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Case Study: Weak Governments and Partial Protection: Property Rights
in the Western Balkans



By Admir Čavalić and Mihailo Gajić

Weak Governments and Partial Protection: Property Rights in the Western Balkans

Admir Čavalić and Mihailo Gajić¹

The Western Balkan countries of Serbia, Montenegro, Macedonia, Bosnia and Herzegovina, Albania and Kosovo are lag behind other European transition countries in terms of economic development and EU accession. Although these countries have introduced deep reforms in many areas, especially during the transition process of privatization and democratization, property rights in these countries are not well protected hindering further economic development and social change.

Instead of protecting property rights state governments in these countries infringe private property rights to pursue political goals. The aim of this paper is to point out differences between Western Balkan countries in their transition path from other transition countries in the region. The paper illustrates the impact of these differences on property right protections with case studies from Serbia, and Bosnia and Herzegovina. The paper describes the present and past state of private property rights in Western Balkan countries with focus on the transition period. In conclusion, based on the comparative analysis, this paper offers a set of recommendations for improving private property rights in the Western Balkans.

Key words: *property rights, government, Western Balkans*

¹ Admir Čavalić is an assistant at the Faculty of economics of University in Tuzla (Bosnia and Herzegovina) and president of the NGO Multi; Mihailo Gajić is director of the economic research department of the Libertarian think tank Libek from Belgrade (Serbia). Authors can be contacted at: admir.cavalic@yahoo.com and mihailo.gajic@libek.org.rs

INTRODUCTION

Private property rights are extremely weak in the Western Balkans compared to the rest of the Europe. The issues range from statistical difficulties in recording used and unused land, legal and cadastral problems, as well as illegal construction and sporadic government intervention. It is clear that the citizens of the Western Balkans have poorly developed and less protected private property rights. These rights are the basis of developing economic freedom, and integral to increasing the competitiveness of the economy leading to higher rates of economic growth. The main purpose of this paper is to bring attention to the low level of private property rights in Western Balkan countries, which sometimes is not clearly visible from international index data, and to explain the causes and consequences through a descriptive analysis. The paper then proposes policy solutions to fix the failures of the existing property rights regime. The paper describes two case studies: the Savamala incident in Serbia and Nana Fata Orlović case in Bosnia and Herzegovina. Both are classic examples of usurpation of private property rights the state governments.

WESTERN BALKANS COUNTRIES

The Western Balkans (WB) lag behind other transitional countries from Europe in many aspects. The term “Western Balkans” itself is fluid. It was first used to encompass new countries that emerged from Yugoslavia, however it included Albania and excluded Slovenia. The most important factor in determining borders of the region is not geographical, but a political one: EU membership. The region is expected to continue to evolve towards the EU, Croatia was the first to leave behind its Western Balkan country status with its EU accession in 2013. Currently, the region comprises of 6 countries: Serbia, Bosnia and Herzegovina, Montenegro, Macedonia, Albania and Kosovo* (a political entity with declared independence from Serbia, but is not yet a member of the United Nations). The countries in the region have a significantly lower level of economic development than their transition country counterparts from the Central and Eastern Europe (CEE) region, lower democracy scores (although a recent trend indicates a worsening position of the CEE countries), weaker rule of law, less effective government institutions and more corruption, all well documented by international indexes.

Table 1: GDP per capita, current USD

EU 15 ²	EU 8 ³	EU 3 ⁴	WB
43 990	15 970	9 650	5 160

Source: IMF, WEO database 2017.

Table 2: Democracy level (higher value indicates higher democracy score)

EU 15	EU 8	EU 3	WB
94.9	89.0	83.7	62.8

² EU 15 are countries that joined the EU prior to 2004, namely France, Germany, the Netherlands, Belgium, Luxembourg, Italy, Great Britain, Ireland, Denmark, Greece, Spain, Portugal, Sweden, Finland and Austria.

³ EU 8 are ex-communist countries that joined the EU in the 2004 accession, namely: Estonia, Latvia, Lithuania, Poland, the Czech Republic, Slovakia, Hungary and Slovenia.

