Promoting Justice Reforms in Central Asia: The European Union's Rule of Law Initiative as Part of a Comprehensive Democratization Strategy?

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Abstract

This article examines the European Union's (EU's) rule of law promotion in post-Soviet Central Asia. More specifically, it focuses on the EU's Rule of Law Initiative, which aims to support legal sector modernization and judicial reforms in the region. Drawing on the "democratic rule of law" (DROL) model developed by Magen and Morlino, the article analyzes whether the Rule of Law Initiative can contribute to democratization processes in Central Asia. Based on content analysis of EU documents and semi- structured expert interviews with European and Central Asian stakeholders, the study reveals the EU's very limited ability to trigger genuine reform. The main reasons are its lack of leverage in the region, limited financial resources, and reliance on the joint ownership approach in the context of authoritarian states.

Keywords

democratization – rule of law – judicial reform – European Union – Central Asia

In June 2007, the European Union (EU) adopted the Strategy for a New Partnership with Central Asia (hereafter, "the Strategy"), which aimed at increasing the EU's political role and representation in the region. One of the key priorities stated in the Strategy was the promotion of human rights, rule of law, good governance and democratization. The Rule of Law Initiative (ROLI) was one of three regional programs.[1] It was officially launched in November 2008.

1 The other two were the EU Water Initiative and the European Education Initiative for Central Asia.

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Led by Germany and France in cooperation with the European External Action Service (EEAS) and the European Commission, the ROLI seeks to set up a coordination mechanism among the EU institutions and the Member States to support ongoing legal sector modernization and reforms of the justice systems in Central Asia as part of the EU's broader democratization policy.

Along with the Strategy, a number of EU documents combine democracy2 and rule of law, thus implicitly assuming a link between these concepts.3 Declaring the primacy of law as one of the principles of a democratic system, the EU discourse suggests that enhancement of the rule of law contributes to democratization processes. Following this logic, the advancement of the rule of law through support to legal and judicial reforms in third countries became part of the EU's external democracy-promotion agenda. However, some empirical studies challenge the link between the rule of law and democracy, emphasizing that the two do not always go hand-in-hand.4 Their findings suggest that specific improvements in one of these spheres do not necessarily cause progress in the other.5 Moreover, the practice of external rule-of-law promotion

2 The EU is commonly argued to be a promoter of the liberal model of democracy. (See, e.g., Milja Kurki, "Democracy and Conceptual Contestability: Reconsidering Conceptions of Democracy in Democracy Promotion," *International Studies Review*, 12, no. 3 (2010): 362–86; Thomas Carothers, "Democracy Assistance: The Question of Strategy," *Democratization*, 4, no. 3 (1997): 109–32). Hence, references to democracy in this article primarily imply the liberal democratic model, as opposed to deliberative democracy, participatory democracy, or direct democracy. (For differentiation, see David Held, *Models of Democracy* (Cambridge: Polity, 2006).

3 E.g., European Commission, "Communication from the Commission to the Council and the European Parliament of 12 March 1998 – Democratization, the Rule of Law, Respect for Human Rights and Good Governance: The Challenges of the Partnership between the European Union and the ACP States," com (1998) 146 final, http://EUr-lex.EUropa.EU/LexUriServ/LexUriServ.do?uri=COM:1998:0146:FIN:EN:PDF (accessed May 14, 2009); European Commission, "Communication from the Commission to the Council and the European Parliament of 25 January 2006 – Thematic Programme for the Promotion of Democracy and Human Rights Worldwide Under the Future Financial Perspectives (2007–2013)," com (2006) 23 final, http://EUr-lex.EUropa.EU/LexUriServ/LexUriServ.do?uri=COM:2006:0023:FIN:EN:PDF (accessed May 14, 2009); Council of the European Union, "EU Strategic Framework and Action Plan on Human Rights and Democracy," 11855/12, Luxembourg, June 25, 2012, http://www.consilium.EUropa.EU/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf (accessed September 12, 2012).

4 Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge: Cambridge University Press, 2004), 95; Randall Peerenboom, "Law and Development of Constitutional Democracy in China: Problem or Paradigm?" *Columbia Journal of Asian Law,* 19 (2005): 201; HiiL, "Rule of Law: Inventory Report" (2007) http://www.hiil.org/uploads/File/1–947-Rule_of_Law_Inventory_Report_2007.pdf (accessed January 11, 2011), 22.

5 Thomas Carothers, "Promoting the Rule of Law Abroad: The Problem of Knowledge," *Carnegie Endowment for International Peace Working Papers. Rule of Law Series,* no. 34 (2003): 7, http://www.carnegieendowment.org/files/wp34.pdf (accessed February 20, 2011).

may incorporate a variety of activities, including training police or improving prison conditions, which – depending on the way they are implemented – might not contribute much to judicial and legal reforms and little, if at all, to advancing democracy.6

Taking account of these observations, this article joins the range of studies questioning the immediate link between rule-of-law support and democratization. To this end, the article scrutinizes the EU's Rule of Law Initiative for Central Asia and evaluates its effects in terms of a potential contribution to democratization processes in five countries: Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan.

The article proceeds as follows. The next section presents the analytical framework and some conceptual clarifications. The study follows the EU's holistic approach to external democracy and rule-of-law promotion and deliberately opts not to provide clear-cut definitions of these terms. Instead, it discusses the conceptual interrelationship of democracy and the rule of law based on a review of EU documents and relevant literature, and uses the "democratic rule of law" (DROL) model developed by Magen and Morlino to operationalize the link between the two concepts.7 The study is guided by three main hypotheses. First, it is assumed that, based on the EU's general approach to democracy and rule-of-law promotion, the ROLI will primarily concentrate on advancing civil rights and independent judiciary (the first two elements of the DROL model). Second, it is hypothesized that the EU will adapt its efforts to domestic contexts in Central Asian states, depending on their openness to EU assistance, which will cause a variation in the ROLI activities across the region. Third, it is argued that, lacking substantial leverage in Central Asia due to an absence of accession conditionality, the EU will largely rely on nonintrusive (dialogue-based) instruments of rule of law promotion, which – in the given context – will make the ROLI incapable of prompting genuine, far-reaching reforms.

