

SÜDOSTEUROPA

Mitteilungen

02 | 2018

58. Jahrgang

Christian Hagemann

The New Macedonian Government's
First Year in Office

Gregor Mayer

Viktor Orbán und die Verrohung
der Sitten in Europa

Georgios Tsiakalos

Europa, Griechenland und die
Flüchtlingskrise

Main Focus: 25 Years of ICTY
Schwerpunkt: 25 Jahre ICTY



Sonja Biserko

25 Years of ICTY: Facing the Past
in Serbia and the Region

Kei Hannah Brodersen

The ICTY's Impact on
Domestic Criminal Justice Systems
in the Former Yugoslavia

Tobias Flessenkemper

The EU and *Transitional Justice*
in Former Yugoslavia

Wolfgang Schomburg / Tobias Bütow

25 Jahre UN-Tribunal für Jugoslawien –
Ein Gespräch über friedensstiftende Justiz

Analysen / Positionen / Essays

6 *Christian Hagemann*
After the Crisis – The New Macedonian Government's First Year in Office

22 *Gregor Mayer*
Das schlechte Vorbild: Viktor Orbán und die Verrohung der Sitten in Europa

40 *Georgios Tsiakalos*
Europa, Griechenland und die Flüchtlingskrise – Chronik einer unwirksamen Abschreckungspolitik

Main Focus: 25 Years of ICTY / Schwerpunkt: 25 Jahre ICTY

56 *Sonja Biserko*
25 Years of ICTY and Facing the Past in Serbia and the Region

68 *Kei Hannah Brodersen*
Where the ICTY is Still Alive – Explaining the ICTY's Impact on Domestic Criminal Justice Systems in the Former Yugoslavia

88 *Tobias Flessenkemper*
The EU and *Transitional Justice* in Former Yugoslavia – Slow Support, Spent Ambition, Lowered Expectations

101 *Wolfgang Schomburg / Tobias Bütow*
25 Jahre UN-Tribunal für Jugoslawien – Ein Gespräch über friedensstiftende Justiz

Berichte

115-117 □ Literarische Verarbeitung von Kriegs- und Gewalterfahrungen und ihre Übersetzung – Deutschland und das ehemalige Jugoslawien im Dialog. Jena, 27. November bis 2. Dezember 2017

119 Rezensionen

□ Centar za unapređivanje pravnih studija [Zentrum für die Förderung juristischer Studien] (Hrsg.): Hereticus – Časopis za preispitivanje prošlosti [Hereticus – Zeitschrift für die Überprüfung der Vergangenheit] □ T. Roser: Post vom Balkanspion – Depeschen aus einem verschwundenen Land □ I. Krastev: After Europe □ N. Gallina / K. Gehl (Hrsg.): Kultur der politischen Eliten in Osteuropa – Neue Zugänge zum Forschungsfeld □ K. Schlögel: Das sowjetische Jahrhundert – Archäologie einer untergegangenen Welt

Sehr geehrte Leserin, sehr geehrter Leser,

im Dezember 2017 beendete das *International Criminal Tribunal for the former Yugoslavia (ICTY)* nach fast 25 Jahren seine Tätigkeit. Nachdem sich die Südosteuropa Mitteilungen schon in früheren Heften (insbesondere 03/2012 und 02/2013) eingehend mit den Themen der *Transitional Justice* im ehemaligen Jugoslawien und der Arbeit des ICTY auseinandergesetzt haben, widmen wir uns in einem Themen-Schwerpunkt in dieser Ausgabe nochmals dem Tribunal und seiner Bedeutung für die Region sowie darüber hinaus. Abschluss und Höhepunkt in einer Reihe von Beiträgen bildet ein Interview mit dem deutschen Juristen Wolfgang Schomburg, der zwischen 2001 und 2008 als Richter beim ICTY arbeitete und sich u.a. mit der Frage befasst, auf welche Weise die Versuche der Rechts- und Wahrheitsfindung, wie sie das UN-Tribunal unternahm, der Friedensstiftung dienen. „Eines Tages“, so Schomburg, „werden auch Angehörige von großen Staaten vor solchen Gerichten zur Verantwortung gezogen werden. Diese Entwicklung ist aus meiner Sicht unaufhaltsam. (...) Wir brauchen noch eine ganze Menge Geduld. Es ist nicht selbstverständlich, dass es internationale Strafgerichtsbarkeit gibt. Es ist eine Errungenschaft dieser Jahrzehnte, die für die Zukunft nicht mehr weggedacht und verdrängt werden kann. In Ruanda und im früheren Jugoslawien wurde gezeigt, dass auch Strafgerichte (...) zum Frieden beitragen können, wenn sie sich denn Wahrheit und Gerechtigkeit annähern dürfen.“

