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CIVIL ENFORCEMENT IN THE WESTERN BALKANS

An overview of the present situation and future developments in the various legal systems in the Western Balkans

(REVIEW)



Book-title: *CIVIL ENFORCEMENT IN THE WESTERN BALKANS: An overview of the present situation and future developments in the various legal systems in the Western Balkans*

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The authors of this book participated in the initial mission of the Balkans Enforcement reform Project - BERP. The purpose or object of the mission was to estimate the exact situation in the area of enforcement of law in the Western Balkans, where it includes the following countries Albania, Bosnia and Herzegovina, Croatia, Former Yugoslav Republic of Macedonia,

Kosovo, Montenegro and Serbia.

This book was the result of that mission, and is published thanks to the Netherlands Ministry of Foreign Affairs.

From a structural point of view this book includes a list of abbreviations, preface, executive summary, ten chapters and four annexes at the end.

The preface presents the background and importance of the book. The executive summary lists the reasons that cause problems with systems of law enforcement in countries of the Western Balkans.

Chapter one is titled "Introduction", which is composed from three parts. The first part explains the importance, but also the the coverage of the term Balkans. Here are indicating that FYROM(Former Yugoslav Republic of Macedonia) is a temporary name and explaining the reason why the authors use that reference. The second part talks about the area of law enforcement as one of the priorities of the reform of the legal system of the Western Balkans, which also clarifies Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The third part explains the regional cooperation in the field of law enforcement.

The second chapter provides a general overview. The first part is the introduction. The second part refers to the political context of the Western Balkans. Here focus is placed on the European perspective, the process of accession of these countries to the European Union (EU) and the status of each country for entrance into EU. The third part refers to legislation and organization of the enforcement process. The common basis for law enforcement in all countries except Albania is explained. In the fourth part covers the initial and constant training of professionals who are involved in law enforcement, which stems from the recommendation of the Council of Europe law enforcement since 2003. The fifth part refers to the need for development and promotion of the Code of Ethics of enforcement agents, and the need for monitoring as well as the existence of controlling mechanism. The sixth part of this chapter focuses on working conditions, and the need for appropriate payroll and benefits to attract and retain qualified candidates. Seventh part dedicates attention to infrastructure and material resources. All countries, except FYROM have a lack of infrastructure and material resources, and this section explains the reason for this lack. The last part of this chapter focuses on the problem of delivering

the documents in the enforcement procedure in all countries of the Western Balkans.

The third chapter is titled: "Cases at the European Court of Human Rights". The beginning contains general information about the European Convention on Human Rights and quotes Article 6 of the Convention, which refers to a fair trial within a reasonable time. Included are the historical cases in which the European Court of Human Rights (EctHR) has determined breaches of Article 6 of the ECHR. This chapter contains data for Recommendation 17/2003 for enforcement and 2009 Guidelines for a better implementation of the Recommendation on enforcement, which have been adopted to achieve effective enforcement of judicial decisions. Only the Republic of Kosovo has not ratified the ECHR, and therefore has no cases before the ECHR in relation to law enforcement. The end of this chapter provides guidance on what should be done in the future in order to reduce the number of cases and improve the enforcement systems in the Western Balkans.

The fourth chapter deals with Albania. The first part is written for Albania in relation of the political context. In this part are aggregated several reports of the European Commission on progress in improving the Albanian enforcement system, we highlighting the deficiencies that exist. This part contains the cases in which the ECtHR judgments rendered against Albania's failure of judgments from ECtHR. Part of this chapter refers to the applicable legislation in the Republic of Albania in the area of enforcement of civil and commercial judicial decisions, and the organization of the enforcement process. In this chapter, the authors focused on the issue of training and education that is required of professionals who are involved in the enforcement process. The status, ethics, control and disciplinary proceedings are also explained in "The State Judicial Bailiff Service" and "The Private Judicial Enforcement Service". According to the authors poor working conditions are one reason for the poor results in enforcement of decisions.

Chapter five is titled "Bosnia and Herzegovina". This chapter clearly states that one of the main obstacles to a more efficient system for enforcement in Bosnia and Herzegovina's is a constitutional structure of the country. In relation to the legislation in Bosnia and Herzegovina's characteristic is new law on enforcement which was adopted in 2003, according to which is explained the enforcement process in this book. This chapter contained much tabular data arising from the research in terms of resolved cases, new cases and backlog of cases. Attention is given to the

training that needs to be done in Bosnia and Herzegovina, as well as lack of a specific code of ethics for enforcement agents. This chapter lists the working conditions, the challenges facing this country and the reasons that cause inefficiencies and abuse of the enforcement system.