Following a background note on the EU's Rule of Law Initiative, the empirical part of this article examines the evidence supporting and challenging these hypotheses. It first maps activities undertaken within the framework of the central component of the ROLI, the EU-Central Asia Rule of Law Platform, and attributes them to the categories proposed by Magen and Morlino,8 revealing

6 Rachel Kleinfeld Belton, "Competing Definitions of the Rule of law: Implications for Practitioners," *Carnegie Papers, Rule of Law Series*, no. 55, (2005), http://www.carnegieen-dowment.org/publications/index.cfm?fa=view&id=16405 (accessed February 20, 2011).

7 Amichai Magen and Leonardo Morlino, *International Actors, Democratization and the Rule of Law: Anchoring Democracy?* (New York: Routledge, 2009).

8 Ibid.

the aspects of the rule of law that were prioritized by the EU. Next, the article scrutinizes the variation of the ROLI activities across Central Asia and the substance of the EU's actions based on a case study of the ROLI support to judicial reform in Central Asia. Methodologically, the study relies on content analysis of ROLI related documents, complemented with insights from semi-structured expert interviews with European and Central Asian stakeholders that were conducted in several steps throughout the period of 2010–2015.9 The final part of the article summarizes the argument and discusses the potential contribution of the EU efforts to democratization processes in Central Asia. The findings question the EU's ability to trigger real reform and its implementation within the framework of the Rule of Law Initiative, considering its lack of leverage, limited financial resources, and reliance on the joint ownership approach in the context of authoritarian states.

Conceptual Clarifications and Analytical Framework

Evaluation of a potential contribution of the EU rule-of-law promotion to democratization is challenged by the "fuzziness" of the EU approach;10 in other words, a lack of clear concepts of democracy and rule of law.11 While both these notions are regarded as values in themselves in the official EU discourse, none of EU documents provides precise definitions or unambiguous explanations of how the two concepts are interlinked.12

As argued by Burlyuk, the absence of a clear conceptualization is "a product of vertical, horizontal, inter- and intra-institutional co-ordination of priorities inside the EU," which is unavoidable considering the EU's highly complicated

9 Overall, eighteen expert interviews were conducted with representatives of the EEAS, European Commission, EU Rule of Law Platform, and Central Asian civil society organizations involved in monitoring democratic and rule of law reforms.

10 Milja Kurki, "How the EU Can Adopt a New Type of Democracy Support," *fride Working Paper*, no. 112, (2012): 3, http://www.fride.org/publication/998/how-the-EU-can-adopt-a-new-type-of-democracy-support (accessed May 14, 2013).

11 Anne Wetzel and Jan Orbie, "The EU's Promotion of External Democracy: In Search of the Plot," *ceps Policy Brief*, no. 281, (2012), http://www.ceps.EU/book/EU%E2%80%99s-promotion-external-democracy-search-plot (accessed September 30, 2012); Erik O. Wennerström, *The Rule of Law and the European Union* (Uppsala: Iustus Förlag, 2007).

12 For a detailed account of the EU's understandings of democracy, human rights, good governance, and the rule of law see Vera Axyonova, *The European Union's Democratization Policy for Central Asia: Failed in Success or Succeeded in Failure?* (Stuttgart: Ibidem, 2014).

institutional setting.13 At the same time, the EU's "fuzzy" approach to defining democracy and the rule of law reflects the general conceptual confusion in the use of the terms in policy and academic discourses.14 Both these domains are characterized by "ideological abuse and general over-use" of the concepts15 and by the lack of commonly agreed upon understandings of the interrelation- ship of democracy and the rule of law.16

A review of the literature identifies two major contesting approaches toward the meaning and aims of the rule of law, commonly labeled as "thick" (or broad) and "thin" (or narrow) conceptions.17 This differentiation has implications for understanding the relationship between the rule of law and democracy. The broad definitions imply the compliance of ruling laws with certain ideals, such as universal human rights,18 which are also seen as an indispensable component of substantive concepts of liberal democracy.19 The observance of human rights and fundamental freedoms can thus be seen as a connecting element between the rule of law and liberal democracy. Alternatively, narrow conceptions deny the dependence of the rule of law on the content of the laws that rule.20 The proponents of this approach do not regard individual rights as embedded in the meaning of the rule of law and consider the latter compatible

13 Olga Burlyuk, "Variation in EU External Policies as a Virtue: EU Rule of Law Promotion in the Neighbourhood," *Journal of Common Market Studies,* 53 (2014): 6. doi: 10.1111/jcms.12216.

14 Kurki, "How the EU Can Adopt a New Type of Democracy Support," 3.

15 Judith. N. Shklar, "Political Theory and the Rule of Law," in A. C. Hutchinson and P. Monahan (eds.), *The Rule of Law: Ideal or Ideology?* (Toronto: Carswell Legal Publications, 1987), 1.

16 Kleinfeld Belton, "Competing Definitions of the Rule of Law."

17 Cf. HiiL, "Concept Paper: Monitoring and Evaluation of the Rule of Law and Justice in the EU: Status Quo and the Way Ahead?" (2012), http://www.hiil.org/data/sitemanagement/media/Concept_Paper%20EU%20monitoring.pdf (accessed January 25, 2014): 7; Svend- Erik Skaaning, "Measuring the Rule of Law," *Political Research Quarterly*, 63, no. 2, (2010): 449–60; HiiL, "Rule of Law: Inventory Report"; Tamanaha, *On the Rule of Law: History, Politics, Theory*; Friedrich A. Hayek, *The Road to Serfdom* (London: Routledge, 1993).

