

**Europeanization of the Rule of Law in Western Balkans – the peculiar
case of the EU’s transformative power failure in Kosovo**

Synopsis of the Doctoral (Ph.D.) Dissertation

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I. Background of the topic

The process of Europeanization has become a popular topic for scholars since the emergence of the European Union. Its emerging policies on enlargement, monetary or migration, have been often criticized, however, the Union has retained insofar its unity.

Nonetheless, the Western Balkans, i.e., the Republics of the former Yugoslavia, excluding Croatia and Slovenia, plus Albania, have been struggling since the fall of the Socialist Federation, to approximate itself with the European Union, committing to robust reform agendas, as well as complying with the sometimes irrational requests, of the EU, subsequently increasing the academic interest in Europeanization theory.

Many scholars portray Europeanization as the institutionalization at the European level of a common system of governance to make, implement and enforce European-wide binding policies. This view is illustrated by Risse, Cowles and Caporaso who define Europeanization as: "the emergence and development at the European level of distinct structures of governance, that is, of political, legal, and social institutions associated with the problem solving that formalize interactions among the actors, and of policy networks specializing in the creation of authoritative European rules".

In this context, it is imperative to stress that Europeanization, as defined by Radaelli, refers to a process of a) construction, b) diffusion and c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, ways of doing things and shared beliefs and norms which are first defined and consolidated in the making of the EU decisions and then incorporated in the logic of domestic discourse, identities, political structures, and public policies. This has been one of the most widely accepted definitions of Europeanization so far.

Kosovo, despite having embraced orientation towards the European Union, has been struggling on two fronts: the first being limited statehood as a result of Serbia's non recognition, and the second, influenced by the first- – the slow integration process and the ambiguous relationship with the EU as a result of the 5 non recognizing member states. Poor and politically unstable since its declaration of independence, Kosovo is focused on the European future and invests certain capacities in rebuilding its relationship with neighbors and establishing meaningful dialogue with the EU Commission. However, faced with difficult political context, not being a member of the United Nations, and yet not recognized by 5 EU member states (Spain, Cyprus, Romania, Slovakia, and Greece) because of Serbia's rejection of independent Kosovo, this relationship has been often undermined, and has left the country lagging behind integration. Despite the "status neutral" position induced by the EU and the willingness to find creative forms of entering into contractual relations, primarily because of its rigid nature of decision-making, all Member States have nevertheless agreed that the EU should provide substantial support to Kosovo to ensure the stability not only of Kosovo, but also of the wider Western Balkans region and Europe as a whole.

The democratization and further integration of the Western Balkans is intimately linked to the results produced in its rule of law area. Considering that the rule of law has become one of the main three pillars of the current EU enlargement strategy, the relevance increases not only for evaluating the readiness of the Western Balkan countries to eventually become EU member states, but also for assessing the potential influence of EU institutions on the implementation of the rule of law outside the EU borders. Scholars have argued that the concepts of democracy, rule of law and judiciary are not identical, with the last two not being clearly defined.

Despite the ambiguity in definition of the concepts, the rule of law reform, tangible results in the fight against corruption remain the “gold standard” to be achieved by the Western Balkans countries on their path towards the EU accession. The baseline criteria were established in the Stabilization and Association Agreements with the respective candidate and potential candidate countries which represent not only a contractual relation with the EU at the early phases of accession but also a benchmark for a measurable impact that can contribute to a more concrete recommendations and easier monitoring of progress.

Despite the fact that academic scholarship and democratic politics agree on rule of law as a legitimizing principle for the exercise of state authority, there is no uniform European standard for institution-building or monitoring activities by the EU in this area.

The question that is aroused in this sense is to what extent the EU has had transformative power and impacted the internal judicial structures of Kosovo and under which conditions the EU is more effective.