⁴ EU 3 are ex-communist countries that joined the EU in 2007 (Romania and Bulgaria) and 2013 accession (Croatia)

Sources: Freedom House, Freedom in the World 2017.

Table 3: Rule of Law (higher score indicates stronger rule of law, maximum 1)

EU 15	EU 8	EU 3	WB
0.78	0.70	0.60	0.53

Source: World Justice Project, Rule of Law Index 2016.

Table 4: Government Effectiveness (percentile rank, maximum 100)

EU 15	EU 8	EU 3	WB
88.8	79.1	62.0	50.8

Source: World Bank, World Governance Indicators 2015.

Table 5: Corruption (higher number indicates less corruption, maximum 100)

EU 15	EU 8	EU 3	WB
73.2	57.9	46.0	40.4

Sources: Transparency International, Corruption perception Index 2016.

Table 6: Economic Freedom (higher score indicates higher level of economic freedom)

EU 15	EU 8	EU 3	WB
7.53	7.44	7.35	7.08

Sources: Fraser Institute, Economic Freedom in the World 2016.

A good example of the WB countries lagging behind their CEE counterparts is the process of euro integration. Although all of these countries proclaimed the EU accession as one of their main national goals, they still have a long way to go. Candidate country status was acquired by Macedonia (2005), Montenegro (2010), Serbia (2012) and Albania (2014), while Bosnia and Herzegovina⁵ and Kosovo* are considered as potential candidate countries. At the same time, CEE countries became the EU members in 2004, and even Romania and Bulgaria will celebrate their tenth EU membership anniversary this year.

Protection of property rights is another area in which WB countries lag behind their neighbors, which is documented by their score in the International Property Rights Index.

Table 7: Property rights protection

EU 15	EU 8	EU 3	WB
7.3	6	5.1	4.3

Source: International Property Rights Alliance, International Property Rights Index 2016.

A plausible hypothesis proposed by Daneil Treisman⁶ is that transition countries took transition paths similar to neighbors in their region: Central Asian countries tended to move towards consolidated tribal or military autocracies of Pakistan or Afghanistan, CEE countries moved closer to socially liberal Germany or Austria, and Baltic states reflected their Nordic neighbors with a corruption free public sector. However, Western Balkan countries do not fit neatly into

⁵ Bosnia and Herzegovina is expected to get candidate country status by the end of 2017.

⁶ Daniel Treisman, 'Political Economy After Communism', in A. Aslund, S. Djankov (eds), *The Great Rebirth: Lessons From the Victory of Capitalism Over Communism*. Washington DC: Peterson Institute for International Economics, 2014.

this proposed behavior. Bearing in mind their geographical position, it seems inconsistent that they, instead of advancing further as CEE countries did, retreated to a state that was more in line with most ex-Soviet countries. This is also visible in the field of property rights protection - private property, although protected by constitutions, is in practice seldom fully protected.

