

**“RULE OF LAW” AND “SOCIAL MARKET ECONOMY”: SOME
REFLECTIONS ON THE GERMAN UNIFICATION AND THE
TRANSITION PROCESSES IN THE WESTERN BALKAN STATES**

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-Keynote address-

(...) As the title of my *keynote* indicates, I will attempt, firstly, to retrace, in a few moves, the integration of the *German Democratic Republic* (hereafter referred to as *DDR*, the German abbreviation of *Deutsche Demokratische Republik*) into the *Federal Republic of Germany* after the fall of the Berlin Wall, and secondly, to compare, as summing up as it is, the development of East Germany to the transition processes in the post-socialist states of Central, Eastern and South-Eastern Europe.

In order to make my presentation comprehensible – despite its unavoidable details, I will begin by anticipating three main conclusions of my analysis:

1° Regarding the *rule of law*

In comparison with the other post-socialist countries, the transition processes in East Germany represent a special case: the integration of the DDR into the Federal Republic in 1990 implements the systematic take-over of the Constitution – the "basic law" (*Grundgesetz*) – and all other laws of the Federal Republic. This evolution includes automatic accession to the *European Community* / (since 2009) the *European Union* – without accession negotiations, without preconditions, without treaty amendments.

2° Regarding the *leadership* of the transition processes

The *Unification* is characterized by a large transfer of the *elites* from West to East Germany: at all political, economic and social levels, East German cadres are replaced by politicians, officials, managers and other experts from the old *Länder*. In the other former socialist states, there is no comparable impact from the “outside”: the transition processes depend largely on the national elites.

Therefore, these countries have to master the post-socialist transformation of values and structures to a great extent on their own. Their situation is similar to Germany after the Second World War and the overcoming of the National Socialist (NS) Regime. Comparing the turning points of 1945-1949 and 1989/1990, historians consider the substitution of elites after the fall of the Berlin Wall as more radical than during the changeover from National Socialism to *democracy* in West and East Germany¹.

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**Thanks and appreciation goes to the doctoral student Mariam Kalaf, who pre-translated a large part of our contribution from German into English

¹ According to a recent study commissioned by the *Stasi-Unterlagen-Behörde* (Stasi Documents Authority), even in the DDR, in the mid-fifties, at least one-third of DDR civil servants were former members of the fascist *National Socialist German Workers' Party* (NSDAP). Already after the founding of the DDR, the dominant *Unified Party* (SED) and the government propagated the "acquittal of the DDR population of all guilt and thereby [draw] the line under the past". The historian Enrico Heitzer from the *Sachsenhausen Memorial* near Berlin is currently investigating how little the idea of a *denazified* DDR society corresponded to reality. Quoted from: Cornelius Wüllenkemper; *Demokratieverständnis: Die neue Rechte und die Erinnerung an die DDR*. Broadcasting of the *Deutschlandfunk* on 31 January 2019:

Regarding the development of the Social Market Economy

The five East German *Länder* – reestablished in the federal system just before the *Unification* – benefit from a transfer of huge funds from the Federal Republic and the European Union. Despite these investments, there is still today no equivalence of *economic growth, employment, working and living conditions* in the two parts of Germany. Similar phenomena as in East Germany can be observed in the other post-socialist countries. Here and there, above all, the massive emigration of qualified (young) people prevent a sustainable economic and social development.

To be understandable, my conclusions require more detailed explanations of the different transitional processes. Therefore, we will firstly focus on the phenomenon of German *Unification*.

I. TRANSITION PROCESSES IN THE WESTERN BALKANS: THE FRENCH-GERMAN SCENARIO

As mentioned beforehand, the East German transition processes have a singular character. It is due to the division of Germany and the *East-West conflict* after the Second World War (1939-1945), with its systematic confrontation between *capitalism* and *communism* during the Cold War. From the beginning (1949), the DDR had been a satellite state of the Soviet Union (USSR) with a state-socialist and planned-economy orientation. It was a member of the Economic Community and *defensive alliance* of the *Eastern Bloc*. The counterpart of the DDR, the Federal Republic of Germany, since its foundation in the same year (1949), trusts in the liberal and social market economy and the pluralistic representative democracy. Part of the US-dominated *Western Alliance* (North Atlantic Treaty Alliance - NATO), the Federal Republic acts together with France as the 'motor' of the economic and political *integration process* in Europe.

So, the fall of the Berlin Wall on November 9, 1989, initiated the *unification process* of two German states which, situated at the interface between the Western and Eastern Blocs during the Cold War, could not be more different in ideology, structure and functioning. The Unification Treaty on August 31, 1990, negotiated by both governments, ordered the dissolution of the DDR, its accession to the Federal Republic and the establishment of the unity of Germany with effect on October 3, 1990. The Treaty was adopted on September 20th, by the Parliaments of the two countries (*Volkskammer* and *Bundestag*). Under constitutional law, German *unification* took place in accordance with Article 23 (old version) of the *Basic Law* (GG). In order to quickly establish the rule of law, this path had been preferred to the alternative possibility of a previous common Constitution according to Article 146 of the *Basic Law* – the option above all of the reform forces in the DDR.

