

Which Independence for the Rule of Law? Lessons from Europe

by

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Tentative draft

The rule of law is increasingly considered to be a necessary condition for the development of a market economy and a successful democracy. The creation of a stable institutional setting, the introduction of transparent, well-formulated and predictable legal norms, the establishment of a system of checks and balances restraining the exercise of political power, have all been the preferred target of policies promoted by international organizations. In this context, an independent judicial system has emerged as one of the pillars of the rule of law. Independent judges – and, as we are going to see, also independent prosecutors – have been increasingly considered fundamental in order to establish and implement a system of fair rules.

However, the concept of courts' independence is not always well defined, often referring to related but different phenomena. Moreover, to a more careful consideration, the relationship between independence and rule of law seems more complex than expected. The case of Europe – where, in recent decades, significant reforms have been implemented in the realm of the administration of justice - is a good case in point. In Western Europe the relationship between courts' independence and the rule of law is not always clear, maybe thanks to different institutional traditions. The new Eastern and Central European states can provide important insights in the matter, thanks to their relative common institutional development: a long period of communist rule and a transition to democracy which is still in the process of consolidation.

The analysis carried out in this paper, although still incomplete, suggests not only that the concept of courts' independence needs a better definition, but that its main dimensions should be taken into account for their different impact: while the external gradient of independence seems to play a positive role for the development of the rule of law, the contribution of internal independence is more ambiguous.

1. The policies of Rule of Law promotion

Over the last decades the concept of Rule of Law (RoL) has increasingly gained importance in the international policy discourse (Carothers, 2006; Morlino and Magen, 2008): the RoL is considered to be a necessary condition for the creation of a market economy and the establishment of a successful democracy. In fact, most influential international organizations maintain that a market economy is a necessary condition for a developed society and that a developed society is a favourable condition for democracy.¹ Therefore, the promotion of the RoL turns out to be a *conditio sine qua non* to increase wealth, improve living standards, and ensure individual and collective well-being. Exemplifying this view, the Rule of Law Initiative of the American Bar Association states that “rule of law promotion is the most effective long-term antidote to the pressing problems facing the world community today, including poverty, economic stagnation, and conflict”.

However, it is not necessary to cross the Atlantic to encounter a strong and vibrant belief in the power of the RoL. A large part of the policies enacted by the Council of Europe and the European Union toward the Eastern and Central European States are based on the uncontested conviction that a successful democracy should be based on a strong RoL (Sadurski, 2003; Piana, 2007; Priban, 2007). Broadly speaking, the concept is used to refer to a system in which a body of clearly formulated rules holds *erga omnes*, being administered by impartial judges. Accordingly, an impartial judiciary should enjoy a set of institutional guarantees that insulate judges – and, to some extent, also prosecutors – from undue influence coming from the political and social environments.

2. *The Rule of Law and judicial independence*

As we have seen, judicial independence (JI) is usually considered to be one of the most important traits of the RoL. Following a centuries-old tradition of liberal constitutionalism, independent judges are considered to be the indispensable instrument in order to enforce legal rules in a consistent and impartial way. However, there are different approaches on how to concretely define JI. Generally speaking, definitions put forward by international organizations strongly emphasize the need of insulating judges from external – and especially political – pressure. For instance, according to the U.N. Basic Principles on the Independence of the Judiciary enacted in 1985, “The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with

¹ The position is also often labelled as embedded liberalism (World Bank, 2004; USAID, 2007)

the law, without *any* restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from *any* quarter or for *any* reason.” (Principle n.2, italics added)

In Europe, the development of a policy discourse on the RoL and JI has been carried out to a large extent by the Council of Europe (CoE). In fact, the CoE is vested with a certain number of key competences, among which the supervision and the enhancement of the European Convention of Human Rights and of the judicial cooperation among its members States. In the early 1990’s the policy field occupied by the CoE expanded significantly in the realm of the promotion of the RoL. This shift catalyzed the development of a large array of recommendations and standards concerning judicial organization, court management, judicial training and ethics. As for JI, in 1994 the CoE issued a Recommendation asking, among others, that “in the decision-making process, judges should be independent and be able to act without any restriction, improper influence, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.”²

However, scholars seem to be less sanguine on the virtues of JI. For instance, Russell (2001: 12) judges “quite unreal” the attempt at wholly insulating judges from their environment. According to Martin Shapiro, since no regime “is likely to allow significant political power to be wielded by an isolated judicial corps free of political restraints” (1981: 34), JI is always to some extent limited. In fact, we “expect courts to be independent at retail, not wholesale... to make their decisions according to the law... to be... the servants of the lawmakers” (2001: 280). In fact, the actual content of JI remains, at least to some extent, undecided.

A recent significant contribution to the definition of the concept of JI and to the analysis of its impact has been produced by some scholars of Law and Economics. Feld and Voigt (2003) focus on highest courts and introduce a distinction between *de jure* and *de facto* JI. *De jure* indicators refer only to legal rules concerning the status of high court judges and their competencies and powers: whether the highest court is anchored in the constitution; rigidity of the constitution; appointment procedures; tenure of judges; retirement age; removal procedures; possibility of reappointment; protection of salary; access to the highest court; allocation of cases; judicial review powers; transparency of court procedures. *De facto* indicators try to catch the empirical dimension of JI and deal with both the status of judges and their powers in practice: the average term length of judges,

² The text is similar to the UN Basic Principles. See Independence, efficiency and role of the judges, Recommendation n. 12 (94), 2d. For the status of prosecutors, see later in the text.

change in the number of judges of the high court and their income, the role of other powers in the implementation of court's decisions and the changes in the legal foundations of the court. Feld and Voigt find a good relation between de facto JI and economic growth,³ while de jure indicators do not seem to be significant, at least from this point of view. However, Hayo and Voigt (2007) found later that de facto JI is robustly explained by freedom of the press and, to a larger extent, by de jure JI. Therefore, it can be inferred that de jure JI positively influences, maybe with a time lag, de facto JI.

In a more recent paper Voigt (2008) finds that also judicial accountability (JA) – defined as institutional arrangements aiming at assuring that judges decide according to “the letter of the law” - is important, as it is statistically associated to higher income and less corruption. He explains this finding through the consideration that fully independent judges could behave in an inefficient or corrupt way or apply the law inconsistently.⁴ Thus, in order for JI to support the implementation of the RoL, judges should be accountable: more precisely, they need incentives to decide according to the law. Voigt also maintains that JI and JA are not in tension, since JA aims only at having judges behaving according to the law.⁵ Voigt's JA indicators refer to three types of checks: those involving the judicial procedure (collective decision-making, appeal); those related to the transparency of the judicial process (publicity of decisions, reasoned decisions, proceedings open to the public) and those internal to the judicial body (judicial ethics and discipline, criminal responsibility). Thus, they try to take into account also the important – and well-known –

³ The general hypothesis – strongly supported by the New Institutional Economics - is that JI helps to enforce the RoL and therefore property rights, furthering economic investment and growth (Moustafa 2007).