DIFFERENCES BETWEEN WB AND OTHER COUNTRIES IN THEIR TRANSITION PATH

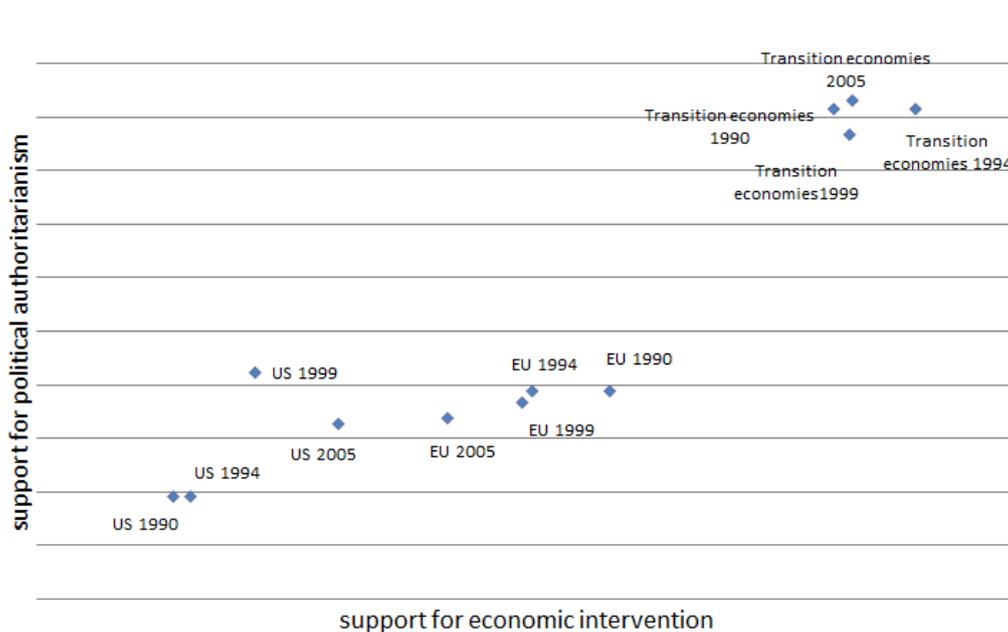
There are clear differences between Western Balkan countries and other transition economies in their transformation from a planned economy and authoritarian regime to a market economy with democratic governance. This paper argues that these specific differences have led to weaker government performance and poor enforcement of private property right protections in Western Balkan countries.

WB countries experienced the same problems and weaknesses that were visible in CEE transition countries, especially concerning property right protections. The main similarity between CEE and WB countries consist of the predominant political culture, which differs from the one prevailing in the Western Europe and the United States.

CEE citizens are significantly more in favor of political authoritarianism and economic interventionism than their Western European counterparts when measured by a composite index of authoritarianism or economic interventionism devised by the World Value Survey data by Gerard Roland.⁷ A remarkable finding in the WVS is that there are larger differences between country clusters (ex. EU-15 or transition economies) themselves than there is within countries of the same cluster.

Graph 1: Support to economic interventionism and political authoritarianism

⁷ Gerard Roland, 'Transition in Historical Perspective', in A. Aslund, S. Djankov (eds), *The Great Rebirth: Lessons From the Victory of Capitalism Over Communism*. Washington DC: Peterson Institute for International Economics, 2014.



Sources: Gerard Roland, *Transition in Historical Perspectives* 2014. Data from World Value Surveys 1990, 1994, 1999, 2005.

This variable of political culture has strong implications to the strength of civil society institutions and the vital role they play in society. Although preference for democracy still prevails in transition countries, these political values open space for vacillations between democracy and authoritarianism. This undermines the rule of law and the property rights regime as authoritarian governments tend to be more infringing on property rights than democratic regimes when taxation is not considered.⁸ With weak social structures and low levels of trust there is less political participation from citizens in building broad coalitions to enforce property rights through the rule of law, as suggested by Douglass North⁹.

However, there are specific circumstances that can explain why WB countries have had consistently low marks in rule of law and private property protection. These differences are hard to measure, and are somewhat intertwined. They are also influenced by the dominant political culture, and in turn they help shape it. These circumstances can be noted as follows:

1) Lack of historical experience with the rule of law and the legacy of the Ottoman empire

Western Balkan countries historically did not spend any considerable amount of time governed by political entities that provided sufficient rule of law. All WB countries were part of the Ottoman empire from the middle ages to the 1878 or 1912¹⁰ - an empire which was notorious for its weak and ineffective institutions as well as widespread corruption, at least when compared to other European neighbor countries such as the Habsburg monarchy. Serbia and Montenegro became independent in 1878, while Bosnia and Herzegovina were occupied by Austro-Hungarian Empire. When the Ottoman empire retreated from the territory that the new

⁸ Taxation can also be considered as a violation of property rights. However, since in democratic countries the right to tax is followed by the right to be represented in the legislative body, the "no taxation without representation" clause cannot be applied.

⁹ Douglass North, John Joseph Wallis, Barry R. Weingast, 'Violence and Social Orders'. Cambridge: Cambridge University Press, 2009.