18 Thomas Carothers, "The Rule of Law Revival," *Foreign Affairs*, 77 (1998)*:* 96; Ronald Dworkin, *A Matter of Principle* (Cambridge, ma: Harvard University Press, 1985), 11–12.

19 Wolfgang Merkel, "Embedded and Defective Democracies," *Democratization*, 11, no. 5 (2004): 33–58.

20 Cf. John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon, 1980), 170–71; Joseph Raz, *The Authority of Law: Essays on Law and Morality* (Oxford: Oxford University Press, 1979), 212; Lon L. Fuller, *The Morality of Law* (New Haven, CT: Yale University Press, 1969), 39.

with nondemocratic political regimes.21 What, however, unites the broad and narrow conceptions and, in a way, provides a lowest common denominator between the rule of law and liberal democracy is the emphasis on the independence of the judiciary. In accordance with the principle of separation of powers, an independent judiciary is expected to guarantee application of properly enacted laws and provide for accountability of the government, which constitutes one of the intrinsic elements of a democratic system based on the rule of law.22

Going beyond this lowest common denominator, Magen and Morlino23 propose a concept of a "democratic rule of law" (DROL), which they regard as a precondition for democratic consolidation.24 According to the scholars, the DROL incorporates five elements: (1) protection of civil and political rights; (2) independent judiciary and modern justice system; (3) institutional and administrative capacity to formulate, implement, and enforce the law; (4) effective fight against corruption, illegality, and abuse of power by state agencies; and (5) security forces that respect citizens' rights and are under civilian control. Drawing on Magen and Morlino, this article argues that external support to rule-of-law-related reforms needs to be targeted at strengthening these five elements in order to contribute to democratization processes in third states. The study thus applies the DROL model to the EU Rule of Law Initiative for Central Asia and examines whether the five elements have been addressed in the process of its implementation.

Before going into empirical details, several preliminary expectations (or even explicit hypotheses) concerning the EU's promotion of the rule of law in Central Asia can be stated. First, a scrutiny of EU documents related to its external democratization policy reveals that the EU does not equally pursue all components of the DROL model.25 Instead, the EU puts a clear emphasis on the independence of the judiciary and on human rights and fundamental freedoms that are considered essential for a democratic system based on the rule of law.26 The European Commission's Communication of 2006 "Thematic Programme for the Promotion of Democracy and Human Rights Worldwide

21 E.g. Peerenboom, "Law and Development of Constitutional Democracy in China."

22 Cf. *The Road to Serfdom*, 54; Raz, *The Authority of Law*, 211.

23 Magen and Morlino, *International Actors, Democratization and the Rule of Law*.

24 Ibid.

25 Axyonova, *The European Union's Democratization Policy for Central Asia*.

26 European Commission, "Communication from the Commission to the Council and the European Parliament of 12 March 1998), 4; cf. Council of the European Union, "European Union and Central Asia: Strategy for a New Partnership." Brussels, 2007, http://consilium.EUropa.EU/uedocs/cms_data/librairie/PDF/EU_CtrlAsia_EN-RU.pdf (accessed October 10, 2009).

Under the Future Financial Perspectives" is exemplary in this sense. Accordingto the document,

> [d]emocracy and the protection of human rights are inextricably linked: the fundamental freedoms of expression and association are the preconditions for political pluralism and democratic process, whereas democratic control and separation of powers are essential to sustain an independent judiciary and the rule of law which in turn are required for effective protection of human rights.27

Hence, it can be expected that, in accordance with the official EU discourse, the Rule of Law Initiative will primarily focus on strengthening the independent judiciary and advancing the respect for human rights (Hypothesis 1 / H1). Second, the EU arguably adapts its democratization efforts to specific con- texts, depending on its own interests at stake and political environments in the countries concerned. Thus, Urdze and Bossuyt and Kubicek observe that the EU's instrument application or substantial scope of its democracy-promotion activities vary across Central Asia.28 While all five republics share similarities in terms of their Soviet legacies and political traditions of authoritarian rule,29 their transition processes after the collapse of the Soviet Union resulted in varying degrees of autocratization.30 The regimes are commonly described as ranging from semi-authoritarian in Kyrgyzstan to consolidated authoritarian (or dictatorial) in Uzbekistan and Turkmenistan.31 Kazakhstan and Tajikistan are often placed somewhere in between, with autocratic power structures but less repressive political systems.32 These differences are also reflected in each

27 European Commission, "Communication from the Commission to the Council and the European Parliament of 25 January 2006," 4.

28 Sigita Urdze, *Die Externe Demokratieförderung der EU in den zentralasiatischen Staaten* (Baden-Baden: Nomos, 2010); Fabienne Bossuyt and Paul Kubicek, "Advancing Democracy on Difficult Terrain: EU Democracy Promotion in Central Asia," *European Foreign Affairs Review*, 16 (2011): 639–58.

29 Alexander Warkotsch, *Die Zentralasienpolitik der EUropäischen Union. Interessen, Strukturen und Reformoptionen* (Frankfurt a.M.: Peter Lang, 2006), 7–8; Alexander Warkotsch, "Normative Suasion and Political Change in Central Asia," *Caucasian Review of International Affairs*, 2, no. 4 (2008): 62–71.