Considering my commitment to higher education and cultural policy here in Skopje, as well as in other universities in the region within the framework of our itinerant *French-German-Balkan Summer University* in Law and Politics, I dare ask myself the question of whether the transition processes in Germany can be "instructive" for the Western Balkan states. As I emphasized seven years ago in its founding act in Bitola (North Macedonia), this Summer University is inspired by the Franco-German success story after the Second World War and its impulses for the process of European integration. We are reflecting on the importance of European Law for Balkan countries, which have broken with their conflict-laden past and are working towards a "sustainable peace" – in close mutual cooperation and through the implementation of reforms in state, economy and society that "open the doors to the European Union"².

<https://www.deutschlandfunk.de/aus-kultur-und-sozialwissenschaften.1147.de.html?drbm:date=2019-01-31>.

² Otmar Seul, 7 July 2012 in Bitola (North Macedonia); see the Joint Declaration of the Ambassadors of France and Germany in Macedonia, Kosovo and Albania of 7 July 2015 on the 2nd French-German Summer University in four Balkan countries; Embassy of the Federal Republic of Germany, Ambassade de France,

The new states that emerged in the 1990s after the disintegration of Yugoslavia are indeed taken on board by the European Union. As with the countries of the former Soviet area, the Union makes the opening of accession negotiations dependent on the "principles of the rule of law, democracy and the social market economy"³. Against this backdrop, it is imperative to address the identity of the Balkan states and their post-socialist development. Our itinerant *Summer Universities* hence investigate which countries do already fulfil substantial *Copenhagen criteria* for accession to the European Union or can do so in the near future.

According to France and Germany, it is "in the continental security and economic interest" to anchor the Western Balkan states (a term introduced at the 1998 EU Summit in Vienna) in the European Union⁴. But the two countries have different conceptions of the conditions for the launch of negotiations on the accession to the European Union, as the recent European Council meeting in Brussels (October 17-18, 2019) signals. France, in contrast to Germany, rejects accession negotiations for the time being and makes any new entry dependent on a previous reform of the accession process. The European Commission and the European Parliament have criticised France's refusal to grant accession negotiations to Macedonia and Albania. The governments of the two countries complain about the "breaking of a promise" by the European Union after having fulfilled stringent conditions in advance: Macedonia had settled the conflict with Greece and amended its Constitution by adopting the name of "North Macedonia" in 2018; Albania had reformed its judicial system and dismissed 60% of its magistrates and prosecutors convicted of corruption⁵.

If it cannot be ruled out that France will show its willingness to compromise at the next *Western Balkans Summit* in May 2020 in Zagreb, it will certainly not be in favour of states tending towards the illiberal Hungarian-style democracy: states accused of persistent shortcomings in the rule of law, in checks and balances between government, parliament and courts or in media freedom⁶. The motives for President Macron's hardness are not a state secret. His attitude is associated with the internal political development of France and with tactical-strategic considerations before the local elections in the spring of 2020. Macron does not want to be accused of strong right-wing extremist opposition, his harshest political rival, of taking the risk of "disorderly migration" (Marine Le Pen). He refers to a persistent resentment among the population towards a region that sends "a large number of asylum seekers"⁷ and could confront Europe with a high level of "organized crime"⁸. If, in the run-up to the local elections in March, mainly domestic political reasons explain the dismissive attitude of the French President vis-à-vis the Western Balkans, why should one not conclude, by implication, that in an electoral victory of the government candidates, in the short term Macron is no longer under pressure to succeed and can show willingness to compromise?

The suspension of the integration process harbours the danger of strengthening the nationalist forces in the Western Balkan states as well as temptations of ethnically defined nation-states (as, for example, in a union of Kosovo with Albania)⁹.

Skopje 7 July 2015: "Une Université d'été itinérante franco-allemande en sciences juridiques dans les Balkans occidentaux - un projet franco-allemand (extraits)" : <https://www.campus-mundus.eu/forums>

³ French Embassy in Berlin: French Strategies for the Western Balkans, document of 9 May 2019 (3 pages), p.1: <https://de.ambafrance.org/Franzoesische-Strategie-fur-den-westlichen-Balkan>

⁴ French Embassy in Berlin, op. cit.

⁵ Silke Wettach: Gefangen in einer Warteschleife, in *Das Parlament*, no.43, 21 October 2019, p. 9; see *Le Monde*, 17 July 2019, p. 4.

⁶ Arguments of the French Secretary of State for European Affairs, Amélie de Montchalin, cit. after Andreas Ernst (*Neue Zürcher Zeitung*): Draußen vor der Tür. Die Europäische Union ringt mit ihrer Erweiterungspolitik, in *Das Parlament* no. 43, 21 October 2019, p. 9.

⁷ Quote: *ZEIT-Online*: Kritik an Aufschub der Verhandlungen mit Westbalkanstaaten, 18 October 2019, <https://www.zeit.de/politik/ausland/2019-10/eu-erweiterung-albanien-nordmazedonien-empoeerung-westbalkan>.

⁸ Silke Wettach, op. cit.

⁹ Andreas Ernst, op.cit.