¹⁰ Of course, there are some small exceptions: Vojvodina province in the north of Serbia was a part of the Austro-Hungary, as was too the Bocca di Kataro region of Montenegro.

Balkan states acquired, they dismantled the previous legal institutions and set up new ones. Although legislation that was adopted mostly was in line with other European countries, its implementation was weak, even when courts were independent the executive power could ignore their ruling. The situation changed in 1945 when the communist party took control over the country and joined the judiciary to the executive, just as it was in other transition countries. However, most of these countries, unlike their WB counterparts, had historical records of the rule of law during their history as part of Austria-Hungary or during the period between the two world wars.¹¹ New research suggests that historical experience shapes attitudes and culture towards a positive or negative perception of property rights, as was the case with Stolypin's land reform in 1906 and 1990s privatization in Russia.¹²

2) Home-grown communist revolution

The communist regime that took power after the World War II is considered a genuine result of the internal revolution and struggle against the Nazi occupation. Although it enjoyed strong military support of the Soviet Union (and to a lesser extent, the US and the UK), the communist resistance enjoyed domestic support as well as hundreds of thousands of armed forces. The strong popular support for the communist party allowed it to put the judiciary under its control, and mostly negate private property rights through forced collectivization and property redistribution.¹³ In contrast, communism in CEE countries was mostly imported through Soviet tanks, and more easily discarded during the transition.

3) Soft communism - a less authoritarian state

The socialist Yugoslav state was less authoritarian than its Eastern European counterparts, after 1953 and the process of "destalinization," Yugoslavia's socialist system was less rigid - the country was a founding member of the Non-Aligned Movement and had very good political relations with the West. The regime did not have to worry about its legitimacy allowing it to tolerate some dissident groups, and cultural influences from the West such as music and pop culture than other communist regimes. Albania is the only exception in the WB region, it had a strong Stalinist dictatorship which was directly supported by the USSR and later Maoist China.

4) Lack of lustration

Majority of CEE countries adopted legislation regarding the process of lustration - Czechoslovakia (1991), Poland (1992), Hungary (1994), Estonia (1995), Lithuania (1999) and Romania (2006). Only Bulgaria and Latvia did not enact special lustration laws. On the other hand, lustration laws in the Western Balkans were adopted only by Albania (2008) and Macedonia (2012). The lack of lustration of former communist officials in the secret service, from regimes accused of massive human rights violations, created an environment in which

¹¹ The long-term impact of economic and political institutional variables on economic growth is well attested in works by North, Acemoglu, Robinson, Easterly, Zilibotti and others. A good synthesis of major ideas within the institutional economics can be found in: Daron Acemoglu, James Robinson, 'Why Nations Fail: the Origins of Power, Prosperity and Poverty'. New York: Crown Business, 2012.

¹² Dower, P.C., and Markevich, A. (2014). A history of resistance to privatization in Russia. *Journal of Comparative Economics*, 42(4), 855-873.

¹³ A good synthesis in the English language can be found at: Stevan K. Pavlowitch, 'Serbia: the History Behind the Name'. London: Hurst Publishers, 2002; and Stevan K. Pavlowitch, 'A History of the Balkans 1804-1945'. New York: Routledge, 2014.

remnants were able to continue to hold high offices and prosper, undermining the initiatives for the rule of law.¹⁴

5) Strong unconstitutional veto players

Countries in the WB region face strong political forces that are not a part of the ordinary political life. These unconstitutional veto players stem from the fact that power is not completely centralized within the state institutions. For example, in most WB countries religious organizations have a significant say over certain policy issues, including those that are not closely related to religious issues. The strength of these forces varies between countries, as shown by the Freedom Barometer data, but are more pronounced in WB countries, and are almost non-existent among old EU member states.¹⁵

Table 8: Unconstitutional veto players

EU 4 ¹⁶	EU 8	EU 3	WB
9.58	8.23	7.50	5.00

Sources: Freedom Barometer Europe 2016.