30 Axyonova, *The European Union's Democratization Policy for Central Asia*, 7.

31 Warkotsch, "Normative Suasion and Political Change in Central Asia," 62.

32 Bossuyt and Kubicek, "Advancing Democracy on Difficult Terrain"; EUgheniy Zhovtis, "Democratization and Human Rights in Central Asia: Problems, Development Prospects, and the Role of the International Community," in: N. J. Melvin (ed.), *Engaging Central*

states' openness to (or acceptance of) Western democracy-related aid. While some forms of democratization assistance are welcomed by state authorities in Kyrgyzstan, they encounter strong resistance in Uzbekistan.33 The domestic context and resonance with EU values (greater or lesser openness to the EU's normative agenda) thus seem to be decisive for the variation in the substance of the EU's democracy support in Central Asia.34 Analogously, one can assume that the EU's rule-of-law advancing efforts will differ among Central Asian states depending on the latter's domestic conditions and acceptance of the EU's engagement (H2).

Finally, in Central Asia the EU lacks one of its most effective instruments of normative foreign policy, namely accession conditionality, because none of the Central Asian states has a membership perspective even in the long run.35 As in other regions with no prospects of accession, the EU has limited leverage in Central Asia and is not in a position to impose anything.36 Instead, it relies largely on a participatory, demand-driven approach by involving partner states in determining priority areas for support. As all Central Asian states (with the exception of Kyrgyzstan) are described as stable authoritarian,37 their political elites are not expected to have genuine interest in far-reaching reforms such as enabling true independence of the judiciary and an effective separation of powers that might lead to their downfall from power.38 Hence, it can be assumed that the ROLI will draw on less intrusive tools, such as dialogue and training in the areas agreed upon with the respective target governments, and thus will not be able to get below the surface in initiating rule-of-law reforms (H3).

The Rule of Law Initiative at a Glance

The Rule of Law Initiative was started by the European Union following the adoption of the Strategy for a New Partnership with Central Asia in 2007.

Asia: The European Union's New Strategy in the Heart of Eurasia (Brussels: Centre for European Policy Studies, 2008), 26.

33 Axyonova, *The European Union's Democratization Policy for Central Asia*.

34 Bossuyt and Kubicek, "Advancing Democracy on Difficult Terrain."

35 Frank Schimmelfennig, Stefan Engert, and Heiko Knobel, "Costs, Commitment, and Compliance. The Impact of EU Democratic Conditionality on European Non-Member States," *EUI Working Paper*, RSC (2002): 29.

36 Cf. Burlyuk, "Variation in EU External Policies as a Virtue," 4.

37 Freedom House, *Nations in Transit*, http://www.freedomhouse.org/report-types/nations-transit (accessed April 24, 2015).

38 Leonid Golovko, "The Space for Legal Reform in Central Asia: Between Political Limits and Theoretical Deformations," *OSCE Yearbook*, (2010): 105–15.

The aims of the Initiative were to provide a coordination mechanism for various rule-of-law-related projects and programs funded by the European Commission and the EU Member States in the region and to enhance European support to legal and judicial reforms in the Central Asian countries through "a concerted regional approach, taking into account national situations."39

Two kinds of actions were envisaged as part of the Initiative: an EU-Central Asia Rule of Law Platform – a multilevel policy dialogue between the EU and the Central Asian states on mutually agreed priority themes, and specific complementary projects supported by the EU and the Member States.40 The dialogue was supposed to occur at three levels: (1) the ministerial level, intended to "discuss and review policy developments in legal reform, including legislation and the basic and further training systems for the legal professions";41 (2) technical working groups at the regional level chaired by the Central Asian republics and organized with the aim to "review the legal sector in the region, recommend the coordination of donor resources, identify regional programmes of common interest areas and give input to discussions at national level";42 and finally (3) national level dialogue on legal reform, which was supposed to involve line ministries as well as further practitioners and institutions (e.g., courts, public prosecutors, lawyers' associations, and police academies) to support them "with information on existing funding opportunities, inputs for the development of work programmes, mechanisms for implementation and financing of activities."43 The specific complementary actions were intended to offer tools for the Central Asian countries in their rule-of-law reform efforts and comprise programs of the EU Member States, the European Commission or other international donors providing technical assistance, and advisory services.44

The official launch of the ROLI took place at a Ministerial Conference in Brussels in November 2008. However, within the first two years the progress of cooperation was rather slow, because Central Asian states showed little interest in the Initiative. In addition, while France and Germany were in charge of

39 European Commission, External Relations, "Concept Note: EU-Central Asia Rule of Law Platform" (unofficial version). Brussels (2008), cited in Martin Schuster, "The EUs Rule of Law Initiative for Central Asia: From Initiative to More Substance?" *EUCAM Policy Brief*, no. 18 (2011): 2, http://www.EUcentralasia.EU/fileadmin/user_upload/PDF/Policy_Briefs/EUCAM-Brief.18.pdf (accessed October 10, 2012).

40 European Commission, "The European Union and Central Asia: The New Partnership in Action," Brussels (2009): 63–68, http://www.eeas.EUropa.EU/central_asia/docs/2010_strategy_EU_centralasia_en.pdf (accessed October 14, 2010).

41 Ibid. 65.

42 Ibid.

43 Ibid.

44 Author's interview with an EU official, December 16, 2010.

coordination at the higher (ministerial) level, there was no executive to implement concrete coordination projects as part of the ROLI.45 In December 2009, the EU signed an agreement with the Council of Europe (CoE) aiming at a joint action to support the development of judicial systems, law enforcement, and modernization of legislation in the five Central Asian states. Yet, it was not before the second Ministerial Conference in June 2010 that the five countries agreed on specific thematic areas for reform to be addressed within the framework of the Initiative, and they also endorsed a European Commission proposal for the EU- Central Asia Rule of Law Platform (RoLP). The Platform was finally launched in December 2011, with €1.8 million of funding provided by the European Commission for a three-year period under the EU's Development Cooperation Instrument.46 It was led by an international consortium of consultancies that – in cooperation with the European Commission, the European External Action Service, Germany, and France – implemented all activities under the RoLP.