II. The identification of the research problem and research novelty

The Europeanization of the Rule of Law sector has been one of the most mentioned but less researched topics in the academic world. The importance of researching the topic of Kosovo is ripe, and more relevant than ever, especially after the positioning of the EU as the frontrunner of the legal reform in Kosovo based on the strategic orientation and the unequivocal support of all political and non-political actors in Kosovo that EU integration remains a top priority. As a subject of the research, and also to add even further to the political context and circumstances surrounding Kosovo’s Europeanization process and European Integration, in-depth analysis were conducted on the role of the EU as a facilitator in the Pristina – Belgrade dialogue for the normalization of the relations, a process that came at a peculiar moment right after the International Court of Justice issued the opinion that Kosovo’s declaration of independence has not violated international law. The importance of the research grows even stronger with the fact that, the current EU’s fatigue in enlargement vis-à-vis the Western Balkans, and internal divisions coupled with BREXIT, have put especially the “insignificant Kosovo” at the bottom of the agenda. Appalled by the pledges made in the Thessaloniki Summit 2003 and the subsequent Summits, the continuance of the integration path for the entire region has been reflected in the November 2019 Non-Paper on Reforming the European Union accession process sponsored by

France as well as the subsequent joint non paper signed by Austria, Czech Republic, Estonia, Italy, Latvia, Lithuania, Malta, Poland and Slovenia titled “Elements for an enhanced enlargement process and sustained and accelerated integration of the Western Balkans.” The study in itself is significant because it assesses the efficiency of the EU in its delivery as a mediator and reform driven factor and how in the overall context its capacities can be utilized in a more effective way to overcome the enlargement weariness and enforce the top to bottom approach in Europeanizing the Western Balkans.

The research has provided with qualitative analysis and findings on the inability of both EU and the Kosovo state actors to implement the imposed reforms as such on the ground, taking into consideration the historical and cultural context of the matter with the aim to thoroughly elaborate and conclude on the lessons to be learned on how the EU should approach the countries with a complex and unique historical and cultural discourse, which will serve as a baseline study of the challenges on the Europeanization theory for the Western Balkans region for the future scholars who will pursue the path of integration, in particular of Kosovo, to the European Union.

The novelty of the approach lies in both the methodological but also the structural aspect. Rule of Law in Kosovo has never been analyzed thoroughly and academically from the prism of the EU induced reform, and the impact that the EULEX rule of law mission had in the country’s approximation to the EU standards. The literature on the Europeanization has been focused mainly on the EU member states, and the supranational impact that the EU institutions had on its Members, however the candidate and potential candidate countries have been neglected from a more robust and in-depth research. Second, the methodology used in order to complete the research has encompassed for the first time an observatory approach combined with a robust academic view and research to the subject, for which these thesis are ought to give a different angle to the Europeanization process of the rule of law sector in Kosovo, coupled with access to interviews and classified documents and provides lessons on background information, methods of action, analysis and recommendations a well as cultural and historical context of application of the Europeanization theory.

III. Literature from which the thesis was inspired

The literature used in the thesis consists of citing primary scientific and open data resources with a special focus on the EU normative documents as well as the legal infrastructure of Kosovo to help analyse better the discrepancies between the requirements of the EU reform and the actual situation in Kosovo. Furthermore, the thesis benefits from quoting also non published and few confidential documents which as part of the research have led to support the concluding remarks of the research and support the three hypothesis. The secondary sources that have inspired the research have been works of modern europeanization researchers which have defined Europeanization and its models of application thus supporting the findings of the thesis from a theoretical perspective based on the empirical research conducted.

The combination of these sources have led to raising new questions. However, the difference in the Europeanization process and how that is being applied, as well as the impact it had in the countries of Central and Eastern Europe compared to the Western Balkans in this case Kosovo.

Despite the fact that the literature on Europeanization was largely focused to shed light on the impact of the European Union's transformative powers into the Member States and the EU's conditionality imposed in different levels and models of governance in particular after membership, the research has gone beyond, in looking into more concretely through the theoretical lens the incoherence in the policy making and decision at the EU level as well as the neglect the interest and the influence of EU in the domestic policies in the Western Balkans.

