

The EU's rule of law promotion in post-Soviet Europe: what explains the divergence between Baltic States and EaP countries?

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Abstract

The European Union (EU) and domestic “change agents” have promoted the rule of law in post-Soviet Europe with varying results. While the Baltic States (Estonia, Latvia, Lithuania) succeeded in establishing the rule of law, Eastern Partnership (EaP) countries (Ukraine, Moldova, Georgia, Azerbaijan and Armenia) did not. Why did EU-driven legal, judicial and anti-corruption reforms not produce the rule of law in the latter group? I argue that divided elites (reformers) in laggard EaP countries engage in detrimental political competition that creates incentives to misuse the law, the prosecution and judicial structures as “political weapons”. The result of this power struggle is an erratic reform process which produces reform pathologies of Europeanization (e.g. legal instability and incoherence, reinforced fragmentation and politicization) that undermine the rule of law. Instead of serving as an external check on rule-of-law abusing reformers, the EU empowers reformist but unaccountable “change agents” in a partisan way, thus creating incentives for the accumulation and abuse of power, especially after regime changes. Reformers in the advanced Baltic States have avoided detrimental political competition, the fragmentation of the state and many reform pitfalls through de facto exclusion of ethnic Russians from the political and judicial system. This policy of partial exclusion allowed elites in Estonia and Latvia to build consensus, to create a unitary state, including strong, unified and independent horizontal accountability structures (e.g. judiciary, Ombudsman, Constitutional Court etc.) which in turn were able to check the executive. The argument is supported by an empirical, indicator-based analysis of the rule of law and several interviews with representatives in Brussels, Strasbourg and Chisinau.

Keywords: Rule of law, EU conditionality, detrimental political competition, Eastern Partnership, European Neighbourhood Policy, Baltic States, EaP Countries

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