Despite its disappointment regarding the French veto on accession negotiations with North Macedonia and Albania, Germany has otherwise agreed with France on a common Western Balkans' policy. The two countries last coordinated their guidelines on April 29th this year. They urge further efforts towards a "lasting stabilisation" of the region: thanks to the resolution of bilateral conflicts such as those between Serbia and Kosovo, thanks to systematic cooperation in core areas such as security policy, justice, economy and culture, and thanks to the fight – I quote – against "external influences that are distorting the region from its European course"¹⁰. The offensive is aimed at the expansionist aspirations of Russia, Turkey and above all China, which attaches particular strategic importance to the Balkan countries as part of its planetary economic project called the *New Silk Road* (according to China's own figures, it already granted them a total of 12 billion in loans between 2007 and 2017¹¹). In other words, a *de facto* withdrawal of the European Union from the Western Balkans would create a "strategic vacuum" that Russia, Turkey and China could take advantage of¹².

Regarding the serious deficits of the Western Balkan states, however, France and Germany identify "difficulties in the permanent enforcement of the rule of law", as well as its economic and social adaptation to the standards of the European Union¹³. This brings into focus objectives that also shape the post-socialist transition processes in the former Soviet sphere. I am particularly familiar with the evolution in Germany, the overcoming of the *East-West Conflict*, as the confrontation between 'capitalism' and 'communism' was the most formative political experience of my generation.

II. GERMAN UNIFICATION: THE UNFINISHED TRANSITION PROCESS IN EASTERN GERMANY

The opening of the Berlin Wall not only ended the 28-year division of Germany, but is rightly regarded – as here in Skopje – as the symbol of the fall of the *Iron Curtain* as a whole, the territorial closure of the Eastern bloc to the West, and thus of the end of the *Cold War* and the division of Europe. The event had a signaling effect: it developed explosive power in the states of *real socialism*. Reform processes were delayed (Czechoslovakia) or even suppressed (Romania). However, the history of the fall of the Berlin Wall, did not begin in Germany: it is the consequence of a political erosion process in the Soviet-controlled bloc. It began in the autumn of 1989 in the member states, and finally returned to the USSR itself.

The focus put here in Skopje on the *transition of legal systems* requires knowledge of the political, social and economic backgrounds of the *legal* development. This question leads me back to the 1990s, when I organized colloquia on German *Unification* at the University Paris Nanterre. I was convinced that this could only be a medium- to long-term integration, which in 1990 had just begun, with the (formal) accession to the Federal Republic of the newly formed East German *Länder*, on the territory of the former DDR¹⁴. 30 years after the fall of the Berlin Wall, field researchers and politicians of all parties indeed consider German Unity as an "unfinished process" (Angela Merkel), due to insufficient integration of the East Germans into the Federal Republic. A deficit, which is partly blamed for their increasing distance from democracy and politics. The electoral successes of the right-wing extremist populist party *Alternative for Germany* (AfD) are attributed to the fact that racist and anti-democratic attitudes among the population can go hand in hand with pronounced social dissatisfaction: above all, she

¹⁰ French Embassy in Berlin, op. cit.

¹¹ *Le Monde*, 12 July 2019, p. 4.

¹² Andreas Ernst, op.cit.

¹³ French Embassy in Berlin, op. cit.

¹⁴ Otmar Seul: Les nouveaux Länder– état des lieux et perspectives. Eléments de réponse apportés lors des Rencontres franco-allemandes de Nanterre sur l'Allemagne unifiée, Introduction to Otmar Seul (dir.): *Les nouveaux Länder dans le processus d'unification*, Actes des 2èmes et 4èmes Rencontres franco-allemandes de Nanterre sur l'Allemagne unifiée, Editions Chlorofeuilles, Nanterre, 2000 (2 volumes, 561 p.), vol. 1, p. 10.

complains about the "neglect of East German experiences" and "inadequate recognition of East German life achievements" since the beginning of the unification process¹⁵. For example, Petra Köpping, the Social Democratic Minister for Equality and Integration of the *Land* of Saxony, sees political apathy and persistent mistrust of the institutions of representative democracy in direct connection with the suppression or deliberate repression of humiliations, offenses and injustices in the "ruptures of life and uprooting" of the 1990s¹⁶.

In this context, particular reference is made to the misguided policy of the *Trust Agency* (Treuhandanstalt, THA). Created on June 17, 1990 by the *People's Chamber* (Volkskammer), the DDR Parliament, to privatize the state-owned companies prior to the Unification, it oversaw the restructuring and selling of about 8 500 enterprises, with over four million employees. The *Trust Agency* should proceed according to the principles of the social market economy – while ensuring "efficiency and competitiveness of enterprises" (§8 Treuhandgesetz). Where this was not possible, the company had to be shut down. In the course of privatisation, there were numerous cases of misuse of subsidies and white-collar crime. In 1998, the *Bundestag's* investigative committee 'DDR assets' estimated the damage caused by embezzlement, fraud and other criminal acts in connection with the privatisation of the DDR economy at three to ten billion Deutsche Marks¹⁷.