In order to be able to reflect on the ability of general definitions to describe the Europeanization and other processes attached to it, the definitions of C. M. Radaelli, R. Ladrech and J. P. Olsen are taken as a starting point.

When focusing on the Western Balkans, recent literature does preserve the fact that the Europeanization of this region in the recent years has become a rather difficult and bumpy road and with that using a different approach was imposed. Researchers have neglected the interest of the influence of EU in the domestic policies in the Western Balkans, merely because of the fact that structural changes induced by the EU (top-bottom approach) was only considered declaratively with no reward presented in the end, and without a clear prospect of moving towards integration. However, with Sedelmeiers emphasis on the current research on Europeanization, the research has been narrowed it down to two main theoretical approaches – the rational and the constructivist institutionalism. Further, the leitmotif of the thesis in addition to the definition of Europeanization as stipulated above, takes a strong consideration also the Sedelmeiers and Schimmelfennings External Incentives Model (EIM) as a mean that uses the logic of the consequences within the rationalist point of view, with which the EU has set forth numerous rules and norms which a perspective country aspiring to join the Union needs to fulfill simultaneously receiving financial or technical support for compliance, or punishment for non-advancement and non-compliance. Arriving at this point, an important element is the EU normative power as a substantive support to the credibility of threat – and as Manners has stipulated, the notion of normative power EU lies in imposition of EU's identity – i.e. series of principles and shared beliefs that the EU member states sign off to but also instill. This parading resonated well with Radaelli's definition and these norms (liberty, democracy, supranational rule of law and human rights) are well stipulated in the EU Law, which makes them binding to the candidate countries as well – making the threat much more credible.

IV. Hypothesis and Research Questions

There are two main causes of the failure to achieve the expectations of the final integration of Kosovo in the EU – as this responsibility is shared both between the EU and the Kosovo decision-makers.

The EU has failed to have a unified position vis-à-vis Kosovo's status, and this is the main obstacle. The second being the creative solutions and the vaguely planned mission of the Rule of Law which has been followed by numerous criticism and fallacies since it was established in 2008. On the other hand, the Kosovo authorities have never engaged in an in-depth analysis of the EU technical requirements on certain processes. Their engagement has been only declarative, without any follow-up on the ground, which has been repeatedly noted in the European Commission progress reports.

The thesis will specifically deal with the presence of the European Union in Kosovo, and its main prerogative to Europeanize the rule of law, with that approximate Kosovo towards the EU integration. It will also analyze the impact that the EU Rule of Law Mission (EULEX) had in the modernization and further Europeanization of the rule of law sector, and how it used its transformative powers with the sticks and carrots policy vis-à-vis Kosovo, powers which have been undermined by the political elite, client-oriented approach towards governance, partisan judiciary, and ineffective administration.

I will also argue on the causes and consequences from the EU sponsored dialogue between Serbia and Kosovo on the normalization of the relations, all these to lead towards the main question, whether the EU approach to the rule of law in Kosovo, has been correctly tailored and what will the future hindrances be for Kosovo in the international fora.

I will base my research on Radaelli's definition of Europeanization as well as Schimmelfenning's, Featherstone's, Olsen's et.al. External Incentives Model of Europeanization, concluding that, specifically in the Rule of Law sector, the EU's approach should not be rigid towards Kosovo but needs to seriously consider also the cultural and historical context, thus arguing that in these cases, it is not the candidate country that needs to adopt to specific provisions imposed by the EU, but in order to achieve success in the broader European universal value, the Union should adopt to the situation on the ground.

In that order my main research question is that "to what extent the power of the European Union stretches in inducing reform in Kosovo and what Europeanization means for the democratic policies and the democratic legitimacy of decision-making at a national level"? The research will include also explanations on how the goodness of fit and misfit between the policies of the EU is, on the one hand, and that of Kosovo on the other, and how the Europeanization process of the rule of law in Kosovo is affected by the fit or the misfit of those policies.

In line with the research questions, more sub-questions have been answered in order to provide an explanation of the theoretical but also practical impediments of the EU to induce reforms in Kosovo.