Within the first phase of the Platform (2011–2014), its agenda focused on three priority areas: (1) Administrative Process and Administrative Procedure, (2) Criminal Law and Criminal Procedure, and (3) Judicial Reform. Structurally, the Platform included four components: forums for dialogue at all three levels, as indicated above; development of training for legal professions; communication, mapping, and networking, including sharing information with other donors active in the rule-of-law promotion in Central Asia; and an advice facility, providing background analyses and studies on current developments.47 Complementing the Platform, several projects and programs were initiated by European donors. These particularly included: a regional rule of law support program by the German development cooperation agency giz (Deutsche Gesellschaft für Internationale Zusammenarbeit), bilateral support to judicial and legal reform in Kazakhstan and to criminal justice reform in Uzbekistan, provided by the European Commission, and the cooperation project "Equal before the Law: Access to Justice in Central Asia," funded by the Finnish Ministry for Foreign Affairs. These projects and programs ran in parallel with the first phase of the Rule of Law Platform, yet the latter constituted the core element of the ROLI.

In early 2015, the second phase of the RoLP (2015–2018) started under the lead of the same international partners. It is expected to continue a similar line of activities as in the first phase. As of late 2015, efforts were still in the stage of development of a work plan and therefore, the analysis in this study focuses

45 Author's interview with a European expert, January 30, 2014.

46 Ibid.

47 More information may be found on the official website of the Rule of Law Platform: http://ruleoflaw.EU/.

predominantly on the first phase of the RoLP as the main component of the EU's Rule of Law Initiative.

Findings i: Prioritizing Civil Rights and Independenceof the Judiciary?

The potential contribution of the ROLI to the democratization of the Central Asian states is assessed in this study based on the ability of the Initiative to advance the five elements of the democratic rule of law model (DROL) developed by Magen and Morlino. Drawing on the EU's official statements related to its external democratization policy, it was hypothesized that the Rule of Law Initiative for Central Asia would focus largely on fostering the first two components of the DROL, namely (1) protection of civil and political rights and (2) independent judiciary and modern justice system (H1). In reviewing empirical evidence to test this hypothesis, RoLP activities initially planned for and actually conducted within the first phase of the Platform (2012–2014) were scrutinized as part of this study. The thematic foci of the activities were used to attribute them to each of the five DROL categories. Tables 1 and 2 summarize the results of this mapping exercise.

Table 1 *The Number of Initially Planned ROLP Activities for 2012–2014 (by categories based on Magen and Morlino 2009)*

State / regional	Protecti onof civil and political rights	Independent judiciary and modern justice system	Institutional and admin. capacity to formulate, implement and enforce the law	Effective fight against corruption, illegality and abuse of power	Security forces respective of citizens' rights and under civilian control
KAZ	1	3	1	–	–
KYR	1	1	3	1	–
TAJ	–	2	3	–	–
TUR	–	3	2	–	–
UZB	2	2	1	–	–
REG	1	5	5	–	–
TOTAL	5	16	15	1	–

source: Rule of Law Platform Central Asia, Overall Plan of Activities for the Period 2012–2014, http://ruleoflaw.EU/wp-content/uploads/2013/07/Overall- Workplan.pdf (accessed 20 June 2015).

The findings confirm that in the planning phase the EU's RoLP prioritized the promotion of independent judiciary and modern justice systems in Central Asia. Of the overall number of RoLP activities with a clear thematic scope (37),48 envisaged for the three-year period, 16 were planned to address various aspects of this DROL component. Yet, in contradiction to what was expected, the protection of civil and political rights did not feature as prominently in the EU's Rule of Law Platform. Instead, the strengthening of institutional and administrative capacities to formulate, implement, and enforce the law was a greater priority. At the implementation phase, the accent shifted even more toward advancing this component to the detriment of supporting independent judiciary, while the protection of political and civil rights received greater attention than initially planned. The last two components of the DROL model – effective fight against corruption and civilian control of security forces respective of human rights – were barely addressed by the Rule of Law Platform. Thus, the empirical evidence only partly supports the first hypothesis of this study.

Table 2 *The Number of RoLP Activities Actually Conducted within 2012–2014 (by categories based on Magen and Morlino 2009)*

State / regional	Protectio nof civil and political rights	Independent judiciary and modern justice system	Institutional and admin. capacity to formulate, implement and enforce the law	Effective fight against corruption, illegality and abuse of power	Security forces respective of citizens' rights and under civilian control
KAZ	1	3	3	–	–
KYR	1	1	3	1	–
TAJ	1	2	4	–	–
TUR	1	–	–	–	–
UZB	1	1	–	–	–
REG	3	6	7	–	–
TOTAL	8	13	17	1	–

source: author's calculations based on rule of law platform central asia, *overall workplan for 2011–2014*, unpublished, (2014).

48 This number includes only actions, whose thematic scope could be identified. Ministerial conferences that had cross-issue agendas, and coordination and organizational meetings (e.g., meetings of the ROLI Steering Committee) were not included.

This evidence needs to be put in perspective. First, it is important to note that the DROL categories proposed by Magen and Morlino are ideal types that are only conditionally applicable to practical RoLP activities, as the latter commonly address more than one issue and thus could be attributed to several categories simultaneously. For instance, workshops with the participation of judges or legal specialists aimed primarily at the modernization of a justice system, yet they also sought to improve institutional capacities to implement the law while not ignoring the civil rights component. Nevertheless, for analytical purposes, the attribution to a particular category needed to be made, and it was done based on the core thematic scope of each RoLP activity.