⁴ As it has been pointed out (Brashear Tiede 2006: 160), “the more discretion (and independence) judges have, the greater possibility that cases outcomes vary and law is applied inconsistently, counter the traditional conceptions of the rule of law.”

⁵ In fact, the problem is often there: how can you decide that a judge has “applied the law” or not? To what extent controls on judge's decisions can be considered not in contradiction with her independence? And again, to what extent does the RoL imply that the law – i.e. statutes - should be interpreted in the exactly the same way in all circumstances? We can refer here to the need of judges to follow “generally recognized” rules, although we should take into account that there will always be some disagreement in the legal community on the meaning of some rules. We can also think that some degree of flexibility is not in contradiction with the RoL. As you can see, the matter is rather complicated.

distinction between internal and external JI⁶: Voigt thinks that forms of accountability – and also internal forms of accountability - are compatible with JI.

The significance of the distinction between internal and external JI is supported also by Ríos Figueroa (2006: 163-164) who emphasizes the need of JA, and especially of internal controls – i.e. controls exerted by other judges - on judicial behaviour. According to his research on Latin America, the relationship between JI and corruption seems to be curvilinear: beyond a certain level, JI tends to lose significance and to actually support corruption. More specifically, high internal JI seems to allow corruption to develop at the lower levels of the judiciary.

3. *The meaning of judicial independence*

All the above-mentioned contributions are, without doubt, interesting. However, the definition of JI is not always clear and seems to miss some important distinctions. In order to clarify the concept of JI, we should, first of all, identify its rationale. In order to perform her functions effectively – and therefore be considered legitimate by the parties to the case - the judge is expected to adjudicate impartially, according to the rules of the legal system, therefore *sine spe ac metu*, i.e. without expectation of benefits or fear of reprisals (Guarnieri and Pederzoli 2002). JI is a relationship and its points of reference are, first of all, the parties: in order to be – and appear to be – impartial, the judge must be independent from them. A judge who depends on one of the parties cannot be – and appear to be – impartial. JI implies a clear political dimension if and when a judge comes to adjudicate a case in which politics is involved: e.g. when the government – or someone politically powerful - is a party. Therefore, we should note that from this point of view the internal dimension of JI can become significant only if it impinges on external independence: for instance, in the case of politically influenced higher ranking judges harassing lower ranks if they decide against powerful political actors.

Once established the fact that JI is, first of all, a relation and that implies a political dimension, we should distinguish between at least two different meanings of the concept (Russell 2001):

⁶ While external independence refers to the relations between the judiciary and the other branches of government, internal independence focuses on guarantees aimed at protecting individual judges from undue pressures from within the judiciary (e.g. high ranking judges).

- *Institutional* independence,⁷ which is usually further distinguished (Shetreet 1985) in substantive – i.e. the principle that the judge is subject only to the law – and personal. This latter dimension – more complex to implement but considered to be an important means to achieve the former - concerns all those safeguards allowing the judge to decide impartially without fearing negative consequences. Therefore, matters of removal, discipline, career, salary need to be strictly regulated.⁸ However, in analyzing institutional JI – and especially the personal dimension - we should also distinguish between:
 - a. Formal rules that are not applied: e.g. the case of the so-called façade constitutions (Sartori 1987).⁹ This is rather frequent in non democratic and transitional regime but rare in consolidated democratic countries. In fact, rule implementation in this field is an element of regime consolidation (Morlino 2003).
 - b. Institutional rules: to the extent that formal rules are implemented, you can infer institutional independence.
 - c. Unwritten rules, practices, customs *praeter legem* supportive of JI: they are important, especially in cases of high institutional continuity (e.g. UK). In other cases, they seem to be less significant.
- *Behavioural* independence (or independence on the bench or judicial autonomy), i.e. the extent to which the judge actually adjudicates impartially. From this point of view institutional JI should be considered a necessary but not sufficient condition.¹⁰ The study of judicial behaviour has pointed out the complexity of the issue, since several elements have to be taken into account. A recent survey of the literature on the field (Gibson 2007) distinguishes between three main “models” of judicial behaviour: attitudinal, normative and strategic. According to the first – which has been developed in relation to the analysis of the US Supreme Court – judges decide disputes in light of the facts of the case vis-à-vis their ideological attitudes and values: from this point of view what really matters are judges’ political preferences. Normative approaches emphasize the significance of the law and, above all, of shared expectations about

⁷ “The autonomy of judges – collectively and individually – from other individuals and institutions” (Russell 2001: 6). In this regard Rios-Figueroa and Staton (2008) speaks of “institutions of judicial insulation”.

⁸ In some countries also the personal security of judges needs to be protected.

⁹ This seems to be the case of de jure JI as defined by Feld and Voigt (2003).

¹⁰ We could hypothesize an institutionally dependent judge behaving independently, but it seems to be a case occurring only in extremely fragmented polities or in view of a regime change (Helmke 2004).

the way judges should decide.¹¹ Strategic analyses point to the fact that judges make choices, which depend on their expectations about the choices of other actors, and these choices are structured by the institutional setting in which they are made (and therefore also by the institutional independence of judges). We do not need now to take a stand on these explanations. It suffices to say that, although behavioural independence involves several factors related in a complex way, institutional independence plays without doubt a significant – although not decisive – role in supporting judicial impartiality. Therefore, it tends to be the first target of reformers, even though its precise content is disputed and the need for forms of JA is often emphasized.

Although JI – especially when conceived as independent behaviour – is, without doubt, significant for the development and implementation of the RoL, in order to assess its impact the wider context in which judges decide must be taken into account. In other words, we should consider not only judicial autonomy but also judicial power: the extent to which judicial decisions really matter (Rìos-Figueroa and Staton 2008). In fact, if the RoL implies a set of rules guaranteeing basic civil and political rights, it needs a judiciary not only autonomous but also with the power to enforce those rights: an independent and powerful judiciary is a necessary condition of the development of the RoL. This necessity is well illustrated *ex-adverso* by the case of several authoritarian regimes, where a bifurcated structure of the judicial system undermines the role of relatively autonomous judges. In those regimes¹² judges can adjudicate with relative impartiality cases between private parties, while politically significant cases are entrusted to politically dependent courts or bodies.

