the Union is assessed exclusively according to its capacity to transpose a body of standards supposed to represent European standards into its domestic legislation.

This is like an original sin. A written normative act can never and must never be understood independently of the population or the legal culture of the country in which it is to be applied. This simple truth must be forcefully recalled because it appears to have been forgotten.

During my time at the Albanian Ministry of Justice, first as a civil servant in the Directorate for the Drafting of Legislation and then as Advisor to the Minister, I was extremely astonished at the multitude of projects that we had to adopt almost as is, for the sole reason that they were required by the European Union. These projects were often poorly conceived for several reasons.

Firstly, they did not take into account Albania's local specificities. For example, the legislation on the right to information of public documents was

¹ See J. Gazzano, A. Mustafaj, „A Blueprint for tomorrow's Europe“, Open Horizons, N°1, Robert Schuman Foundation, 2019.

supposed to be based on the best European standards (although there are many differences in this respect) but ignored a difficult reality on the ground in towns and villages outside the capital. Wanting to go too far, too fast, this legislation ignored the lack of IT infrastructure, of infrastructure dedicated to storage, of staff trained to understand a law that changes the obligations of the administration. It also ignored the need to change the legal culture in territorial administrations in an area with which they were unfamiliar. Thus, when the Minister of Justice tried to propose a reform by stages, with increasingly rigorous criteria and gradually meeting European standards, he was reproached for not being progressive, for not listening to the European Union. The law was finally adopted. As a result, it remains largely unimplemented in the country.

Secondly, these projects were often the result of legal "patchworking". Thus, the quality of the law creating a specific administrative justice system in Albania (whose adoption was an express request of the European Union) was, according to the European representatives, guaranteed by the fact that it took the best of the German and French systems. However, a judicial system, whether civil, administrative or criminal, must be intimately linked to the substance of the law applied. The EU's experts should have started their analysis with the study of administrative law in Albania and the general public culture which influences public law, both in substance and in form. Instead, the system that has been proposed and adopted mixes two systems that everything opposes and wants to graft them to a country with a different substantive law (strongly influenced by Italy).

This point is crucial because administrative justice is the citizens' last bulwark against the actions of the State and local authorities. Legal "patchworks" like this are doomed not to be implemented or in a very imperfect way.

Moreover, the progressive additions to the legislation have made, are making and will continue to make the overall coherence of the legal system less so. During all the years of negotiations for accession to the Union, the Union has sent representatives from different States who have no particular knowledge of the candidate States, public law or State reform. At the same time, assistance missions from several Member States have succeeded one another. All of this has contributed to the continuous introduction of diverse and sometimes opposing influences, and on sometimes identical subjects, which has led to global system void of ideological coherence.

This is particularly true in areas requiring almost continuous reform, such as the Civil Code and the Criminal Code, which have been subject to French, German, Dutch and other influences as the various assistance missions has

succeeded one another. However, in some of these areas, prison policy for example, there are great differences between these countries.

Finally, these reforms are viewed dogmatically and ideologically. There is only partial, if not rare, interest in their practical consequences. The best example is the reform of the judiciary in Albania and the vetting of judges. To combat corruption in the judiciary, a reassessment of judges and prosecutors was introduced to control their assets and potential links with criminal networks. It is impossible to refute the absolute necessity of this approach both from the point of view of justice and morality. However, if this idea is not adapted to the country in which it is to be implemented, it becomes counterproductive, and to continue to praise is pure propaganda.

In practice, in Albania, this reassessment has led to the dismissal of many judges and prosecutors. For this reason, and for almost a year, the High Court, which is the final court of appeal in administrative, civil and criminal cases, has not had a single judge out of the nineteen provided for by the law. And although three judges had recently been appointed to enable it to partially resume its work, it is still unable to dispense justice in cases requiring a quorum of five or nine judges. The Constitutional Court is still in deadlock for lack of a quorum, having only four out of nine members (including the three recently appointed).

