

Faithful to the tradition of modern constitutionalism, the new constitutions of the states of Central and South Eastern Europe have invariably incorporated the principle of rule of law as one of the basic tenets. This principle, derived in different constitutional and normative ways, contains a few key elements that represent its positive-law concretisation in the aforementioned constitutions. These are:

- Constitutional guarantees for basic rights and freedoms, which as a rule entails their direct constitutional implementation and a developed system of court protection;
- Separation of power into legislative, executive and judicial, and its constitutional distribution to corresponding state institutions, with different constitutional solutions in terms of checks and balances;
- Independent judiciary as a guarantor of implementation of the former as well as the latter element;
- The constitution and law as the sole foundation and limitation of the activity of all state institutions.

Having integrated the principle of rule of law in their respective constitutions, the states of Central and South Eastern Europe have committed themselves to two basic political goals:

1) a historic break with the old (communist) system, which implies substantial constitutional discontinuity, and 2) a clear orientation towards a modern constitutional democracy as a government system that would allow for free development of the individual and the society.

This, of course, is a normative agenda that eventually prevailed in Central and South Eastern Europe on normative, political and teleological planes alike. If, however, we turn to empirical evidence of the process, we can see a clear difference between these countries. This new dividing line is drawn against the criterion of (i)reversibility. In a number of countries, the principle of rule of law is not only a constitutional and normative tenet, but also a prevailing pattern in the functioning of the government system, whereas in the other former communist states this is not the case. In order to reach a more specific definition of this division, which emerged in mid-1990s, we can rely on a EU decision on the admittance of new members in 2004. Only those states that meet the criteria falling within the complex of rule of law (and not only them) qualified for the next enlargement wave. The remaining few, located in South Eastern Europe, are the subject of this conference.

The rule of law is certainly the crucial and most difficult problem in the process of democratic and liberal transformation of all countries that lived under authoritarian regimes. This is not a political problem only, which incumbent politicians can solve, but rather a problem of historic and structural nature. Given that all these countries have adopted Western European and North American constitutional models, it is necessary to focus on a historic and structural obstacle. The constitutional-liberal model was derived from a contraction between the society, which had