On the whole, the political significance of courts – and of independent judges – is influenced by several factors: among them, the structure of the judicial system, the rules of procedure, the prerogatives of the judge¹³ and, not least, the enforcement of judicial decisions. In addition, an extremely significant element is the role played by public prosecution. To this actor now we turn our attention. Although judicial power depends on several elements, the institutional position of public prosecution is, without doubt, one of the most significant.

¹¹ In this context the role of reference groups seems to be significant (Baum 2006).

¹² Historically, the most significant are Francoist Spain, Fascist Italy and Salazar's Portugal. A recent, significant case is Egypt (Moustafa 2007). Other cases are well-analyzed in Ginsburg and Moustafa (2008).

¹³ I.e. procedural powers of the judge and of the public prosecutor (Langer 2004, esp. 13-14).

4. *The role of public prosecution*

In fact, the role of Public Prosecution (PP) is extremely significant for the way the administration of justice works and for its general significance, since it deeply influences the access to criminal justice.¹⁴ PP plays an important part in allowing politically significant cases to access the judicial system - e.g. in order to punish corruption or other forms of politicians' misbehaviour. It is therefore easy to understand why also this matter has been addressed by the CoE in its attempts to promote the RoL. For instance, with specific regard to the independence of the public prosecutor, the CoE has recently stated: "The Committee of Ministers endorses the Parliamentary Assembly's recognition of the essential role of the public prosecutor in ensuring security and liberty throughout European societies. It further shares the Assembly's assessment that Recommendation Rec(2000)19 on the role of public prosecution in the criminal justice system constitutes a detailed reference text for guidance of the current operations and future reform of the public prosecutors' offices throughout Council of Europe member states." (CoE Parliamentary Assembly, 2004). According to the 2000 Recommendation, "States should take appropriate measures to ensure that public prosecutors are able to perform their professional duties and responsibilities without unjustified interference or unjustified exposure to civil, penal or other liability. However, the public prosecution should account periodically and publicly for its activities as a whole and, in particular, the way in which its priorities were carried out" (Rec 2000, par. 11).¹⁵

¹⁴ The PP is often defined as the gate-keeper of the criminal justice system.

¹⁵ The Recommendation also states that "if the legal system so permits, states should take measures in order to make it possible for the same person to perform successively the functions of public prosecutor and those of judge or vice versa. Such changes in functions are only possible at the explicit request of the person concerned and respecting the safeguards" (Rec. 2000, par. 18). In addition, "public prosecutors should scrutinise the lawfulness of police investigations at the latest when deciding whether a prosecution should commence or continue. In this respect, public prosecutors will also monitor the observance of human rights by the police". (Rec 2000, par. 21-23).

Despite the fact that the CoE never spoke out its own conception of a constitutional democracy, it is possible to uncover few, key aspects of the prosecution "à la Européenne". Prosecution offices are embedded in a hierarchically organised State. They fulfil their function by trying to find some sort of trade off between two principles: the need of being responsive to the executive (which is in charge of criminal policies) and the obligation of being accountable to the law (legality principle). Therefore, the relationship existing between the prosecutorial function and the rule of law is twofold: the public prosecutor acts in accordance with the

The view of prosecutorial independence as a facilitating condition for the achievement of better justice, a view shared by both the national and international policy discourse, seems to find support in the social sciences. Putting together the outcomes of a large-scale research, it is again Voigt (Voigt et al. 2008) who suggests that prosecutorial independence (PI) strongly supports effectiveness in fighting political corruption. This is made possible, according to his argument, *via* the increase of prosecutorial autonomy from the legislative and executive branches (this last being often the main objective of prosecutorial scrutiny). Voigt analyzed a large sample of countries through the distinction between *de facto* and *de jure* independence,¹⁶ finding a strong relationship between *de facto* PI and control of corruption. Thus, besides *de facto* JI, *de facto* PI has to be considered an important element of the RoL, since a politically dependent PP is deemed to “filter” the cases accessing the judicial system, therefore undermining the significance of an independent judiciary.

However, especially because of the significance of its role, the problem of PI must be approached with caution. These are some of the elements to consider:

- PP enjoys often significant prerogatives in the investigating phase. These powers influence not only the types of cases being actually prosecuted but also the gathering of evidence.¹⁷ A powerful PP can definitively shape the development – and the outcome – of the trial;
- Prosecutorial discretion – especially in the pre-trial phase – is, at least to some extent, inevitable;¹⁸

law (legality principle) and in some countries also acts in accordance with the policy objectives fixed by the ministry of justice (democratic principle).

The guidelines and the recommendations adopted by the CoE do not provide national governments with any instruction on how to find a trade-off between these two principles nor do they elicit any preference about the “lexicographical order” that should be imposed upon them. Nonetheless, prosecutorial independence is almost conceived as the outcome of the legal accountability of the prosecutorial decisions. In addition, the simple fact that judges and prosecutors should be allowed to shift from one position to the other and vice versa may point out a preference for a system in which PI and JI are combined in order to oppose a firm, steady resistance to any interference of the executive.

¹⁶ The distinction between *de jure* and *de facto* PI mirrors that of JI.

¹⁷ The role definitions of PP, the relationships with the police as well as the prerogatives of the defence attorney are also significant here.

- However, unlike the judge, the PP is not much constrained by the adversarial structure of the trial, since she plays an active role in the criminal process;¹⁹
- Court ineffectiveness - above all, court delay - can magnify the impact of PP activities on politicians. PP investigations affect their reputation, even when they do not lead to final convictions.²⁰ In addition, courts' overload cannot but magnify the extent of prosecutorial discretion and its impact: decisions regarding the types of cases to prosecute or to prosecute more forcefully have significant consequences for the implementation of the RoL.

Therefore, because of its powers, PP accountability seems to be particularly important - maybe even more than in the case of the judge - for the actual implementation of the RoL (Rios-Figueroa 2006: 146-7). It seems that an unaccountable PP can produce significant damages to RoL values: a point that seems to be underrated by Voigt. On the other hand, there is no perfect solution to the problem of prosecutorial accountability. Judicial checks are not always effective, since the judge cannot immerse herself into the investigation. If she does, her impartiality can be damaged: judge should not take a too activist posture.²¹ External checks - that is, forms of political accountability - can be criticized, especially if they can influence PP specific decisions. However, it is not always easy to limit political influence to the issuing of general guidelines. As for internal controls, they can be distinguished in hierarchical - inside the prosecutorial corps - and professional - i.e. exerted by the legal profession at large.²² The first are likely to be more effective, although in some case they can appear to be politically motivated (for instance, if the top prosecutor is politically appointed). Transparency can play a mitigating role here.

5. *Jl, PI and the RoL: a complex relationship*

The short analysis carried out in the preceding paragraphs indicates the complexity of the relationships between Jl, PI and the RoL. Without doubt, some degree of Jl and PI seems to be a

¹⁸ The principle of compulsory prosecution, if not effectively checked, can actually increase de facto discretion. See Open Society Institute (2008).