7) Lack of EU pressure on reforms

To become one of the EU member states a country must comply with the Copenhagen criteria; In the area of politics it must be a democracy; in economics it must have a viable market economy; in the legal area it must introduce the *acquis communautaire* (EU legal package) and abide by the rule of law. Only countries entering the EU in 1973 (the UK, Ireland, and Denmark) and in 1995 (Austria, Sweden, Switzerland) had a relatively easy task to incorporate the *acquis* to their respective legal system. All of them were democracies with a viable market economy and strong the rule of law.

In contrast, all transition countries had to implement deep reforms in order to qualify to enter the EU, bearing in mind they were planned economies with authoritarian regimes that did not have a strong history with the rule of law. The EU itself had some experience with similar reform processes since Greece, Spain and Portugal also had to implement similar reforms during their accession process.

During the accession process of the CEE countries, the EU had a pronounced role - it offered not only role models, but also served as a referee during the negotiation process by setting targets and measuring achievements. The European Commission offered technical assistance for reforms, as well as pecuniary supplements, but its most important role was its political pressure on respective CEE governments in fulfill the set criteria. This non compromising stance led to greater and deeper reforms in CEE countries that joined the EU in 2004, Romania and Bulgaria in 2007, Croatia in 2013, and in WB countries.

However, the EU's thorough accession process has lost its political momentum - years of unbridled influence have ended. EU voters now see prospective members from the WB as

¹⁴ Dvorakova, V., & Milardovic, A. (2007). Lustration and consolidation of democracy and the rule of law in Central and Eastern Europe. Zagreb: KAS, 2007.

¹⁵ For better understanding of the term, as well as the information regarding unconstitutional veto players in individual countries, consult: Freedom Barometer Europe, Fridrich Naumann Stiftung, 2016.

¹⁶ EU 4 are Germany, the Netherlands, Belgium and Austria. This group of countries was used since other advanced European economies were not taken into account for the Freedom Barometer Europe 2016.

“poor cousins from the countryside “ with much to gain but little to contribute by their accession.

Today, EU policymakers and officials, due to the European financial crisis which has deeply shaken the foundations of the EU, are spending their political capital on core EU issues such as the eurozone crisis, Greek debt, Brexit, the refugee crisis etc. While points of conflict in the WB region remain unsolved or poorly managed, predominantly Kosovo, Bosnia, Serbia and Macedonia continue to fuel national and ethnic tensions.

In these circumstances, political instability is perceived as a big problem, but without political leadership to ensure long-term commitment for deep reforms policymakers are only able to pursue short term solutions. The EU has been more lenient towards the WB than it was towards CEE countries in their accession.

In short, WB countries are pretending to reform and the EU pretends it believes the reforms are implemented. This is further made possible by the fact that most reforms are legislative in nature, a news making “step” in the right direction, but its actual implementation often remains overlooked.¹⁷

In countries with weak governance, high corruption and weak rule of law (all characteristics of WB countries) the main problem is not that legislation is nonexistent or of low quality (although this could also pose an issue) but their incomplete or arbitrary implementation. The behavior of EU officials to tolerate such realities in the accession process enables WB countries to keep weak rule of law, which translates into poor property rights protection.

Furthermore, infringement of property rights are completely set aside when political costs of defending private property are considered higher than the perceived benefit of state seizure. This was the case with the Avaaali incident which showed complete state capture in Serbia, but was not even mentioned by the EU Progress Report on Serbia.¹⁸

8) Ethnic or civil conflicts

While other European countries behind the Iron Curtain used the opportunity that the fall of Berlin wall offered to introduce democracy and market economy, Western Balkans countries were mostly embroiled in bloody ethnic conflicts and nation building after acquiring independence from the Yugoslav state. Albania, although not embroiled in a full-scale war, did go through a situation that was similar. Macedonia too went through an internal conflict in 2001. Apart from Albania, conflicts in WB countries were based on different ethnic affiliation, between a majority and minority group (or sometimes even between different minority groups). All these bloody armed conflicts (1991 - 1995, 1997, 1998 - 1999, 2001) forced democratic and economic transformations to take a backseat on the policy agenda - first priority was awarded to either winning the war and establishing an independent state, controlling the territory considered as “ours” (and preferably widen its scope), or to defend the nation against the “foreign threat,” then to build up national political institutions as a sign of independence and sovereignty, and lastly to introduce the rule of law. It seems that in WB countries this time never came.