- What was the role of the EU amidst other international players in Kosovo's pre-accession process?
- Were the incentives given to Kosovo sufficient for the political elite to pursue them vigorously? Was the approach right to engage in a facilitation process between Kosovo and Serbia in parallel with the integration process?
- Did Kosovo have sufficient institutional and social capacities to download the EU's norms in the forms that were required, or were they too ambitious? Did this impede also the implementation of such norms and standards?

In terms of hypothesis, the research will prove:

Hypothesis 1. Europeanization definition as theoreticized by Radaelli et.al. represents a misfit to post-conflict countries with a more complex set of legal and political background and legacy. EU should use the constructivist approach in trying to Europeanize the perspective member states, rather than the rationalist one. It should adapt to the circumstances in the process, disregarding the rigidity of the imposition of legal and political norms.

Hypothesis 2. Kosovo has a modern and robust institutional framework in the Rule of Law sector; however, the results are missing which is reflected in the European Progress Report for Kosovo. Since for more than a decade the European Union has had the exclusive right in the externally driven conditionality process, nonetheless, has proven to be passive and not credible in offering a clear membership perspective.

Hypothesis 3. Despite the fact that declaratively the EU has kept the enlargement at the top of their agenda, the approach entailing both Kosovo and Serbia have been more dismissive rather than accepting, primarily because of the fact that the reforms required have been followed formally only, while the rewards and punishments policy has been unequally distributed.

V. Data collection and methodology

1. Data collection. Two main methods of equal importance for this study were used for data collection in order to address the research question and sub-questions on the powers of the EU conditionality vis-à-vis Kosovo, its gaps and challenges, and address the raised hypothesis: a holistic approach by using a narrative literature review as a method and in-depth interviews as a qualitative research method to further gain insight and feed the research questions. The thesis uses a single in-depth study with a qualitative method approach based on the specificity of Kosovo's institutional setup as well as its political context in the non-consolidated statehood specter which focuses on the EU conditionality and the ability of Kosovo to adopt the imposed conditions in a two-fold process. In order to be able to answer the research question, however, multiple datasets from a robust desk-review and semi-structured interviews will be used in order to collect all facets of the dilemma, including the institutional setup with a strong emphasis on the anti-corruption agenda and the Public Administration, as well as the EU integration process.

2. *Rigorous narrative literature review* subdivided into the exploration, interpretation and communication process which was applied to address the key research questions which in this case served as themes. Philosophical assumptions and stances were drawn from a large pool of published information and were organized and stored for further review. Selected information explored from the search focused on books, articles in journals, empirical and non-empirical research, research papers and reports, policy documents as well as public and private records. These were further expanded, and the sources were validated before the interpretation phase. Prior to communicating the information, the data were analyzed and synthesized into cumulative arguments leading to specific conclusions and potential discussions.

The main purpose of the literature review in this research was to identify the key issues and the gaps in this specific field of the research by contextualizing, evaluating and critiquing the sources and issues. More specifically, this method plays a significant advantage to the definition of the Europeanization concept and in understanding the gaps and insufficient information not only in research but also in published results and particularly on the impact the EU policies had in other developing countries by answering the ‘whys’ and ‘how’s’ and then extending further into this research field. Last but not least, the literature reviews in this case justifies the need for the primary research to be conducted, and the significance of the chosen method.

3. *Qualitative research* that took place in a form of in-depth interviews with key informant people in the rule of law sector in Kosovo played, arguably, an irreplaceable role in gaining further insight of the impact of the EU policies have in Kosovo and the overall Europeanization process of the rule of law in Kosovo, primarily dictated by the findings of the literature review.

Even though the findings of the literature review were used to define the broader themes of the instrument designed for the interview, a top-down approach was applied in the interviewing process; topics were introduced as a general idea and details were added in the process. A specific instrument consisting of broad research questions aiming to gain specific insight in line with the main research questions was designed to guide the flow of the interview. This allowed the disclosure and often led to new topics and ideas that potentially did not emerge in the past.