¹⁹ We cannot deal here with the case of the instructing judge. However, it does not seem to radically affect the argument in the text. Its actual role tends to oscillate: when defined in active terms it can be assimilated to the prosecutor, although with some caution (Langer 2004; Hodgson 2005).

²⁰ This and other related points are well developed by DalBò et al. (2006).

²¹ The problem mirrors the dilemma of the instructing judge: judge and prosecutor at the same time?

²² In fact, they are not really "internal". However, they do not depend on the hierarchy.

precondition for the development of the RoL, but also the need of forms of accountability has to be taken into account: it possible to make accountability and independence compatible, although much depends on the way they are defined. For instance, an extremely expanded definition of JI – like that put forward in the above mentioned UN Basic Principles – can actually impinge even on modest forms of JA. But how is the situation in practice? How JI and PI are implemented? And how do they impact on the state of the RoL? The analysis cannot be restricted to highest courts, the RoL being dependent on the performance of all courts. The different way internal and external independence are combined and the consequences of different combinations should also be taken into consideration. For instance, in a hierarchical setting – where higher ranking judges are in charge of the career of their lower colleagues – a low degree of external independence of higher judges can allow the political environment an effective channel of influence on the whole judicial corps, even though lower ranking judges enjoy a high level of external independence. On the other hand, as we have seen, an high degree of both internal and external independence can impinge on accountability.

The EU countries are a good case to improve the analysis and to introduce a first testing of the proposition that JI and PI play a crucial and positive role in the establishment and consolidation of the RoL (and, more specifically, in the fight against corruption). They are all democracies (more or less consolidated): the risk of lumping together radically different types of regime is therefore avoided. Limits of the “most dissimilar” comparison are fairly confined: this limit characterizes the investigations of Voigt, whose sample of countries includes from fully achieved democracies to authoritarian States. In addition, there is a lot of useful information on all these countries. Therefore, although the findings of our analysis will be circumscribed to the set of cases considered, the evidence seems to be relatively stronger than in other studies and, on the whole, rather homogeneous (Rios-Figueroa and Staton 2008). Last, as we have seen, in the EU a strong engagement in favour of the RoL has been under way in recent decades, supported also by the Council of Europe (CoE). Actually, the role of the CoE seems to be more effective in the context of the EU than in non-EU countries. Also as a part of this engagement, JI, PI and, in general, the role of prosecution in the criminal justice system tends to be strengthened more or less everywhere.²³

²³ See the already cited Recommendations of 1994 and 2000. Inside the CoE the activity of the CCJE (Consultative Council of European Judges) and CCPE (Consultative Council of European Prosecutors)

6. *Judicial reforms and the RoL in EU-15 countries*

A first appraisal – limited to the EU-15 countries: the more consolidated democracies - confirms the complexity of the relationships between institutional JI and PI, on one hand, and the RoL, on the other. The state of JI and PI in EU-15 countries is analyzed in tables 1 and 2. Tab. 1 presents the data gathered by Feld and Voigt (2003), while tab. 2 is based on our analysis of current literature and official documents of the CoE.²⁴ Of course, in some cases the evaluation should be improved. However, also with its limits, it gives us a good appraisal of the present situation in the more consolidated democracies of Western Europe.²⁵

The evaluation has been carried out by identifying four different types of relationships between courts and politics, corresponding to increasing levels of institutional independence:

- 1) *Full politicization*: in this setting politics can exert direct influence on all significant elements of the status of judges (and prosecutors): recruitment, career and discipline (includes removal). In the case of prosecution, politics can also issue general or specific instructions. A general low level of independence is the result, although much depends on the structure of the political system.²⁶
- 2) *Limited political influence*: in this case politics exert influence only on the top of the judicial or prosecutorial hierarchy – e.g. by appointing supreme court's judges or a prosecutor general – while lower ranking are recruited on a technical, non-political basis and enjoy

should be underlined. For example, the first has recently published an advice on the role of Judicial Councils in supporting judicial independence.

²⁴ We have relied especially on reports on judicial independence by the Open Society Institute (2001 and 2002) and by the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe (www.coe.int/dghl/cooperation/cepej, last visited April 2, 2009) and, in some cases, on interviews with local experts.

²⁵ As a point of reference, also an appraisal of the US situation is included.

²⁶ In fact, the actual role of courts will depend to a large extent on the traits of the political regime. For instance, although US and the former USSR exhibited rather similar judicial settings – with judges and prosecutors directly elected or politically appointed – the free and polycentric nature of American democracy allow judges – and prosecutors – a much higher degree of behavioural independence than the monocratic setting of the USSR, where the CPSU ruled without any significant restraint.

good guarantees of external independence.²⁷ Here much depends on the level of internal independence, since low internal independence implies a strong influence by politically appointed higher ranks, allowing politics to influence indirectly all the judicial corps. On the other hand, we should take into account that organizations made up of career personnel always enjoy some degree of autonomy vis-à-vis the leadership. Therefore, the overall level of institutional JI can be judged moderate to low (in the case of very low internal JI).

- 3) *Hierarchy*: political influence here is reduced at a minimum since all judges enjoy high guarantees of external independence. However, internal independence tends to be low, thanks to the powers over recruitment, career and discipline entrusted to the higher ranks.²⁸ Highest positions tend to be assigned through a sort of cooptation.²⁹ As for prosecution, the influence of political power tends to be restricted by some form of compulsory principle.³⁰
- 4) *Self-government*: judicial reforms in the second part of the XX century have brought about in some countries of continental Europe a strong increase of judicial independence in both its dimensions. Political influence has been severely restricted and also the role of higher ranks has been narrowed and in some cases completely dismantled. As a rule, this setting has been achieved through the institution of a Judicial Council in which all ranks are represented. In some case – Italy – the principle “one magistrate, one vote” has been adopted in Council’s elections, leading to the complete dismantling of the traditional hierarchical influence. Always in Italy this development has involved also public

²⁷ A variation could be political influence channelled on the judicial corps through a Judicial Council composed mostly of political appointees. Although Judicial Councils are often considered to be an effective means to bolster JI, much depends on their composition and powers (Garoupa and Ginsburg 2009).

²⁸ Also through a Judicial Council controlled by higher ranks. As for discipline, it is often administered by a special body staffed by high ranking judges and/or non political professionals.

²⁹ Outside Europe, the Japanese judiciary seems to exemplify rather well this type of judiciary. However, some argue that the dominant role of higher ranking Japanese judges actually masks the political influence of the LDP, the predominant party in Japanese politics (Upham 2005).