This mapping of activities had an effect on how prominently some components of the DROL model featured in Tables 1 and 2. Thus, the civil rights component was often implied in the agenda of RoLP conferences and seminars, while not being their central element. This impacted the score of this component in the tables, and one could argue that civil rights were actually more present in the RoLP agenda. However, the interviews conducted for this study suggested that civil rights (and human rights in general) were deliberately not made a central theme in the RoLP framework, as other EU mechanisms (such as bilateral Human Rights Dialogues, also launched following the Central Asia Strategy)49 were reserved to deal with these issues.50

At the same time, the relatively high score of the second component of the DROL model (see Tables 1 and 2) could also be questioned, considering that this component actually includes two elements: independence of the judiciary and modernization of justice system. These elements do not necessarily imply the same thing, and hence a more detailed examination of the actual substance of the activities attributed to this category is needed. This follows in the final section of the empirical analysis (see Findings iii below).

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49 For a detailed account of the EU Human Rights Dialogues with Central Asian states, see Vera Axyonova, "The EU-Central Asia Human Rights Dialogues: Making a Difference?" *EUcam Policy Brief* no. 16 (2011), http://www.EUcentralasia.EU/uploads/tx_icticontent/EUCAM-Brief-16.pdf (accessed June 15, 2015).

50 It was similar for the last two components of the DROL model. The European Commission deliberately excluded the fight against corruption and democratic security-sector reform from the scope of the RoLP, suggesting that these issues needed to be dealt with in for- mats other than the Rule of Law Initiative. Author's interview with a European expert, July 1, 2015.

Findings ii: Adapting to Domestic Contexts

It was further hypothesized in this study that the EU would adapt its rule-of- law-advancing efforts to domestic contexts in the target countries, causing a variation in the substance of its activities among the Central Asian states. It could be expected that Kyrgyzstan, as the most open regime in the region, would be most receptive of the EU's rule of law promotion, while Uzbekistan and Turkmenistan would provide the most challenging environment for implementation. Hence, the EU's engagement would be more active and far-reaching in the former, less so in Kazakhstan and Tajikistan and considerably restricted in Uzbekistan and Turkmenistan.

The above compilation of the RoLP activities by country demonstrated that their scope varied across Central Asia. Yet, this variation was less significant at the planning stage than hypothetically assumed (see Table 1). Five to six activities were initially planned for each country, with somewhat greater emphasis on the modernization of the justice systems in Kazakhstan and Turkmenistan, and on institutional and administrative capacities in Kyrgyzstan and Tajikistan; whereas in Uzbekistan the protection of civil and political rights and the independence of the judiciary were equally prioritized.

What is more evident, though, is that the EU had to adjust its plans at the implementation phase. Thus, in Uzbekistan and Turkmenistan the RoLP did not encounter support on the part of the governments. Within the first two years of the project, the states did not endorse the RoLP agenda.51 Until the end of the first phase of the RoLP, the governments insisted on the opening of RoLP offices on the ground, which would have required registration of the RoLP with line ministries in the countries. The Uzbek government particularly emphasized that the EU's Rule of Law Initiative did not fall under regulations of the bilateral Partnership and Cooperation Agreement with the EU, and hence its activities needed accreditation with the Ministry of Justice.52 These requirements created considerable administrative obstacles for the RoLP, which in the end resulted in the EU's minimal engagement with these two countries in the framework of the Rule of Law Initiative. Out of five initially planned RoLP activities for each of these states only two could be implemented in Uzbekistan and only one in Turkmenistan (see Table 2), in the latter case it was an activity in the sphere of civil rights support, which had not been originally envisaged at the planning phase (see Table 1). To compensate for the lack of activities in the two countries, the RoLP had to opt for a greater engagement

51 Author's interview with a European expert, January 30, 2014.

52 Author's interview with a European expert, July 1, 2015.

at the regional level, which allowed involving representatives from Uzbekistan and Turkmenistan, although with less intensity than would have been possible within a bilateral format.

Concerning Kyrgyzstan, all initially planned activities could be implemented there. Yet, contrary to above expectations, Kyrgyzstan was not described by European partners as "the easiest country to work with" in the sphere of the rule of law, due to communication difficulties and opaque decision-making.53 In comparison, in Kazakhstan and Tajikistan the actual engagement was more intensive with more activities implemented by the end of 2014 than originally envisaged under the RoLP work plan (see Tables 1 and 2). Overall, Kazakhstan turned out to be a more proficient partner for the EU in terms of implementing the rule of law agenda, especially considering Kyrgyzstan's and Tajikistan's lack of capacities and Uzbekistan's and Turkmenistan's lack of interest. The variation in intensity of RoLP activities among the Central Asian states (particularly at the implementation phase) supports the assumption that the EU adjusts its rule-of-law-advancing efforts to local circumstances. Yet, this adjustment depends more on the acceptance of its assistance by the target states and less on the state of liberalization of the regime in question.

Findings iii: Fostering Real Reform?

In the final step, it was hypothesized that – considering the nature of the Central Asian regimes and the EU's limited leverage in the region – the Rule of Law Initiative would mainly draw on non-intrusive tools of engagement in areas agreed upon with the governments, which by definition would not allow far- reaching rule of law reforms (H3). An examination of the RoLP support to judicial independence and modernization of justice systems (which was prioritized by the EU at the planning phase and still featured quite prominently at the implementation level) provides empirical evidence in support of this assumption. As one of the core elements of rule-of-law promotion, the advancement of judicial independence may be engaged in at least two levels. At a micro-level, the impartiality and independence of individual judges from external influences and pressures needs to be ensured, which is also related to an effective fight against corruption. At a macro-level, the independence of the judiciary (as a whole) from the rest of the state institutions needs to be strengthened in line with the principle of separation of powers.