The State can therefore no longer fulfil one of its fundamental functions, the very basis of the social contract, that of rendering justice as a last resort for its citizens. Worse, at the time of writing, none of the dismissed judges are being prosecuted by the ordinary courts to account for their assets or links with criminal networks. Not only does this fuel the general incomprehension surrounding the reform, but it also considerably increases the risk of these dismissed persons not being tried before the European Court of Human Rights.

From this double paradox (non-functioning courts and unprosecuted judges), the real winners remain the criminal networks; as for the losers, they are the citizens and the construction of the Albanian State.

This enlargement policy and its implementation are contributing to the creation of a clear separation between the formal and the real State, between a country that we discover in the texts published in the Official Journal and one that we encounter in daily life. To have adopted such legislation that counts in the Union's progress reports, without assessing its consequences or effects, is considered an injustice.

The more time passes, the greater this gap will become and the more difficult it will be to bridge. This is nothing new and can be applied to any country that

has joined the European Union. However, it is a major reason for the difficulties that these new members are experiencing, as well as the indirect imbalances that they cause in the Union. The issue is all the more urgent as the Western Balkans are at the focus of concern.² The United States seems to have lost its realism in the region, taking surprising positions, such as supporting the dangerous idea of an exchange of territory between Kosovo and Serbia or recent statements in favour of a withdrawal of US troops from Kosovo.

On the other side of the international arena, and when everything should be pitted against them, Russia and Turkey are back in the region with a harmful cross-policy of destabilisation or ethnic and religious affirmation. For example, British intelligence services attribute the 2016 coup attempt in Montenegro directly to Russia. Moreover, since Erdogan came to power, Turkey has introduced a so-called 'neo-Ottoman' policy in which Islam and cultural diplomacy play a central role. These diffuse influences are divisive and therefore very dangerous in the long term. China is taking advantage of the geopolitics of money as it takes part of the Silk Roads through the region, lending considerable sums of money to the Balkan States or acquiring many companies in strategic sectors (energy, transport, etc.), thereby making these countries highly dependent on this new Chinese diplomacy.

The European Union's response cannot be reduced to enlargement for enlargement's sake. While it is true that this would reduce the risks posed by these foreign influences in the region and on the Union, it is a short-term solution, which does not respond to the dichotomy between the formal and the real State and, therefore, does not really help the candidate States on their path towards developing and consolidating the rule of law. It even poses a risk to future generations.

A window of reform seemed to open up with the refusal of France and some other Member States to open negotiations with Albania and Northern Macedonia. Unfortunately, the Commission's response was not satisfactory. In [its communication](#) of 5 February 2020, the Commission reiterates the points which it considers to be essential although they are peripheral. Thus, it would be "fundamental democratic, rule of law and economic reforms" which "will in turn foster solid and accelerated economic growth and social convergence", further contributing to the misconception that the development of these countries is only a question of reform.

² See A. Mustafaj, "European Policy in the Western Balkans at a crossroads", in *"The Schuman Report on Europe, State of the Union 2019"*, Editions Marie B, 2019.

The whole strategy revolves around reforms in a vision that remains rather rigid. The Commission goes further, stating that the "Credibility [of the accession process] should be reinforced through an even stronger focus on the fundamental reforms". Focusing on fundamental reforms is not the solution, it is part of the problem and will remain part of the problem as long as its correlation with the State and society, in which these reforms are implemented is not understood.

The Commission's priority should be to define the third stage of European integration, to rebuild the link between the project and enlargement. At the very least, the enlargement procedure should be redefined so that the candidate States can really strengthen themselves and reduce the gap between the real and the formal world.

Hence, new types of so-called "objective" criteria should no longer be based solely on reforms, but on their consequences. The European Union could set up partnerships with entities that build indexes to be used in the integration process. For example, Transparency International's Corruption Perceptions Index could be used as an indicator (without constituting it entirely) of the country's effective fight against corruption. This would put different pressure on the governments of the countries concerned. It would also prevent countries that drop a few places in the ranking every year from being praised by the Commission for their fight against corruption through reforms adopted by their parliaments.