³⁰ Although the compulsory principle cannot erase the discretion inherent in prosecution, it can severely narrow the extent to which political power can give instructions to public prosecutors.

prosecutors, achieving in this way the highest degree of courts' institutional independence among EU countries (and possibly democratic regimes).

For each country the most significant elements of institutional independence have been assessed, separately for judges and prosecutors, providing also an overall average evaluation. It should be emphasized that the evaluation is qualitative. So, the ranking of the countries is ordinal, although there is some simplification in summing up the scores of the different properties. However, the average evaluations should provide us with the type of judicial setting to which specific countries are more proximate to. As we can see, the third and fourth types – Hierarchy and Self-government - seem to prevail, with JI and PI to some extent associated. Only the two European common law countries – and also Sweden - seem to display a lower level of institutional independence. The evaluation refers to the present situation. However, the second part of the XX century has seen a general trend toward strengthening judicial independence almost everywhere in Europe, although changes have been mostly slow and incremental.

The state of the RoL in Europe has been assessed through the data provided by the World Governance Indicators (WGI) of the World Bank. Table 3 presents data from two of the indexes provided: Rule of Law³¹ and Control of Corruption.³² These indexes try to assess the general state of legality, pointing at an evaluation of the performance of all public institutions involved (and therefore take into account also institutions other than judicial). Table 4 presents the level of trust in justice, as measured by the Euro Barometer surveys in the last 20 years. It should give us an idea of the evolution of social trust toward judicial institutions. These data refer to phenomena partly taken into account by the WGI, although they have not been included in those indexes. They have been introduced as an additional measure and because they should give us a better idea of a state of things likely to be the by-product of the RoL (Rios-Figueroa and Staton 2008). In fact, we can hypothesize that a high degree of social trust toward justice is related to the actions of an effective and impartial judiciary.

The complexity of the relationship between JI, PI and the RoL seems to be confirmed. The 2007 WGI RoL index ranks first – in this order - Denmark, Austria, Sweden, Finland and

³¹ The variables considered in the index include among others: control of crime, fairness of judicial process, protection of property rights, perceptions of judicial independent behaviour, confidence in the police and the judicial system...

³² Variables include: perception of corruption, trust in financial honesty of politicians, frequency of extra payments by firms, transparency, anti-corruption laws...

Luxembourg (bold). The 2007 WGI Corruption Control index gives similar results: Finland, Denmark, Sweden, Luxembourg and Netherlands. Denmark and Finland exhibit also the highest average degree of trust in justice (followed by Austria, Greece³³ and Sweden). However, these countries do not seem to enjoy a particular high level of JI and PI:³⁴ according to Feld and Voigt (2003), only Austria and Denmark have consistently JI high scores. Our analysis puts Denmark, Finland and Austria (and also Luxembourg) in the intermediate third and Sweden in the lower.³⁵ On the contrary, some countries with low RoL and Corruption Control WGI scores (in italics) – like Italy, but also Portugal and Belgium – seem to enjoy very strong JI and PI. This situation is confirmed by further analysis. Tables 5 and 6 show respectively the relationship between JI and WGI RoL scores and PI and WGI Control Corruption scores. In fact, countries classified as belonging to the third type of JI and PI (Hierarchy) exhibits systematically better performances than countries of the Self-government type.³⁶

The Italian case seems to be paradigmatic of this state of affairs. It scores very high on both JI and PI,³⁷ but it shows also relatively low scores on WGI RoL and Control Corruption, as well as in Euro Barometer surveys (see tables 1, 2, 3, 4). Voigt (Voigt et al. 2008: 16) maintains that in some case reverse causality is at work: high – at least de jure – JI/PI can be the answer to an initial low level of the RoL.³⁸ However, Italy is puzzling because high de jure JI and PI has been established at least since the 1970s and also de facto JI and PI seem to have been high since then,³⁹ but, at least in

³³ The Greece seems to be somewhat a special case. It needs an explanation.

³⁴ There is no significant difference in PI and JI scores here: countries ranking high in PI seems to exhibit a similar rank in JI.

³⁵ Only Netherlands seems to exhibit a rather high degree of *judicial* independence.

³⁶ Also the few countries of types one and two are characterised by better scores.

³⁷ See, above all, Di Federico (2005; 2008), who underlines also the significant powers enjoyed by the PP in Italy.

³⁸ We can add that Portugal is a relatively young post-authoritarian democracy and Belgium in recent years has been troubled by some serious case of miscarriage of justice.

³⁹ Feld and Voigt (table 1) evaluate Italian de facto JI ad the second highest in EU-15. Voigt et al. (2008) do not give country scores for PI but only overall averages. A tentative calculation of PI in Italy has been performed by the authors following the indicators put forward by Voigt: Italy shows a de-jure PI of 0,825 – against an average of 0,466 – and a de-facto PI of 0,720, against an average of 0,526 (or 0,612). In fact, in Italy institutional JI and PI seems to have been high – and growing - since the late 1950s. According to our analysis (table 2), courts' institutional independence in Italy is the highest in the EU.

the last decade, no significant improvements in Italy's WGI scores have been registered.⁴⁰ It would seem that, unlike what Hayo and Voigt found (2007), judicial reforms in Italy have not worked (at least, so far).

Although the data do not seem to support a strong relationship between courts' independence and the development of the RoL, it can be argued that Italy stands out as an exception, since its problems are related to the troubled process of State building, with its legacy of weak administrative structure and deficient public ethics (Romanelli 1995). A similar line of reasoning can explain the relatively modest institutional independence of judges and prosecutors in Nordic countries – and to some extent also Eire and UK - which can exhibit good levels of RoL, with institutional – relative ease of the process of State-building, high institutional continuity... – as well as cultural – vibrant public opinion, protestant tradition of personal responsibility⁴¹... - factors (Pellegrini and Gerlagh 2008). In other words, the relative deviance of these cases from what expected should be explained by their different long-term institutional developments, maybe giving way to a sort of malign - or benign - path-dependence.

7. The impact of judicial reforms in the New Europe: a tentative assessment.

The new EU Central and Eastern European countries (CEECs) provide a good opportunity to enlarge and improve the analysis of the impact on the RoL of judicial reforms strengthening JI and PI. They share a common political heritage – late and troubled State-building and a long period of non democratic and communist regime - experienced a democratic transition, do not seem to have a strong tradition of political integrity, but they have been under a strong pressure, especially by the EU, to conform to RoL prescriptions. Therefore, they can offer significant evidence not only of the reaction to external pressure but, above all, of the impact of judicial reforms.⁴²

⁴⁰ The WGI/RoL indicator shows a worsening of the situation, while control of corruption is stagnating. Also Della Porta and Vannucci (2007: 833-835) argue that in recent years corruption has increased in comparison to the pre-1992 era. They explain this worsening with the scarce collaboration of the political class to the fight against corruption.