53 Ibid.

In order to ensure the separation of powers in the Central Asian states, the macro-level approach would require a comprehensive reform of the existing systems of supreme and constitutional courts, as presently they find themselves under the strong influence of the executive in all five countries (Kyrgyzstan again being, at least to some extent, a positive exception).54 Such a reform would be impossible without introducing changes into constitutional law. However, the reform of constitutional mechanisms was only cursorily addressed within the first phase of the RoLP.55 Apart from the four ministerial conferences held between 2008 and 2015 that covered the necessity of constitutional reforms, among other things, three other RoLP activities tackled the issue: a regional seminar on constitutional law, a conference on the role of the constitution in supporting state development in Tajikistan, and a seminar on constitutional reform and the institution of ombudsman in Turkmenistan – all conducted in late 2014.56 All these actions relied on a mechanism of social learning through dialogue and exchange of ideas on best practices, without providing clear reform proposals or benchmarks for their implementation. The questions of constitutional reforms in Central Asia were further expected to be dealt with by the Venice Commission as part of the joint action of the EU and the Council of Europe.57 However, here the European engagement also primarily concentrated on organizing awareness-raising seminars and study tours with participation of selected Central Asian states. Only in the case of Kyrgyzstan did the Venice Commission provide substantial guidance in constitutional reform, which was requested by the Kyrgyz Interim Government in the aftermath of the 2010 political crisis that led to the ouster of the president, Kurmanbek Bakiyev.58

54 Cf. Wim A. Timmermans, "Independence of the Judiciary in the Central Asian States (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan)," *Expert Study – Rule of Law Platform Central Asia* (2014) http://ruleoflaw.EU/wp-content/uploads/2014/04/ Independence-of-the-judiciary-in-the-Central-Asian-States-EN-reduced.pdf (accessed May 25, 2015); Adam Bodnar and Eva K. Schmidt, "Rule of Law and Judicial Independence in Eastern Europe, the South Caucasus, and Central Asia," *OSCE Yearbook 2011* (2011): 289–301.

55 Rule of Law Platform Central Asia, *Overall Workplan for 2011–2014*, unpublished, (2014).

56 Ibid.

57 During the time under study, Kyrgyzstan and Kazakhstan were the only Central Asian members of the Venice Commission. Yet, as part of the joint action with the EU, the Commission also established cooperation with national institutions of Tajikistan, Turkmenistan, and Uzbekistan.

58 Project details, including a full account of its activities, can be found on the official website of the Venice Commission: http://www.venice.coe.int/WebForms/pages/?p=03 _CAROLInitiative.

The RoLP's limited coverage of constitutional reform issues is largely explained by the EU's demand-driven approach to cooperation that gives Central Asian governments an opportunity to suggest their own priorities for assistance.59 There may be many factors that justify this approach, including the assumption that the governments would be better placed than external actors to identify areas where assistance is most needed, the necessity to ensure the governments' ownership and thus sustainability of cooperation, and the EU's unwillingness and inability to interfere in internal politics of sovereign states beyond its borders.60 However, the EU's reliance on the demand-driven approach in promoting the rule of law and democratization in Central Asia is challenged by local realities. Central Asian regimes rest on a strong consolidation of power in the hands of the executive (with the exception of Kyrgyzstan after 2010) and associate their stability with "unchangeability" (and, in a way, immunity) of political elites.61 Reforms that carry the possibility of forcing elites to be accountable to the judiciary could endanger their impunity, and therefore are incompatible with their interests in keeping power.62 Not surprisingly, in the framework of the RoLP, Central Asian governments have not identified reforms of constitutional mechanisms among the main priority areas. The only case when the initiative actually came from one of the states was the seminar on constitutional reform and the institution of ombudsman in Turkmenistan in late 2014. However, this allegedly happened as a result of the un soft pressure on the Turkmen government and the latter's intention to demonstrate reforms and thus boost its international legitimacy in view of the upcoming Asian Olympic Games to be held in Ashgabat in 2017.63 Other than that, the macro-level constitutional reforms aiming at the strengthening of the separation of powers by advancing the independence of the judiciary were largely excluded from the EU support programs in Central Asia.

Nevertheless, the questions of judicial independence were addressed at the micro-level in the framework of the Rule of Law Platform. As part of its Judicial Reform priority, the RoLP particularly sought to tackle existing deficiencies in judicial capacity that supposedly hampered the impartiality and independence of individual judges. In this context, the following issues were identified as the key challenges common for all Central Asian countries: insufficient technical skills and financial resources, improper influence on judges and corruption, inappropriate training and equipment, inefficient court management and allocation of cases, and overloaded judges, which all resulted in a lack of public

59 Author's interview with a European expert, July 1, 2015.

60 Author's interviews with EU officials, December 16, 2010 and March 24, 2011.

61 Golovko, "The Space for Legal Reform in Central Asia," 106–107.

62 Author's interview with a Central Asian civil society representative, September 6, 2013.

63 Author's interview with a European expert, July 1, 2015.

trust in the court system.64 In order to improve this situation, a set of regional and bilateral activities was developed, including professional training sessions, raising awareness about best European practices through seminars and study tours, providing recommendations on possible legislative reforms (e.g., on the liability of judges in Kyrgyzstan), and related background research.65

All these activities were relevant with regard to the situation in the Central Asian states and necessary to ensure deliverables of the RoLP as a project. However, they were hardly sufficient to eliminate the above deficiencies. In fact, many of these activities ended up focused on capacity building and modernizing the judicial system, but not necessarily making it more independent. This puts into perspective the above findings concerning the EU's prioritization of the justice reforms in its rule of law agenda (see Findings I).