¹⁷ This is usually visible in European Commission’s Progress Reports dedicated to specific WB countries, in which legislative changes receive much higher attention than implementation assessment.

¹⁸ The EU Progress Report on Serbia was later amended in the European Parliament which included the Savamala incident, calling for prompt enquiry in this case.

Case study 1: Savamala incident in Belgrade, Serbia

During the parliamentary election night on the April 24th, 2016, a group of masked men tore down, with heavy machinery equipment, a block of buildings in the urban district of Savamala in the downtown center of Belgrade. During this incident, the unknown perpetrators tied up people (security workers and ordinary passersby). When the police were alerted by inhabitants of the district they replied that they were not in charge of this problem and that they should contact municipal police, the municipal police responded the same as the national police. The buildings - mostly non-residential - were razed to the ground.

This block was connected to a large real estate investment project - the Belgrade Waterfront - which the prime minister of Serbia, Aleksandar Vucic, highlighted during his electoral campaign. The land previously occupied by the demolished objects is now to be used to widen the scope of the Waterfront building project. The following day, although owners of the destroyed property filed complaints to the police, the municipal civil construction inspectorate promptly removed the debris and cleared the site for construction. This act of vandalism received public attention after an independent journalist investigation and the ombudsman report, which accused state and municipality police of following orders from high city officials not to intervene after they received calls from citizens in distress. The demolishers also received logistical assistance from the electricity distribution company that turned off power in the block in order to prevent some of them from being injured by ripped electrical cables during the demolition. Citizen groups and Civil Society Organizations organized several massive demonstrations against the perpetrators calling for accountability of Belgrade's mayor.

Prime minister Vucic stated on national television first that the problem is not demolition itself, but the fact it was done under the cover of dark, and that he would personally run a bulldozer over these objects in order to secure the Waterfront investment. After the protests continued, news outlets, under the influence of the government, started a smear campaign against the protesters calling them "foreign mercenaries." In the end, the prime minister stated on television that this was the work of "complete idiots" from the top of city management, without issuing any names. More than a year has passed, the prosecutor office still hasn't raised the indictment against the unknown perpetrators, stating that the investigation is still on going, and not one of the city official has been held accountable.

Case study 2: Fata Orlović – "Not in My Front Yard!", Bosnia and Herzegovina

Fata Orlović or Nana Fata Orlović ("nana" meaning nanny) is a Bosnian woman who has been in a legal battle with authorities over her private property for more than 17 years now. Fata was born in vilage Hrnčići in the outskirts of Bratunac during the Axis power invasion sometime between 1940 and 1943. She was married to Šaćir Orlović with whom she had seven children. Before the Bosnian War (1992-1995), she had four houses and four stables. During the war, her family were victims of ethnic and religious cleansing, losing her husband Šaćir and between 22 and 28 family members, all seven of her children became refugees.

Nevertheless, Fata was determined to go back to her home in Konjević Polje in 2000 where she found that her house had been totally demolished and in her yard a Serbian Orthodox church was built. In fact, the church was built before 1996, immediately after the war. This was a

typical act of marking a territory by building religious buildings, but the biggest problem was that the church was built on Fata's private property.

With the motto of respecting all religious objects and religions, but appreciating her private property more, Fata Orlović began her "woman against the system" legal battle to move the church from her land. Soon she would find out that she was fighting a war on two fronts, one against the state bureaucracy, and religious fundamentalists who continue to intimidate her with threats and direct attacks. True, some were more polite, offering Fata money to stop her legal battle. But this only more motivated Fata Orlović to go to court.