⁴¹ In this case Austria would be an exception to the exceptions.

⁴² We have decided not to consider in our analysis Cyprus and Malta exactly because their different political tradition. Malta has a long tradition of democratic (and colonial) rule. Partly the same can be said for Cyprus (British colony between 1878 and 1960), although the institutional development of this country has been deeply affected by the conflict between the Greek and Turk populations.

The available data allow us to introduce in a systematic way the diachronic dimension. Therefore, the survey of the state of judicial reforms in the CEECs has been carried out distinguishing between institutional changes introduced in the first period after the demise of communist regimes (1989-1997) and later (1998-2007). Table 1, 7 and 8 give a first assessment of the situation.⁴³ Data have been gathered in usual way. They are not always wholly satisfactory and in some case need to be improved. However, it comes out clearly that, already in 1997, JI and PI had been more or less strengthened almost everywhere in the area, at least in comparison with the situation in previous communist regimes, which is exemplified in the table 7 by the case of the DDR. However, whereas in Bulgaria, Lithuania and Romania judicial reforms (Fabri 2005) have been introduced but remained a sort of maquillage at least until the late 1990s,⁴⁴ in Hungary, Czech Republic, Latvia, Poland and Slovenia de jure and de facto JI exhibited a smaller gap and the level of institutional independence achieved was not far from that prevailing in Western European countries. In the following decade (1998-2007), thanks to the strong pressure of the EU, additional judicial reforms have been implemented, all aiming at strengthening JI and PI. The transition to democracy in the area has implied a general strengthening of the role of courts in the political system. Today, all the countries considered exhibit a rather high level of institutional independence, with Romania, Slovakia and Slovenia in the first ranks (table 8). In fact, the countries where judicial reforms have been more radical in the last decade seem to have been: Romania, Bulgaria, Lithuania and Slovakia that in this way have caught up with – and also overcome – other countries.

The following step is to connect judicial reforms to the state of the RoL. With the implementation of reforms we would expect, maybe with some time lag, a general improvement of RoL indicators. Table 3 and 4 show WGI and EB data: the situation does not seem very clear, at least so far. Some countries – Estonia, Latvia and, to a lesser degree, Lithuania and Bulgaria –

⁴³ In the following analysis we do not refer to Feld and Voigt (2003), since they have no data on some countries (Latvia, Poland and Romania). However, the data they present do not seem to invalidate our conclusions.

⁴⁴ In these countries the reforms passed in the early 1990s were never fully implemented, undermined and resisted as they were by the overwhelming influence of a politically appointed prosecutor general or the ministry of Justice (Open Society Institute 2001).

exhibit an improvement in WGI scores.⁴⁵ Others – Romania, Slovakia and Slovenia - are more or less stable. On the contrary, the Czech Republic, Hungary and especially Poland show a decline. Although the time span of the analysis can be considered rather short, the data do not seem to agree with mainstream hypotheses about the impact of judicial reforms. Czech Republic, Hungary and Poland had the highest level of institutional independence in 1997 and have more or less maintained their scores in the following decade.⁴⁶ Therefore, we should have expected in these cases an improvement in RoL scores. Only in the case of Latvia and, less, Estonia the improvement in WGI scores can be related to a previous situation of relative independence. On the other hand, it is difficult to relate the improvements in WGI scores by Bulgaria and Lithuania with the recent strengthening of their courts' institutional independence. This situation finds support in tables 9 and 10, analogous to tables 5 and 6. In 1997 a sort of continuous relationship between courts independence, on one hand, and WGI RoL and Corruption control scores, on the other, can be detected, with countries with higher levels of institutional independence exhibiting better scores. However, the same cannot be said for the following decade. In 2007 the situation in these countries seem to mirror Western Europe: Hierarchy performs better than Self-government in terms of WGI scores. Although it is maybe too early to propose general statements on the relationships between JI, PI and the RoL, the data gathered so far seems to qualify the argument about reverse causality: the adoption of a Self-government type can be triggered by a state of weak RoL, but its impact seems doubtful (at least in terms of WGI indicators).

We can add that the apparent counter-intuitive results associated with the relatively deluding performance of countries leading the first round of judicial reforms – Poland, Czech Republic and Hungary – could be tentatively explained by considering separately reforms of the institutions and reforms of personnel. For instance, at least in Poland and Hungary Judicial Councils created at the very beginning of the transition, by increasing judicial independence, contributed to consolidate the power of personnel (especially ordinary judges) that had been to a large extent socialized in previous totalitarian regimes. These people remained in office and constituted the “new” judiciary, possibly with negative consequences for the implementation of RoL values. It is a situation that –

⁴⁵ The Baltic States exhibit the stronger improvement in WGI scores, but only Estonia – and, to a lesser extent, Slovakia – shows a parallel improvement in the popular trust in justice (see table 4).

⁴⁶ Our analysis estimates a stability of the level of Czech courts institutional independence and a slight improvement of the same scores in Hungary and Poland.

without a change of personnel - can reproduce itself in other cases in the future (e.g. Romania, Bulgaria) and affect for a while the outcome of judicial reforms.

8. *The Rule of Law and courts' independence: still a complex relationship*

So far, our analysis confirms the complexity of the relationships between JI, PI and the RoL. The only generalization that comes out confirmed is that relating judicial reforms to a state of RoL weakness: countries with a weak RoL are today more likely to strengthen courts' institutional independence, but the impact of these reforms is far from clear.

However, although a better assessment of the impact of judicial reforms in the CEECs can provide us important insights, in the meanwhile other concurrent or alternative explanations can be suggested:

- a. Notwithstanding recent common political experiences, long-term institutional traditions are still significant and affect the way institutional innovations are implemented. For instance, the relative good state of the RoL in Estonia, Hungary and Slovenia – and to some extent also in the Czech Republic – should be explained with a tradition of good government – including judicial and non-judicial institutions – maybe predating the communist experience. This interpretation can be supported by the fact that, although almost all CEECs – the only exception being the Czech Republic – have implemented Judicial Councils modelled on the CoE prescriptions, these institutions seem to perform rather differently in terms of RoL indicators.
- b. The fact that institutional independence does not seem associated with RoL scores should not be surprising. We should take into account the strategic dimension of courts' independence (Rios-Figueroa and Staton 2008). Political fragmentation - both at the institutional and party levels – supports not only institutional independence but also independent judicial behaviour (Ginsburg 2003). Therefore, judicial autonomy – and the development of the Rule of Law - has to be related to the level of divisiveness in and between the political branches of government, which undermines the capacity of containing courts' power (Ferejohn et al. 2007, 747).
- c. Judicial reforms are effective but only to some extent: their relationship with the RoL is curvilinear. At first, they are supportive but, beyond a certain level, their

influence tends to decrease or even to reverse the sign. In other words, while some degree of institutional independence is necessary for the development of the RoL, independence is not sufficient but must be balanced with forms of accountability (Rios-Figueroa 2006). Data showing the relatively better performance of the Hierarchy type of courts' institutional setting tend to support this view, pointing at the risks of an excessive level of internal independence.