The balance sheet of the *Trust Agency* with its economic and social hardships is today more than ever in the focus of public criticism. The opposition party *Die Linke* (still strongly anchored in the East German *Länder*) is calling for a new parliamentary inquiry to clarify to which extent the *Treuhand's* function and procedure has prevented the creation of equal living conditions between East Germany and West Germany in the long term. First of all, it should be found out why "viable trust companies" were closed and why jobs that could have been preserved were destroyed: "The damage caused by the *Treuhand* is still a major cause of the economic backwardness of the East and political frustration in many places"¹⁸. In fact, the unification process is accompanied by other bitter consequences for the East German population – such as the devaluation of vocational qualifications or the failure of pension regulations for special DDR professions. The radical exchange of elites in favour of the West German system – as if the East had lacked professional competence and leadership skills – suggests to critics the "suspicion of political backwardness" only because one lived "in the DDR" and thus in a "dictatorship" (Köpping). Obviously, the unification process did not fulfil the hopes and expectations placed in it. Consequently, the logic he followed must be understood.

The unification process, one could conclude already in 1990, was conceived and implemented unilaterally by the Federal Republic. The early *Monetary, Economic and Social Union* of July 1st narrowed the DDR government's scope for political action. All important decisions were taken by the Federal Ministry of Finance. Alternative regulations introduced by the DDR were no longer seriously considered. It is true that with a (costly multi-billion) restructuring and renovation of existing companies instead of a "rapid privatization", it would certainly not have come to a "value transfer from East to West" of gigantic proportions¹⁹. But as the voting in

¹⁵ Dieter Segert: Verpasste Chancen im 41. Jahr, in Bundeszentrale für Politische Bildung: Das letzte Jahr der DDR, *Aus Politik und Zeitgeschichte* (supplement to *Das Parlament*) nos. 35-27 (p. 12-17), Bonn, 26.8.2019, p. 17).

¹⁶ Petra Köpping: 'Integriert doch erst mal uns!' - Eine Streitschrift für den Osten, Berlin, Ed. Chr. Links-Verlag, 2018.

¹⁷ Quote *Wikipedia* : Keyword 'Treuhandanstalt', <https://de.wikipedia.org/wiki/Treuhandanstalt> – with reference to Deutscher Bundestag 13. Wahlperiode Drucksache 13/10900 *Beschlussempfehlung und Bericht des 2. Untersuchungsausschusses nach Artikel 44 des Grundgesetzes*, <https://dipbt.bundestag.de/dip21/btd/13/109/1310900.pdf>.

¹⁸ Dietmar Bartsch, parliamentary party leader of *Die Linke* in the German Bundestag, quoted after Radio Berlin-Brandenburg, Inforadio of 19 April 2019: <https://www.rbb24.de/politik/beitrag/2019/04/linke-bundestag-untersuchungsausschuss-treuhand-wende-ddr.html>.

¹⁹ Petra Köpping op. cit. p. 29. According to the daily newspaper *Neues Deutschland* of 15 September 1994, around 1 500 billion German mark (DM) became de facto the property of the Federal Republic with the

favour of the CDU-controlled *Alliance for Germany* (Allianz für Deutschland) proves, this process was quite welcome by the vast majority of the East German population: they accepted unity as a "gift from above"²⁰ and trusted the promises of the Federal government, which imagined "flourishing landscapes" (Helmut Kohl). A degree of trust that practically amounted to a renunciation of forms of direct political influence by the citizens themselves. Attempts by the East German *civil rights movement* (Bürgerrechtsbewegung) and the progressive forces in the disempowered, formerly state-supporting *Socialist Unity Party* (SED) to revalue the DDR with a new Constitution and reform it from the ground up became obsolete. Even four elections in 1990 did not leave enough time for democratic learning processes²¹. Faced with massive influence by the leading parties of the Federal Republic, the elections only provided the East Germans with "superficial knowledge" of the electoral and party system of the Federal Republic²². The DDR researcher Ilko-Sascha Kowalczyk concludes that the population "had to get along in a system that no one had explained to them, and that many people were never told even later"; that it never came to a "mixture of East and West": "Westerners predominantly appeared as superiors. The Ostler often perceived themselves as inferior, declassed, and under command"²³. Where the political basic order remains alien to parts of the population, so concludes the field researchers, right-wing extremist and populist movements have a particular following.

It makes sense to wonder why, in 1989/90, the East Germans did not already assess more realistically the consequences and risks of the Unification. The Viennese political scientist Dieter Segert assumes a "naïve ethnic nationalism": the slogan *We are a people* reveals the belief of belonging to a "mythical nation" from birth, in the certain assumption that we can therefore count on "a kind of comprehensive, family help from the West Germans"²⁴. If this *nationalism* has had an extreme right-wing effect on a relevant minority of the population since the refugee crisis (2015), according to Segert, it is because these people want to "remain unmixed German". Mindful of their own migration experiences, when looking for work and a better standard of living in West Germany, one did not want to be "exposed to the uncertainty of another mass migration movement"²⁵.