The selection of the key informants involved prior identification of the people enrolled in the judiciary system as well as experts on the rule of law in Kosovo, both national and international.

For practical issues, the interviews were recorded with participants’ consent while the collected information from the interviews was then transcribed and coded to be further analyzed and reported accordingly.

4. *Content analysis* was applied for analyzing the collected information from the key informant interviews firstly as the most reliable method for this particular case as the process focuses on language, features and meaning in context, it involves a systematic process, including coding in the analysis, ultimately making the data verifiable and consequently more reliable. Secondly, it

allows the researcher to test the hypothesis both during the interviewing and in the analysis process. Considering that this method involves reading and judgment, collected information was firstly categorized into pre-defined themes through labels and codes then to be selected and interpreted by trying to identify their meaning and potential implications with the aim of presenting the answers to the specific research questions. Hence, *constant comparison* of the newly acquired data in the in-depth interviews with the pre-existing data was used in order to feed and fit the newly emerging themes with the previously drawn ones.

VI. Presentation of the dissertation and main findings

The thesis is structured in 9 chapters, providing comparative and analytical chapters in exploring all facets of the Europeanization process including the policy approach, the institutional setup and the relations between Kosovo and external actors.

Despite some visible progress in the European Integration path by Kosovo, the research has shown that a lot has remained to be done. Brussels in all its powers and with all efforts has failed to Europeanize Kosovo, in particular in its area of rule of law and fight against corruption.

The processes described in this dissertation have led to the conclusion that within its strive to Europeanize this part of the continent using its carrots and sticks policy of inducing transformative power, the European Union has produced a negative effect, complicating the normative efforts further, imposing decisions, laws and procedures as well as mechanisms that are not compatible to Kosovo's historical, political and social context, adding to the ambiguity of the mandates of a myriad of institutions that are involved in fishing corruption and reforming the rule of law, and finally involving undue political leverage on carrots offered such as the visa liberalization to push its own domestic agenda, regardless the costs associated to it which has ultimately diminished its credibility.

Further, it is said that one of the biggest failures of the EU in Kosovo is still perceived to be the visa liberalization process, which is proven to have a larger political implication rather than a purely technical nature as it is stated. The European Commission and the European Parliament have said that "Kosovo has fulfilled all preconditions" and have recommended the lifting of the visa requirements for its citizens, but these recommendations have not been anticipated with a great deal of enthusiasm by the member states.

The concluding chapter in order to reflect on the findings from the research has been divided in three main sections:

- The EU's conditionality approach in applying reform to the rule of law sector in Kosovo based on the External Incentives Model.
- The interdependence between the EU conditionality and the domestic factors in the process of Europeanization.

- Other factors impacting the Europeanization of Kosovo linked to its geopolitical position and yet still unresolved political questions of sovereignty in the global fora.

The European Union aspires according to Radaelli's definition to not only be a regulatory mechanism on the normative area but instill a community of values affecting social attitudes, norms, and beliefs. In Kosovo the EU has strived, through both the logic of consequences (the External Incentives Model) and appropriateness (Social learning model), to induce the reform in particular in the Rule of Law and the Public Administration. The Kosovo Parliament, immediately after the declaration of independence has approved all the packages of the Comprehensive Status Proposal in an expedite procedure, without giving the public nor the members of parliament the chance to comment on them. The application of this model made Kosovo legislative members feel that these laws are imposed, and hard to implement.

The empirical research has shown clearly that the progress of the rule of law reform has stagnated, despite the continuous efforts of the EU. The former Kosovo Rapporteur in the European Parliament, interviewed by the author has stipulated that despite the obvious criticism of the mandate and the work of EULEX, there has been some good to it, especially in improving efficiency and independence of law-making and law enforcing structures, and with that to oppose the criticism she asks: "what would be Kosovo's situation if there would be no EULEX mission?"