- d. More precisely, professionalism seems more important than independence for judges – and prosecutors – supporting the development of the RoL. In fact, identification with the institutional requirements of the judicial role – i.e. impartially adjudicating cases according to the law -⁴⁷ is related to the professional qualifications of the judge. As learning and experience increase a judge's competence to perform a specific role, they increase the process of internalising the requirements of that role. This can be the reason why, as put forward by Rios-Figueroa (2006) and also Voigt (2008), a too high level of – especially internal – independence is dysfunctional, if it means weak professional checks.⁴⁸ Too independent judges and prosecutors – being unaccountable - can become captured by powerful external interests and this can be especially true where professional identification is already weak. Therefore, we should focus on the process of organizational socialization, which seems to be the main element affecting the significance of professional standards for judges and prosecutors and therefore their autonomy – i.e. independence on the bench. Thus, the role of the broader set of incentives judges face should be taken fully into account.

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⁴⁷ Qualified but similar considerations can be made for public prosecutors.

⁴⁸ The significance of professional checks on judges is stressed by Haley (2006). Professionalism can be fuelled by a variable combination of selection in recruitment and organizational control. An emphasis on initial selection can decrease the role of later checks, with positive consequences for JI (Gross and Etzioni 1985).

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	Tab.1 Judicial Independence (Feld and Voigt 2003)	
Country	de jure	de facto
Austria	0,733	0,900
Belgium	0,825	0,800
Denmark	0,779	0,813
Finland		
France	0,634	0,780
Germany	0,729	0,800
Greece	0,833	0,500
Ireland		
Italy	0,793	0,858
Lux		
Netherl	0,631	0,467
Portugal	0,530	0,706
Spain	0,551	0,750
Sweden	0,605	0,700
UK		
Average EU-15	0,695	0,734
Bulgaria	0,397	0,133
Czech R.	0,761	0,167
Estonia	0,641	0,700
Hungary	0,651	0,800
Latria		
Lithuania	0,447	0,433
Poland	0,693	
Romania	0,548	
Slovak R.	0,569	0,319
Slovenia	0,869	0,431
Cyprus	0,817	0,743
Malta		

Tab. 2 JUDICIAL AND PROSECUTORIAL INSTITUTIONAL INDEPENDENCE IN THE EU-15 (2007)										
Country	J app	J career	J disc	Average	P app	P career	P disc	P acc	Average	Total average
Austria	3	3	4	3,333	3	3	3	2	2,750	3,042
Belgium	4	4	4	4,000	4	4	3	2	3,250	3,625
Denmark	3	3	4	3,333	3	3	3	2	2,750	3,042
Finland	3	3	4	3,333	3	3	3	2	2,750	3,042
France	3	3	4	3,333	3	3	4	1	2,750	3,042
Germany	3	2	4	3,000	3	2	4	2	2,750	2,875
Greece	3	3	3	3,000	3	3	3	2	2,750	2,875
Ireland	3	3	3	3,000	3	2	2	1	2,000	2,500
Italy	4	4	4	4,000	4	4	4	4	4,000	4,000
Lux	3	3	4	3,333	3	3	4	2	3,000	3,167
Netherl	3	4	4	3,667	3	2	4	2	2,750	3,208
Portugal	4	4	4	4,000	3	3	4	2	3,000	3,500
Spain	4	2	4	3,333	3	3	4	2	3,000	3,167
Sweden	3	2	3	2,667	3	2	3	2	2,500	2,583
UK	3	3	3	3,000	3	2	3	2	2,500	2,750
USA	1	1	1	1,000	2	2	2	1	1,750	1,375

app: initial recruitment. States of the property: 1 = appointment by the political branches or direct election; 3 = recruitment through competitive, technical examination controlled by the hierarchy; 4 = or by a representative judicial body.

career: promotions after initial appointment. States of the property: 1 = promotions decided by the political branches or through direct election; 2 = political influence but only at the top of the hierarchy; 3 = promotions controlled by the judicial hierarchy; 4 = or by a representative judicial body.

disc: discipline and removal. States of the property: 1 = discipline and/or removal by the political branches or through direct recall; 3 = by higher ranking judges or prosecutors (also through a judicial court) or by external bodies composed of non political professionals; 4 = by a representative judicial body.

acc: P decisions accountable to/influenced by (general and/or specific directives); States of the property: 1 = direct influence by political branches or direct election; 2 = in a hierarchical setting by a politically appointed top prosecutor; 3 = in a hierarchical setting by self-selected high prosecutors or political influence checked by compulsory principle; 4 = by a representative judicial body.

Tab. 3 WGI Indexes					
	RoL			Corruption Control	
	1996	2007		1996	2007
Austria	1,91	1,90		1,98	2,02
Belgium	1,55	1,52		1,4	1,45
Denmark	1,87	1,95		2,29	2,42
Finland	1,90	1,87		2,3	2,59
France	1,47	1,32		1,45	1,32
Germany	1,79	1,78		2,09	1,8
Greece	0,94	0,65		0,38	0,28
Ireland	1,71	1,77		1,85	1,75
Italy	0,98	0,43		0,49	0,45
Lux	1,61	1,85		1,95	2,27
Netherl	1,81	1,76		2,22	2,25
Portugal	1,14	0,95		1,57	1,13
Spain	1,35	1,12		1,08	1,16
Sweden	1,84	1,90		2,27	2,37
UK	1,83	1,75		2,21	1,89
Bulgaria	-0,11	-0,14		-0,76	-0,22
Czech R.	0,87	0,77		0,58	0,26
Estonia	0,51	1,00		-0,02	0,94
Hungary	0,84	0,74		0,63	0,44
Latvia	0,13	0,57		-0,65	0,31
Lithuania	0,29	0,49		-0,18	0,17
Poland	0,64	0,28		0,39	0,14
Romania	-0,15	-0,17		-0,24	-0,19
Slovak R.	0,23	0,35		0,4	0,28
Slovenia	0,87	0,84		1,05	0,9
Cyprus	0,76	0,96		1,62	0,78
Malta	0,43	1,55		0,37	1,2