In einer minutiösen Analyse zeigt die Strafrechtlerin Kei Hannah Brodersen, wie das ICTY nicht nur die *Transitional Justice*, sondern auch die Strafrechtssysteme in Bosnien und Herzegowina, Kroatien und Serbien im Allgemeinen maßgeblich geprägt hat. Tobias Flessenkemper untersucht den (in den 25 Jahren gewandelten) Umgang der Europäischen Union mit dem Thema *Transitional Justice* im ehemaligen Jugoslawien. Die prominente serbische Menschenrechts- und Friedensaktivistin Sonja Biserko kommt zu einem eher pessimistischen Schluss in Bezug auf die Nachhaltigkeit des ICTY in Serbien: Nach wie vor lehne dort die Gesellschaft mehrheitlich dessen Mission ab; die Eliten würden sich weiterhin in Diskreditierung des Tribunals und Revision der Geschichte üben.

Außerhalb unseres Schwerpunkts befassen sich weitere Beiträge mit anderen aktuellen Themen in Südosteuropa: Christian Hagemann wirft seinen Blick auf die Reformerfolge der neuen mazedonischen Regierung ein Jahr nach dem Regierungswechsel und der Beendigung der tiefen politischen Krise. In Anerkennung der großen Fortschritte empfahl im Februar 2018 die EU-Kommission die Aufnahme von Beitrittsverhandlungen mit dem Balkanstaat. Ob die Hoffnungen in Skopje auf solch einen Durchbruch erfüllt werden, hängt auch von einer Lösung im lange Jahre währenden Streit mit Griechenland um den Staatsnamen ab, so Hagemann.

Den Beitrag Ungarns „an der Verrohung der Sitten in Europa“ sucht der Autor und Journalist Gregor Mayer an einem Vergleich der ungarischen Verhältnisse mit Polen, Rumänien und

Österreich aufzuzeigen. Der ungarische Premier Viktor Orbán mit seinem zunehmend „illiberalen“, semi-autoritären und kleptokratischen Staat wird nach Ansicht Mayers allmählich zum Rollenmodell für andere europäische Führer mit populistischen und autoritären Ambitionen.

Der griechische Soziologe Georgios Tsiakalos, Experte für Migration und Flüchtlinge und privat als humanitärer Helfer engagiert, befasst sich mit dem Umgang Griechenlands mit der Flüchtlingskrise, die das Land seit 2015 vor unlösbare Aufgaben stellte. Tsiakalos wirft zugleich den Europäern eine „unwirksame Abschreckungspolitik“ sowie einen Mangel an adäquaten Reaktionen auf die Massenflucht und ihre humanitären Herausforderungen vor. Ergebnis dieser Politik sei nicht zuletzt das „Aufkommen und Erstarken rechtspopulistischer und rassistischer Gruppierungen und Parteien“ in den Aufnahmeländern – wie z.B. in Griechenland.

Eine anregende und erkenntnisreiche Lektüre wünscht Ihnen

Ihre Redaktion

Hansjörg Brey

Claudia Hopf

SÜDOSTEUROPA

Mitteilungen

Zeitschrift der Südosteuropa-Gesellschaft

Summaries Heft 02/2018 58. Jahrgang

Christian Hagemann

After the Crisis – The New Macedonian Government’s First Year in Office

Macedonia was for more than two years shaken by a deep political crisis that started in the realm of a massive wiretapping scandal revealed in 2015. This crisis finally came to an end when an opposition-led government took power on 31 May 2017. After months of obstruction by the long-term ruling party VMRO-DPMNE and its allies, the centre-left SDSM formed a coalition with three ethnic-Albanian parties and Zoran Zaev was appointed the new Prime Minister.