For the DDR, the adoption of the West German social and economic order happened at a time when the Federal Republic was undergoing change itself, namely the transition to *neoliberal* or *market-liberal capitalism*. Liberalisation, deregulation and privatisation, as raised by the US and United Kingdom as the new standard, were praised as patent remedies for economic reforms in the EU states and promptly tested in the DDR. The consequences of the massive economic upheaval were felt above all in the labour market. Around four million jobs were rationalized by the *Treuhand* – due to the liquidation of 500 large state-owned companies (VEB) in favour of West German competitors. For a long time, the unemployment rate in East Germany was twice as high as that of the West. Despite a variety of labour market promotional measures, the rate was still 20.6 % in 2005, compared with 11.6 % in the West German *Länder*. It only fell to 7.6%

annexation of the DDR. Of this, at least 600 billion DM was accounted for by the industrial property taken over by the trust. As a result of the privatization policy, about 85 percent of them were in West German hands. See Klaus Steinitz *Steuergeld nach Ost – Gewinne, Vermögen nach West*, <https://www.neues-deutschland.de/artikel/507067.steuergeld-nach-ost-n-gewinne-vermoe-gen-nach-west.html>

²⁰ Ilko-Sascha Kowalczyk: Das Ende der DDR 1989/90, in Bundeszentrale für Politische Bildung: *Das letzte Jahr der DDR, Aus Politik und Zeitgeschichte* (Suppl. *Das Parlament*) nos. 35-27 (p. 4-11), Bonn, 26.8.2019, p. 10.

²¹ Election of *People's Chamber* (Volkskammer) (18 March), local elections (6 May), accession of the (re-established) East German *Länder* to the Federal Republic (3 October), All-German *Bundestag* elections (2 December).

²² Dieter Segert: *Verpasste Chancen im 41. Jahr*, in Bundeszentrale für Politische Bildung: *Das letzte Jahr der DDR, Aus Politik und Zeitgeschichte* (Suppl. *Das Parlament*) nos. 35-27 (p. 12-17), Bonn, 26.8.2019, p. 14.

²³ op. cit. p. 11: "The East Germans had learned this role long enough. Since 1990, however, they have been constantly told that they are now the movers and doers themselves. But they were not. And those who moved up to leading positions were "in the eyes of the East Germans soon no longer considered East Germans".

²⁴ op. cit. p. 15.

²⁵ *Ibid.*

between 2008 (14.6%) and 2018. In the West, in the same period, the rate fell from 7.2 % to 5.3%²⁶. When looking for a new job, it was about demonstrating flexibility. Even older people who did not just want to be absorbed by the *social network* of the Federal Republic, opened up new occupational fields and accepted the challenge of becoming commuters.

Looking for a secure job brought with it a mass migration from East to West. The statistical offices of the *Länder* indicate that the population of the East shrank by more than two million between 1991 and 2018²⁷. This fact is not least owed to the exodus of skilled workers, especially of young people, to whom the domestic economy offers too few career opportunities. The population decline is until today a real handicap for the East German economy and society, as well explains its structural weaknesses: the *New Länder* are lacking in large medium-sized and large companies, which open up foreign markets. Significantly, not a single one of the 30 companies in the German Stock Index (Dax) is headquartered in the East. Nevertheless, even if the process of aligning living conditions in both parts of Germany has not been completed, the East German economy cannot be denied sustainable progress. The statistics speak for themselves: the Gross Domestic Product is rising; per capita economic output is approaching that of the old federal states; productivity in rural regions already corresponds to about 90 to 95 percent of comparable regions in the West – in contrast to the cities, where only about 75 percent of the productivity level corresponds to that of the West German municipalities, and requires matching targeted regional support²⁸.

As in Eastern Germany, the radical variant of neoliberal capitalism was also enforced in the other post-socialist societies of Europe, with the difference that the evolution was not about taking over a complete institutional system "from outside". Dieter Segert notes that their transition processes could be influenced by "external models", but (with exceptions like the Baltic states) without being directly controlled by "external elites" as in the DDR²⁹. Some critics assimilate the *value transfer* from East to West and the *transfer of elites* from West to East to resemble a "colonization of the DDR"³⁰.

III. DEFICITS OF THE TRANSITION PROCESSES IN THE WESTERN BALKAN STATES

Not under *external* pressure, the transition processes in the other countries were slower than in the unified Germany. After having adopted its constitutional order and thus its political and economic system, the *East-German Länder* had merged as an integrated component of the Federal Republic – that meant without accession negotiations – into the *European Community/European Union* and started benefiting from its subsidies.

The new Balkan states that emerged after the collapse of Yugoslavia lacked comparable 'catch-all structures' that could have defined and controlled the conditions and objectives of post-socialist transformation processes. Largely reliant on the use of their own (limited) resources, the Western Balkan states had in their *national interest* to find and finance consensual solutions

²⁶ Figures from the Federal Employment Agency, Nürnberg (2019): Arbeitslosigkeit im Zeitverlauf, quoted after Institut 'Arbeit und Qualifikation' of the University of Duisburg-Essen; http://www.sozialpolitik-aktuell.de/tl_files/sozialpolitik-aktuell/Politikfelder/Arbeitsmarkt/Datensammlung/PDF-Dateien/abbIV35.pdf.