Tab. 4 TRUST IN JUSTICE (Source: Eurobarometer)																	
	48 1997	51 1999	54 2000	55 2001	56 2001	57 2002	59 2003	60 2003	61 2004	62 2004	63 2005	64 2005	65 2006	66 2006	68 2007	69 2008	Average
Country																	
Austria	62	61	69	70	73	69	69	67	68	68	74	72	73	72	76	73	69,8
Belgium	14	22	39	34	37	35	36	34	30	39	48	40	44	43	51	49	37,2
Denmark	72	70	78	74	80	75	80	79	76	79	83	80	82	76	85	83	78,3
Finland	50	61	69	63	69	68	74	68	69	73	78	75	78	75	77	80	70,4
France	36	35	48	41	40	34	43	39	42	39	53	40	38	40	47	46	41,3
Germany	50	52	55	58	61	57	60	55	56	58	58	60	57	55	59	58	56,8
Greece	63	55	61	62	69	61	69	68	73	66	53	59	55	59	58	48	61,2
Ireland	59	49	59	55	61	58	50	48	50	46	52	48	50	45	45	57	52,0
Italy	31	38	35	40	40	44	44	41	46	35	43	47	45	37	33	31	39,4
Lux	51	59	70	56	61	56	55	54	57	55	65	59	53	52	56	52	56,9
Netherl	54	59	58	60	62	55	62	50	49	57	65	60	62	60	67	63	58,9
Portugal	40	42	32	31	35	35	46	47	36	36	41	37	40	42	37	37	38,4
Spain	48	40	48	42	46	42	43	41	47	45	47	46	48	48	56	55	46,4
Sweden	48	53	62	57	66	58	66	58	57	58	64	51	63	63	63	67	59,6
UK	48	48	50	49	53	46	47	43	37	50	54	49	49	46	49	49	47,9
Bulgaria								23	18	20	20	20	20	15	12	13	17,9
Czech R.								30	29	32	32	32	35	37	31	32	32,2
Estonia								41	47	44	49	49	49	51	57	58	49,4
Hungary								48	47	52	50	44	55	46	46	38	47,3
Latvia								37	29	40	37	32	32	24	28	27	31,8
Lithuania								24	27	28	30	27	23	24	25	28	26,2
Poland								24	21	16	23	22	29	30	38	32	26,1
Romania								35	29	26	35	32	34	26	26	28	30,1
Slovak R.								19	16	27	27	31	29	31	27	31	26,4
Slovenia								31	30	27	34	34	32	35	26	28	30,8
Cyprus								67	66	61	60	59	53	60	58	59	60,3
Malta								43	46	37	45	52	46	45	47	52	45,9

Tab. 5 JUDICIAL INDEPENDENCE AND RULE OF LAW IN UE-15 (2007)*

Independence	RoL Average	N	η^2
1. Full politicization	2,0000	1	
2. Limited political influence	2,0000	2	
3. Hierarchy	1,8900	9	
4. Self-government	1,3300	3	
Total	1,8000	15	0,352

Tab. 6 PROSECUTORIAL INDEPENDENCE AND CONTROL OF CORRUPTION IN EU-15 (2007)

Independence	CCorr Average	N	η^2
1. Full politicization	1,8900	1	
2. Limited political influence	1,7650	2	
3. Hierarchy	1,8556	9	
4. Self-government	1,0100	3	
Total	1,6767	15	0,243

* In tables n. 5,6, 9 and 10 cases have been classified accordingly to only two variables: appointment and career. Rule of law and Control of corruption scores are those of WGI. We thank Michele Sapignoli and Alessandro Marino for the help in preparing the tables.

Tab.7 JUDICIAL AND PROSECUTORIAL INDEPENDENCE IN EAST EUROPE (1997)

	J app	J career	J disc	Average	P app	P career	P disc	P acc	Average	Total average
Bulgaria	1	1	1	1,000	1	1	1	2	1,250	1,125
Czech R.	3	3	3	3,000	3	3	3	2	2,750	2,875
Estonia	2	2	3	2,333	2	2	2	2	2,000	2,167
Hungary	4	3	3	3,333	4	3	3	2	3,000	3,167
Latvia	3	3	3	3,000	3	3	3	2	2,750	2,875
Lithuania	1	2	1	1,333	1	2	1	2	1,500	1,417
Poland	4	2	3	3,000	4	2	3	2	2,750	2,875
Romania	1	1	1	1,000	1	1	1	1	1,000	1,000
Slovak R.	3	3	3	3,000	2	2	2	2	2,000	2,500
Slovenia	4	4	3	3,667	2	2	2	2	2,000	2,833
(DDR)	1	1	1	1,000	1	1	1	1	1,000	1,000

Tab.8 JUDICIAL AND PROSECUTORIAL INDEPENDENCE IN EAST EUROPE (2007)

	J app	J career	J disc	Sub-Total	P app	P career	P disc	P acc	Sub-total	Total	2007/1997
Bulgaria	4	4	3	3,667	4	4	3	2	3,250	3,458	2,333
Czech R.	3	3	3	3,000	3	3	3	2	2,750	2,875	0,000
Estonia	3	4	4	3,667	3	3	3	3	3,000	3,333	1,167
Hungary	4	4	4	4,000	3	3	3	3	3,000	3,500	0,333
Latvia	3	3	3	3,000	3	3	3	2	2,750	2,875	0,000
Lithuania	3	3	3	3,000	3	3	3	2	2,750	2,875	1,458
Poland	4	4	3	3,667	3	3	3	2	2,750	3,208	0,333
Romania	4	4	4	4,000	4	4	4	3	3,750	3,875	2,875
Slovak R.	4	4	4	4,000	4	4	4	3	3,750	3,875	1,375
Slovenia	4	4	4	4,000	4	4	3	3	3,500	3,750	0,917

Tab. 9 JUDICIAL INDEPENDENCE AND RULE OF LAW IN CEEC'S (1997 AND 2007)

Independence	RoL Average 1996	N	η^2	RoL Average 2007	N	η^2
1. Full politicization	- 0,1300	2				
2. Limited political influence	0,3200	2				
3. Hierarchy	0,5800	2		0,7080	4	
4. Self-government	0,6450	4		0,3170	6	
Total	0,4120	10	0,636	0,4730	10	0,258

Tab. 10 PROSECUTORIAL INDEPENDENCE AND CONTROL OF CORRUPTION IN CEEC'S (1997 AND 2007)

Independence	CCorr Average 1996	N	η^2	CCorr Average 2007	N	η^2
1. Full politicization	- 0,5000	2				
2. Limited political influence	- 0,3350	2				
3. Hierarchy	0,2000	2		0,4200	4	
4. Self-government	0,6175	4		0,2250	6	
Total	0,1200	10	0,706	0,3030	10	0,068