This was not easy. First, she needed to prove to the court in Bratunac that her murdered husband Šaćir was indeed her husband, that Hamza Orlović, in whose name the title was still held, was her late father-in-law, and that she was the rightful claimant to the land where her family home once stood. After four years on court, her private property rights were recognized.

Now, there was a strange situation, legally the church was on her (some even called it Fata's church), but she could not remove it. She started the legal process with a goal of removing the church. In 2004 Ministry for urban and property planning of the Republic of Srpska, declared that the church should be moved. Nothing happened. Again, in 2007, the highest state officials of Republic of Srpska and Serbian Orthodox Church agreed to remove the church to a different location (just across the road). Still, nothing happened. The Serbian Orthodox Church explained that it could not finish another court case to claim the new location for the church.

Meanwhile, a court in Srebrenica declared that no one has responsibility for confiscation of private property or the illegal construction of the church on that property. Because of her protest of these rulings Fata Orlović was charged with "causing national, ethnic and religious hate, division and intolerance" as well as committing a "criminal act against the freedom of faith and the performance of religious rituals." On April 16th, 2007, the first instance court declared that Fata Orlović was not guilty. However, the prosecution team lodged an appeal and, on January 26th, 2009, Fata Orlović was found guilty as charged and sentenced to a month in prison on a suspended sentence. She was also ordered to pay 150 KM in legal costs, an amount that equals her monthly pension. Later, in 2015, Fata committed the legal offense and received a fine of 200 KM, for telling local police officers to "get that church out of my land."

Although there has been a tremendous public pressure by international community representatives over the last 17 years, Bosnian politicians of different levels, non-governmental organizations, foreign media (the BBC reported on the case of Fata Orlović), several documentaries, hundreds of letters, and even a theatre play titled "Silence of Nanny Fata," today in 2017, the case of Fate Orlović has not been solved – the church is still there.

This case best illustrates the state of the Bosnian legal system when it comes to respecting private property rights. Fata Orlović's fight against the state apparatus is regarded as a test of the potential for restoration of the rule of law in divided Bosnia. According to James Rodehaver, human rights director for the OSCE in Sarajevo, the relocation of the church will be an important indicator of a return to the rule of law and the possibility of resolving the legacy of war. Thus, Fata Orlović, from the ordinary woman who experienced a tragedy during the war in Bosnia became a symbol of resistance and struggle for private property rights. This fight lasts today and Fata uses every opportunity to tell us her story and defy the system. Her message remains the same all these years – "Not in My Front Yard!"

CONCLUSION

The transition path of each former USSR satellite has until now led to one of two outcomes. Either they have developed enhanced institutions with relatively high democratic scores and an attractive business environment, which includes strong rule of law institutions that protect private property rights. This outcome has mostly been achieved mostly by CEE countries that are now members of the EU.

The other outcome consists mostly of ex-USSR countries in the Western Balkans with entrenched autocratic regimes, weak rule of law and poor business environment.

This paper shows the WB countries have faced unique circumstances that obstructed and slowed reforms towards societies with democratic and effective governance, rule of law, and economic freedom.

In order to combat the causes of the weak rule of law and property rights protection in the WB, those specific circumstances need to be carefully acknowledged and examined. They are rooted in historical and cultural dimensions, where policy actions are very elusive if not outright impossible. Policy recommendations need to address the strongest exogenous political factor: the European Union and its accession process in order to facilitate reforms that strengthen the rule of law.

The process of EU accession was intended to serve that purpose, however its influence was diluted by bureaucratization and back dealing with local WB political elites in order to pursue short-term political goals such as neighborly relations. Creating institutions that provide rule of law and secure property rights has not been a priority.

The EU accession process must be reconsidered and thoroughly implemented. It must create a climate in which advancement towards EU inclusion is conditioned by good performance in the rule of law measured by independent international indices such as the Rule of Law Index by the World Justice Project, Economic Freedom of the World by the Fraser Institute, Doing Business Index by the World Bank, and the Bertelsmann Transformation Index (Bertelsmann Stiftung) among others.

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