²⁷ Quoted after Daniel Eckert : Ost- und Westdeutschland. Auseinanderdriften zwischen Ost und West wird drastisch unterschätzt, *Die Welt*, online text 13 June 2019: <https://www.welt.de/wirtschaft/article195175059/Ost-und-Westdeutschland-Auseinanderdriften-wird-drastisch-unterschaetzt.html>.

²⁸ According to information above all from Klaus-Heiner Röhl, *Institut der deutschen Wirtschaft* Köln (IW), and Oliver Holtemöller, *Leibniz Institute for Economic Research* Halle (IWH), quoted after Daniel Eckert a. a. O.

²⁹ Dieter Segert op. cit. p.16.

³⁰ Wolfgang Dümcke, Fritz Vilmar (eds.): *Kolonialisierung der DDR. Kritische Analysen und Alternativen des Einigungsprozesses*, Münster (agenda Verlag), 3rd ed., 1996.

themselves. Can it be assumed that their *elites* have aligned their reforms to the ideal of the *common good* – to use a key term of political philosophy, about a largely *negotiated* balance of interests between the socially and politically relevant forces of the countries?

As mentioned beforehand, France and Germany note that the Western Balkan states have serious deficits in the development of democratic, constitutional and socially oriented *market economy* conditions. To explain these deficits, the beginning of the transition process must be recalled. Part of an integrated economic area with a federal structure, these countries were, after the disintegration of Yugoslavia, subject to particularly radical structural changes. Under the pressure of the recession, the per capita Gross Domestic Product (GDP) collapsed by about 50 percent. It is about as much as in the post-Soviet countries – except, of course, the special case of the DDR, with incomparably milder social consequences for the population. Thanks to the *Monetary Union* and welfare state institutions of the Federal Republic, current income and pension payments as well as private savings assets benefited from the favorable 1:1 exchange rate from the DDR Mark to the DM and were unaffected by inflation (which could have destroyed the savings deposits in neighboring countries). Above all, unemployment was significantly better compensated.

But such discrepancies between the social standards in East Germany and in the other countries (with incomparably greater impoverishment of large parts of the population) do not tend to lead to a significantly different reception of the ongoing transition processes by the population: here and there, the opinions are largely characterized by personal dissatisfaction and disappointed hopes. As in East Germany, the economic and social restructuring can, individually and collectively, trigger feelings of "social uprooting" and lead to political apathy, distrust of values and institutions of representative democracy, and susceptibility to slogans of national-populist and right-wing extremist trends.

Are such tendencies already to be seen as infallible indicators of the disequilibrium of the *rule* and the *social market economy* in the Western Balkans? In view of the limited available time for my lecture, further explanations will be limited (according to the title of the presentation) to these two key concerns of the European Union for opening accession talks. This means: it must be pointed out that with the prospect of membership of the European Union – at the Thessaloniki Summit in 2003 – the Western Balkan states finally were given guidelines that required a reorientation of their previous policies.

On the basis of its Copenhagen criteria (1993), the European Union first of all insists on the transformation of the state into a democratic and *rule of law*-based community.

3.1 Rule of Law

According to international observers, regional and national tensions are still blocking progressive development today. There is consensus that the political elites lack the will to reform, being often highly populist, and using linguistic, religious and ethnic differences for party-political and personal benefits. Austrian politician and Balkan expert Reinhold Lopatka comes to the sobering realization that corruption at the highest institutional level points to the increasing "appropriation of the state by interest groups"³¹. In other words, the anti-corruption measures demanded by the European Union are mostly not, or not consistently implemented. The judiciary lacks independence, transparency and the will to prosecute. These deficits affect not only ethnic minorities, but the *citizens* in general: in the *civil society*, the conviction that "everyone is equal before the law" seems to be weak.

The European Union is uncompromising regarding the *rule of law*. It sees the absence of political will to implement essential legislation as the main obstacle to state and social reforms. With regard to its demand for democratization measures at all social levels, the Union insists on

³¹ Reinhold Lopatka, member of *Austrian People's Party* (ÖVP): Auf dem Weg in die EU? Der Westbalkan vor großen Herausforderungen, in *AIES-Studies* (Austria-Institut für Europa-und Sicherheitspolitik, Wien) no. 8, October 2018, p. 15 sq. In the following, we mainly reproduce Lopatka's synthesis of analyzes by the European Union and international research institutes.

freedom of expression and media. These concerns are apparently not shared by the political classes: structures to promote diversity of opinion are poorly developed, state and economy are highly clientelist – tendencies that prevent the emergence of *counter-public* covering the whole spectrum of civil society.

The constitutional deficits in the Western Balkans do not only hamper the development of representative democracy and, ideally, complementary forms of direct *citizen participation* in policy-making, but also reinforce *social inequality*. The fight against corruption announced in its *enlargement strategy* is also an important economic policy measure for the European Union to enforce more distributive justice. Reinhold Lopatka has aptly summarized the hitherto dominant distribution mechanism: "Too often, nepotism and corruption are the basis for the distribution of wealth, as the political elites are driven by fear of losing access to public money while voters are driven by the hope of benefiting from elite favor"³².