As one of the most important finding that has been stipulated in the concluding remarks and that has been under-researched insofar is the fact that the nature of decision making in the EU when it comes to the Western Balkans has not been very straight forward, and has been met with a vigorous debate among the Member States which has undermined the clear integration perspective, by adding to Kosovo new conditions on each of the prior completed tasks set forth by the Council or the Commission – such as the case with the Demarcation between Kosovo and Montenegro. Also, the lack of accountability of the EU through its EULEX Rule of Law mission in Kosovo has diminished the trust in the institution and increased the skepticism of the population on the carrots offered as a result of the never-ending demands by the EU. In this context, as stipulated in the concluding remarks, the EU needs to revisit its approach and the methodology – as described in the External Incentives Model – towards the Western Balkans countries, if it wants to maintain the stability and the fragile peace in this region.

With this, the research has shown through various empirical findings that the conditionality does not solely depend on the EU force, but also the ability and the persuasiveness of the domestic factors to detach from political messianism and engage in a more concrete implementation of the requirements instead of just ticking the box. In addition, from the theoretical conceptions, one can argue that despite the need for further elaboration of the Europeanization process as defined by Radaelli in the literature review chapter, the additional focus needs to be given in adjusting the theoretical concepts when analyzing Kosovo in the contested statehood prism, but also the Western Balkans in general, because of its troublesome history. This can serve as a starting point

of redefining the Europeanization theory for the future scholars on the approaches used by the European Union to further expand on the theoretical framework on the interconnection between the EU and the candidate member states especially in the adoption of the EU Law, whether that is possible as prescribed by Radaelli, Schimmelfenning et.al, or the modality of the conditionality should be based also on the contextual prerogatives of the individual countries. From the research conducted, it is evidenced that there are no available studies so far that inherit the research of the Europeanization to the level of details in the rule of law sector in Kosovo, and this model used in this thesis can serve as a starting premise of analyzing further the degree of Europeanization, causes and consequences in the rule of Law area in Kosovo but also wider in the Western Balkans, with a stronger focus on the anti-corruption efforts.

VII. Relevant scientific publications and presentations

PUSTINA, LORIK: *EU's changing conditionality – the later it is, the harder it gets, Kosovo as a test case.* In: Goran, Ilik; Angelina, Stanojoska (eds.) “Towards a Better Future: Democracy, EU Integration and Criminal Justice”: International Scientific Conference Conference Proceedings Volume I. Bitola, Macedonia: Faculty of Law Kicevo, University St Kliment Ohridski, (2019) pp. 362-373. 12 p.

PUSTINA, LORIK: *The UN-constitutional Constitution of the Republic of Kosovo: the principle of the double “super”majority.* In: Fejes, Zsuzsanna (eds.) Jog határok nélkül. Szeged, Hungary: Szegedi Tudományegyetem Állam- és Jogtudományi Doktori Iskola, (2018) pp. 289-307. 19 p.

PUSTINA, LORIK: *Europeanization revisited – the case of Kosovo.* In: Institute, for sociological political juridical research CHALLENGES OF CONTEMPORARY SOCIETY II - Proceedings from the International conference. Skopje, Macedonia (2017) pp. 171-186. 16 p.

PUSTINA, LORIK: *The Public Administration of Kosovo Europeanization Consequences: the Past and the Present.* In: Erzsébet, Csatlós (eds.) Recent Challenges of Public Administration: Papers presented at the conference of ‘Contemporary Issues of Public Administration’ on 26th April 2017. Szeged, Hungary: Iurisperitus Bt., (2017) pp. 97-107. 10 p.

PUSTINA, LORIK: *The legality of the Pristina - Belgrade political dialogue: The queer case of the Historic Agreement.* STUDIA JURIDICA ET POLITICA JAURINENSIS. Vol. 2. (2017) pp. 23-39. 17 p.

PUSTINA, LORIK: *Review of: Sabrina P. Ramet / Albert Simkus / Ola Listhaug (eds.), Civic and Uncivic Values in Kosovo. History, Politics and Value Transformation, Budapest et al.: Central European University Press, 2015.* In: Südosteuropa, 65 (2017) 602-604. 3 p. <https://www.recensio.net/r/2917c24609de412e9544314ea0d67fd3>