To problematize it further, the EU's approach of sharing best practices through trainings and study trips by no means guaranteed that these practices would actually be applied by those trained. Moreover, it could be questioned whether these practices were generally applicable in the Central Asian context without far reaching reforms that, as shown above, were not welcome in the countries. While the RoLP monitored the situation on the ground by commissioning studies on legal and judicial developments,66 there was no functional mechanism for the EU to ensure that its recommendations were implemented by Central Asian authorities. Moreover, as shown above, the EU experienced considerable difficulties in convincing some of the Central Asian governments of the necessity of their involvement with the Rule of Law Platform. Throughout the first RoLP phase, its agenda was not endorsed by Uzbekistan and Turkmenistan. These two states often chose to ignore regional meetings organized by the EU, as they remained skeptical of the EU's political engagement in Central Asia.67

Finally, beyond the RoLP dialogue and awareness-raising, a considerable part of the EU support to the Central Asian justice sectors was devoted to making the work of courts more efficient. The improvement of court efficiency was commonly associated with better access to justice and the proper and timely execution of court decisions.68 Yet, in practice, the EU assistance tended to focus on

64 These have been retrieved from the official website of the RoLP: http://ruleoflaw.EU/our-work/our-common-agenda-main-areas-of-work-and-recommendations-of-the-regional-seminars/.

65 Author's interview with a European expert, January 30, 2014.

66 E.g., Timmermans, "Independence of the Judiciary in the Central Asian States."

67 Author's interviews with European experts, January 30, 2014 and November 15, 2012.

68 Rule of Law Platform Central Asia, "Recommendations of the EU-ca Rule of Law Regional Seminar on Judicial Capacity", Brussels, 12–13 November 2012, at: http://ruleoflaw.EU/ wp-content/uploads/2013/10/121114_rs-Brussels_Recommendations_Judicial-Capacity_e.pdf (accessed 12 January 2014).

technical issues, such as training of court personnel in techniques ensuring faster handling of court cases. This trend was preconditioned by the result- oriented project management approach of the European Commission that, like other international donors, relied on quantifiable indicators of success.69 In this context, the impartiality and independence of judges was difficult to measure in quantifiable terms, which made it an unattractive target for an assistance project. This resulted in a situation when judicial independence remained important on paper, but was often unattended when it came to actual support.

Conclusion: Advancing Democratization by Promotingthe Rule of Law?

Zooming out from the above analysis, this study sought to evaluate the potential contribution of the EU's rule-of-law support, and specifically of the Rule of Law Initiative, to democratization processes in Central Asia. Taking account of scholarly debate and the EU's conceptualization of democracy and the rule of law, it evaluated the potential contribution of the ROLI to democratic developments, drawing on the "democratic rule of law" model developed by Magen and Morlino. Particularly, the article argued that in order to foster democratization processes in Central Asia, the EU's rule-of-law-promoting efforts needed to be targeted at strengthening the five DROL elements.

The examination of activities conducted in the framework of the EU's Rule of Law Platform, the core component of the ROLI, revealed that it concentrated primarily on building administrative capacities, reforming the justice system, and partly promoting civil rights (the first three elements of the DROL model), while the fight against corruption and democratic security sector reform (the latter two elements) were largely left unattended. Reflecting the general trend in the EU's democratization policy of including a human rights component into all programs and projects,70 the RoLP activities incorporated civil rights in many of its activities, while not making them a central theme in its agenda. At both the planning and implementation levels, the primary emphasis was on supporting the judicial reforms and building capacities in

69 Cf. Gordon Crawford, "Promoting Democracy from Without – Learning from Within (Part i)," *Democratization*, 10, no. 1 (2003): 77–98.

70 European Commission, "Programming Guide for Strategy Papers: Democracy and Human Rights," (2008): 1 http://ec.EUropa.EU/development/icenter/repository/F20_human_rights_en .pdf (accessed October 18, 2009).

formulating, implementing, and enforcing the law. At the implementation stage of the RoLP, the latter had a clear priority, whereas the former turned out to be mainly focused on modernizing the justice system, without making it less dependent on the executive.

Lacking strong leverage in Central Asia due to the absence of accession conditionality and limited interest of the states in what the EU had to offer (e.g., technical assistance), the EU had to rely exclusively on the demand- driven, joint ownership approach in its attempts to advance the rule of law. This made the rloP implementation completely dependent on the good will of the Central Asian governments and their readiness to accept the RoLP agenda. This dependence resulted in varying degrees of intensity of RoLP activities across Central Asia. Thus, in Kazakhstan, Kyrgyzstan, and Tajikistan the RoLP managed to conduct considerably more activities than in the other two Central Asian countries. And in the broader framework of the Rule of Law Initiative (that included, for instance, the Venice Commission's project on constitutional reform), Kyrgyzstan received more substantial support.

In addition, with only €1.8 million71 envisaged for activities in five countries within a three-year period, the Rule of Law Platform did not have strong financial backing. With such limited resources and the necessity to report progress to the donors and drivers behind the ROLI (the European Commission, Germany, and France), the RoLP engaged in a very selective set of activities, which by no means could trigger real reforms in the absence of interest on the part of Central Asian states ("domestic pull") and of more substantial "push" on the part of the EU.72

All these findings suggest that the (potential) contribution of the EU's rule- of-law promotion to democratization processes in Central Asia is very modest at best. In these terms, the European Union joins external actors, who declare a link of rule-of-law support and democratic advancement in their programmatic documents, yet – having limited resources and being constrained by domestic impediments in partner countries – opt for less challenging targets in supporting judicial modernization and institutional capacity-building when it comes to assistance implementation.

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71 This amount was provided to the Rule of Law Platform and did not include funds for other projects, e.g., conducted in cooperation with the Council of Europe.

72 Tanja. A. Börzel, and Yasemin Pamuk, "Pathologies of Europeanisation: Fighting Corruption in the Southern Caucasus," *West European Politics,* 35, no. 1 (2012): 79–97.