Of course, the basic prerequisite for improved living conditions is first of all production- and productivity-enhancing, as well as socially compatible economic reforms.

3.2 Regional Economic Integration

The need for economic reform has so far not been a priority issue in the Western Balkan public discourse. Their urgency is obvious: the countries have much lower Gross Domestic Products (GDP) than any previous candidate country when it joined the Union³³. The European Union knows the difficulties of the Western Balkan states: they often have to eliminate structural deficits from the socialist era. As a result, the industrial sector remains barely competitive. 60% of the exports come from the low-tech industry: a gradual transition into the segment of the medium-tech industry is hence indispensable³⁴.

In view of the criteria for accepting accession talks, the Western Balkans Summit in Trieste in July 2017 was of strategic importance. For the first time, the countries agreed on a plan for *regional integration*, with the objective of developing the infrastructures and creating a transnational economic space that ensures the flow of goods, services, capital and highly skilled labor. With a regional policy, the Western Balkans would take into account today's trend towards *deglobalization*, especially the decline of the long-distance trade. Even companies from heavily export-oriented countries like Germany are investing less overseas and relocating their production back to Europe, if possible, to countries not far from their core market. In addition to high transport costs, rising labor costs especially in Asia (now equivalent to the wage levels of the Eastern European and South-Eastern European countries) mean that the outsourcing of production to overseas countries has become considerably more expensive. But *globalisation* is also being counteracted by governments sealing off their markets by "imposing tariffs and counter-tariffs, waiving quotas for local production, obstructing unwelcome investors"³⁵.

For the Western Balkan countries, the "regionalisation of supply chains" also requires a rigorous transition to *digital* business models and thus to new technologies. It is well known that exports of manufactured goods (increasingly produced by countries such as China and India itself) have been declining significantly already for a good decade, while, conversely, computer-based data and service exchanges are growing strongly.

Such development processes are no longer strictly oriented on the neoliberal model, but recur back to government intervention. In order to consolidate the single market, the economy is relying on incentives such as tax cuts, on public growth and investment programs, which in particular expand digital infrastructures. The consequences for

³² Lopatka op. cit. p. 17.

³³ Statement of the International Monetary Fund (IMF), quoted after Lopatka op.cit. p.14.

³⁴ For the deficits, see above all the *Research Report* of the Vienna Institute for International Economic Studies: *Steigerung der Wettbewerbsfähigkeit in der Balkanregion – Möglichkeiten und Grenzen*, Report no. 3, December 2015: <https://www.ac.at/accounting-the-competitive-ability-in-the-balkanregion-moeglichkeiten-and-border-p-3755.htm>.

³⁵ Michael Sauga: *Neue Heimatländer*, in *Der Spiegel*, no. 18, April 27, 2019 (p.56-58), p. 57 sq.

the Western Balkans are obvious. In order to bundle national key competences and make them the basis for their political and economic activities, it is essential that they make decision-making processes at all levels pluralistic and social-partner-based.

3.3 Industrial democracy and Corporate governance

The financial and economic crisis of 2007/2008 has sharpened awareness of the need for a stricter regulatory framework for management and supervision of companies. This is what the concept of *corporate governance* stands for³⁶. Going beyond the (in the narrower sense) *corporate constitution* (*Unternehmensverfassung*), it reflects the legal and factual integration of companies into their environment. In their activities, they are required to take due account of the interests of all the internal and external persons, groups or institutions to which they depend: the *stakeholders* (including above all customers, suppliers, investors or public administration).

The relatively new term *corporate governance* (1984) is compatible with certain principles based on historical claims such as "industrial democracy", "workers' self-employment" or "employee participation" in Europe. This is because of the key role played by *employees* among stakeholders. Countries with high standards of employee involvement in decision-making and control processes grant them rights of *participation* or even co-determination in the Supervisory Board or the Board of Directors, in plant management and in the workplace. Moreover, they focus on *collective bargaining*: negotiating wages and working conditions by trade unions and employers' organizations at the sectoral level as well as on work organization and social affairs through company unions or elected workers' bodies and management at a company level. Measured by its indicators of "smart, sustainable and inclusive growth", the *European Trade Union Institute* (ETUI) certifies that these countries have significantly better and more socially acceptable economic performance than countries with lower standards³⁷.

The latter undoubtedly includes the Western Balkans³⁸. Two deficits are particularly striking: on the one hand, a low degree of organization of employers in the private sector, so that the lack of *negotiating partner* for the unions means that only a small proportion of companies are covered by collective agreements; on the other hand, weak participation rights of workers in decision-making processes at workplace and company level – their rights to information and consultation being generally exercised by their unions and only rarely by directly elected employee bodies.

The difficulty of transferring European standards of social and labor law to post-socialist countries is also evident in the German unification process. Thirty years after the fall of the Berlin Wall, *social partnership*, *social dialogue* and *employee participation* in East Germany are still less pronounced in Eastern than in Western Germany. The discrepancy is particularly obvious at the collective bargaining level: as recently as 2017, around 49% of West German employees, but only about 34% of East German employees worked in collectively bargained

³⁶ The term was introduced by Bob Tricker (Oxford Centre for Management Studies, University of Warwick Business School) in his 1984 book entitled '*Corporate Governance: Practices, Procedures and Power in British Companies and their Board of Directors*', published by Gower Pub Co: https://en.wikipedia.org/wiki/Robert_Ian_Tricker.