Other objective and concrete criteria might be the reduction of the poverty rate, an increase in the share of GDP in education, the level of access to the health system, the conservation of plant and animal areas, etc. However, the criteria for improvement that can be of practical use to the country, its citizens and, ultimately, the European Union are infinite.

Over and above the criteria, the Union really must work as a partner that is aware of the candidate country's realities on its road to accession. This may involve defining major priority areas, which could be the subject of enhanced partnerships between the Union and the candidate countries. These should be determined on the basis of findings on the ground.

For example, how do we break the spoils system and the partisan subordination of the administration in a country that has a protective civil service status? By creating a stronger partnership in the area of access to the civil service because, with a truly impartial and meritocratic system, one breaks the influence of political parties in appointments and transfers in the administration. It reduces the risk of systemic corruption, since the civil servant is accountable only to him or herself. The equation is simple: a good

civil servant with imperfect laws will always do better than a bad civil servant with good laws.

How can we combat the manipulations to which an uneducated rural and peripheral population is subjected despite the fact that education is free and compulsory? By creating a stronger partnership in the field of education, by investing in teacher training, in teachers' working conditions, by supporting the improvement of the organisation of the education system. Education is undoubtedly the big missing link in the accession process. Yet it is through education that we can prepare a new generation to take over while breaking codes and starting a new dynamic.

Finding the loopholes, balancing the system, changing the culture: these must be the priorities of the enlargement process.

Unfortunately, these demands, like those expressed by so many European actors (citizens, politicians, think-tanks) do not seem to have been heard by the Council. And so, on 25 March, on a proposal from the Commission, the Council gave the go-ahead for the opening of accession negotiations with Albania and Northern Macedonia on the same basis that is so widely open to criticism and which is criticised.

For Ursula von der Leyen, " The European Union delivers on its promise. North Macedonia and Albania did what was asked of them and they have continued making progress in the reforms needed. Today marks the start of the journey to a bigger and stronger European Union."³

The notions of "promises", "implementation of the necessary reforms" or the mention of the path towards a "bigger or stronger" Union automatically resulting from enlargement thus remain predominant. Deaf to the need for questioning and in-depth reform, the European Union will contribute to widening the gap between the real and formal worlds of the candidate States. In so doing, it will ultimately contribute to weakening the Union.

Albania and Northern Macedonia, as well as the other States of the Western Balkans, have a natural place in European integration. But Europe must firstly help them to really get on track so that they can effectively get on the train and become the Union's next wagons. It is not through form (procedures and reforms off the ground) but through substance (real impacts and an improvement in the lives of all citizens) that this objective will be achieved.

The creation of the European Union was possible because it was carried by a generation that had a common goal. More than a goal, today's generations are

³ Launch of membership negotiations with Albania and North Macedonia, 25 March 2020, https://ec.europa.eu/commission/presscorner/detail/en/ip_20_519 and <https://data.consilium.europa.eu/doc/document/ST-7002-2020-INIT/en/pdf>.

looking for meaning in what they do. There is an urgent need to find, or rediscover, the meaning and purpose of the European project in order to restore the balance between the European project and enlargement with the ultimate aim of strengthening the European Union.

Advocating a true reform of the European Union's enlargement process

An important window of opportunity to reform the European Union's enlargement process was opened at the European Council in Brussels on 17 and 18 October 2019 and also with the rejection of the launch of negotiations with Albania and Northern Macedonia. However, the reflection initiated by the European Commission, which was presented on 5 February 2020, together with the green light given by the Council on 25 March 2020 to the opening of negotiations to these two countries do not seem to demonstrate any new awareness of the problems and issues related to enlargement. Although the natural place of the Balkan States in the European Union should not be questioned, vital reflection regarding the way in which the enlargement process has been conducted to date and its link to the European project is required, so that essential lessons can be drawn in view of true reform, which would give the candidate States the means to consolidate, and strengthen the Union.