The sixth chapter is titled "Croatia". It includes comments by critics who point to Croatia in terms of reforms and judicial reform strategy, arising from the reports of the European Commission. Disrespect and failure of timely decisions of higher courts were contributing to cases against Croatia before the ECHR. In 2009 enough progress was seen in the area of judicial reform and new legislation was adopted, but the European Commission was seeking to improve the independence, professionalism and competence of the judiciary. This chapter explains the role of the notary and the public enforcement agents, but also the overall enforcement process. The authors specify the problems and challenges in enforcement process in Croatia, including statistical data on the number of cases in Croatia. Attention is given to the training of professionals involved in the enforcement process, ethical behavior, monitoring and control, disciplinary proceedings, service of documents, as well as future directions of the organization of the enforcement process.

Chapter seven is titled "Kosovo". This chapter provides general observations about the political background and the legal and judicial status of Kosovo. Activities of the mission with which the European Union decided to establish the rule of law, known as EULEX in Kosovo are mentioned. European Commission reports on progress indicate that the efficiency of the judicial system is weak and judicial institutions in Kosovo have made little progress in enforcing efficient service, and civil and criminal justice. Statistical data from surveys conducted indicate that Kosovo has a significant backlog of cases in the courts. Kosovo introduced a new law on enforcement proceedings in 2008, but since this law was in some way a remake of the former Yugoslavian law of 1978, there are many problems in the enforcement in Kosovo. The situation is complicated because of the mixed and sometimes vague legal framework and the difficult legal system with various international elements. In view of future needs, the authors noted that creating a good legal framework was condition sine qua non, but also, the establishment of good and transparent system for monitoring and control, system of disciplinary procedures and training was equally important.

Chapter eight refers to "FYROM (Former Yugoslav Republic of Macedonia). The authors noted that this country is a leader in the Western Balkans. The country introduced a system based on private executors in 2006 and since then the system was strengthened. Based on the survey, which was conducted in FYROM, experiences with the system of private executors are very positive. This chapter indicates that there was a negative image that created problems for the enforcement professionals as a result of the issue of transfer of old cases before 2006. Focus is on the process of enforcement, training, disciplinary action, working conditions in this country.

The ninth chapter is titled "Montenegro". European Commission reports on the progress Montenegro has demonstrated in the area of judicial reform, but there is a lack of trust in the system and concern for the level of political influence. Backlog in civil and criminal cases was reduced, while the lack of infrastructure and equipment have hindered efficiency of the judiciary, but efforts were made by the authorities to remedy the situation. Montenegro and Serbia have followed the same path of reforms at the same time. In these two countries reform legislation began in 2008. The Montenegro starting point of the reform was the strategy for justice reform and on the basis of the assessment system for execution. Since then, "a working group under the auspices of the Ministry of Justice began by developing a new code of law enforcement and public officials for enforcement". Interestingly, USAID estimates that "the total number of enforcement cases 73% were for collection of unpaid utility bills".

The last chapter of this book refers to Serbia. On several occasions the system enforcement of Serbia was criticized by the European Commission. Execution of judgments remained ineffective. European Court of Human Rights (ECHR) made 45 judgments that Serbia had violated the European Convention on Human Rights and Fundamental Freedoms (ECHR). Most of judgments concerning the violation of the right to a fair trial because of the length of the procedure for execution of judgments. The authors suggest the intentions of the Serbian Government to radically change the draft law for enforcement proceedings, which seems very ambitious and introduces some radical changes in the current implementation. One major change was the introduction of so-called two-track system: enforcement is ordered by the court and executed by the court or a (private) executor. Serbia followed a different technique and codified legislative procedural aspects and organizational issues in enforcement new law enforcement and security.

The book provides an overview of all systems enforcement in the

Western Balkans

reforms that were underway at the time this book was prepared. This book highlights the main issues and presents practical examples of what happens in area of enforcement in the Western Balkans. The book allows the reader to understand what is happening in the context of a particular development. What attracts attention is that almost all countries started the process in the direction of reform the outdated system of enforcement, but many challenges remain. The book abounds with statistical, comparative and historical analysis. It was useful, interesting and easy to read, in this short review I tried to cover all the material, but I recommend to all readers to read the book to enrich their knowledge in this area.