³⁷ See Aline Conchon: Die Mitsprache der Arbeitnehmer in der Corporate Governance Eine europäische Perspektive, in Report no. 135, ETUI, Brussels, July 2015 (41 p.), p. 41 (Fn.18) - with reference to the *European Participation Index* developed by Sigurt Vitols: <http://www.worker-participation.eu/About-WP/European-Participation-Index-EPI>.

³⁸ See among others, Otmar Seul: Standards for Employee Participation in Decision-Making Processes (Information and Consultations Rights) and their Implementation in Candidate Countries for EU Accession in the Western Balkans - The Case of Albania, in Tomas Davulis (dir.): Labour Law Reforms in Eastern and Western Europe, Ed. PIE Peter Lang, Brussels, Bern, Berlin, Francfort o. M., New York, Oxford, Vienna 2017, p. 179-195.

companies³⁹. The lower level of collective bargaining explains the pay gap between East and West. In the *new Länder*, gross earnings are almost 20 percent lower. In the absence of collective agreements, wages are generally "negotiated more freely": it is easier for employers "to take advantage of applicants' low expectations and reduce wages"⁴⁰. A collective agreement therefore promotes the wage adjustment between East and West: employees with collective wage earning today in the East almost as much as in the West.

But as the trend towards decentralization of collective bargaining from the industry to the company level shows, in times of global competition, more differentiated demand and shorter innovation cycles, the model of *industrial democracy* in Germany is also changing significantly. This carries a particularly negative tendency: the number of companies with *employee co-determination* in the workplace has declined throughout Germany! In the West German private sector today, only 40% of employees work in companies with an elected *works council* (Betriebsrat). In East Germany, there are and were never more than 33%. However, the state of research does not allow a clear indication of the reasons for the dwindling interest in collective representation at company level. Peter Ellguth and Susanne Kohaut, from the trade union-related *Institute of Economics and Social Sciences* of the *Hans Böckler Foundation* (WSI), assume that employers are increasingly opposed to the establishment of works councils – but admit "that it's difficult to assess whether such preventive actions indicate a new or at least intensified trend, or whether they have always taken place and are currently receiving increased attention". However, they identify as a new phenomenon, "the offensive advertising of law firms for consulting services for the effective prevention of works council elections": "a clear call for breach of law"⁴¹.

IV. TRANSITION PROCESSES INVOLVING *CIVIL SOCIETY* (CLOSING REMARKS)

Due to the limited time available, my *Keynote* only humbly covers the multitude of questions raised and discussed by the abundance of contributions to this International Colloquium. Based on the concrete experiences of the German unification – which, as I said, involve an atypical transition process for the DDR / the East German *Länder* – I nevertheless hope to have made you aware of some important transnational problems of post-socialist structural changes. However, my firm assumption that such processes can only be managed in the medium to long term implies no speculation about the current state of development in East Germany and the Western Balkans. For this purpose – and especially with regard to a systematic comparison of the transition phases – we lack, to my knowledge, a normative-functional concept for deriving dimensions, criteria and indicators of the transition process.

Nonetheless, our observations may lead to the realization that the rule of law and the social market economy require a renewed model of *democracy* that systemically combines the principles of *representative* democracy with elements of *direct* democracy. Not only the increasing discontent of the population in East Germany and the Balkans, but also a global phenomenon of these days is heading in the same direction: the fact that peoples in their entirety rebel against corruption, social inequality and disregard for human rights, can only be understood as a call; to overcome the stage of often *formal* democracy and systematically involve *civil society* in political decision-making.

³⁹ Peter Ellguth, Susanne Kohaut: Tarifbindung und betriebliche Interessenvertretung: Ergebnisse aus dem IAB-Betriebspanel 2017, *WSI-Mitteilungen* 4/2018, p. 299–306; Abstract: https://www.boeckler.de/wsi-mitteilungen_115204_115217.htm.

⁴⁰ Data by Christoph S. Weber, Philipp Dees: Anspruchslöhne - immer noch Unterschiede zwischen Ost und West, *WSI-Mitteilungen* no. 8/2015, p. 593–603, quoted after *Böckler Impuls* Ausgabe 20/2015: https://www.boeckler.de/62859_62876.htm.

⁴¹ *Ibid.* p. 9.

This also applies to the economy. European *Citizenship*, with its changing understanding of the interplay of economy and ecology, must have an impact on the workplace. Environmentally compatible and socially responsible production concepts require not only 'efficiency' in the representation of entrepreneurial interests, but also in the methods of *employee participation* in decision-making processes in the company. A structural combination of *delegated* participation with *direct* participation must ensure a new quality of industrial relations and thus of *corporate governance*. It requires a combination of trade union action, participation or even co-determination of elected employee bodies and forms of *direct* participation (group work, company referenda).