The article takes a closer look at how the crisis took a turn for the better and how the difficult situation after the snap elections of 11 December 2016 was resolved. It then takes stock of the development of domestic and international politics under the new government, as well as the progress of promised reforms. Overall, the government has achieved its intermediate goal and received a recommendation from the European Commission for the start of EU accession negotiations. This recommendation rewarded the ending of state capture, the increase in media freedom, and the inception of important reforms.

Still, much remains to be done and most measures still have to reach the decisive stages of legislation and implementation. Progress in the process of Euro-Atlantic integration could help the new government to achieve its agenda while remaining popular with the electorate. This progress, however, is based on a resolution of the name dispute with Greece. Domestic change in Macedonia, it seems, hinges on the willingness at the domestic and international levels to make such change happen.

Gregor Mayer

The Bad Role Model – Viktor Orbán and the Decline of Values in Europe

During his eight year rule, the Hungarian leader Viktor Orbán established the foundations for an “illiberal”, semi-authoritarian, kleptocratic state. By displaying the ability to withstand critical assessments and infringement procedures by EU bodies and the capacity to get re-elected at will, Orbán became a role model for other leaders with populist and authoritarian leanings.

The article discusses three cases: In Poland, the ruling right-wing populists take direct advice from Orbán on how to sit out EU procedures after upending the independence of the justice system. In Romania, a left-wing post-communist leadership draws inspirations from Hungary when trying to legalize government

corruption. In Austria, where the populist, pro-Russian FPÖ entered the latest coalition government, Orbán is mentioned as a point of reference, when the limits of ruthless capturing of state institutions are deliberated.

The article sums up the European strategies to confront Orbán's undermining of European values. It draws the conclusion, that sanctions doled out by the European institutions are not enough. Citizens in Europe should also get more active, participate in elections and draw inspirations from recent citizens' protests in Romania and Slovakia which forced their corrupt leaderships to partial retreats.

Georgios Tsiakalos

Europe, Greece and the Refugee Crisis

History of a Disproportionate Dissuasive Policy

Through the Directive 2001/51/EC the countries of central and northern Europe were able to relinquish their responsibility to receive those seeking asylum and safety from other countries directly at their borders – including airport transit zones – and to decide on their applications. The countries of southern Europe thus became the exclusive gateways to the EU for the refugees from the crisis regions of Asia and Africa. This particularly applies to Greece since 2014.

The article examines the dissuasive measures undertaken by Greece in order to realize European policy within its territory. Special focus is put on the question whether these measures were or could be proportionate and effective, and which domestic political constellations have influenced them until today.

Main Focus: 25 Years of ICTY

Sonja Biserko

25 Years of ICTY and Facing the Past in Serbia and the Region

The article addresses the impact of the International Criminal Tribunal of the former Yugoslavia (ICTY) on the region, with the main focus put on Serbia. Although the Tribunal established the facts about crimes committed – executioners were identified, some of the key political, military and police inciters and perpetrators have been put on trial and sentenced – Serbian society is still in deep denial. The ICTY was not equipped with mechanisms that would have made Serbia (and other countries in the region as well) duty-bound to deal with its legacies.

Serbian elites were not able to refrain from Milošević's project because they were largely part of it as well. Instead, elites are engaged in discrediting the Tribunal's legacy and revision of history of the recent past, including the 20th century. History is perceived only from the victim's viewpoint which blocks a serious debate about the past.

Although new avenues have been opened to Serbia (towards accession to the EU) Serbian nationalism has not been defeated yet. Without objectified political and social context and without explaining the role Serbian elites have played, Serbia's aspirations will be hampering regional development. The EU in its relations with Serbia should focus on a radical change of Serbia's value system.

Kei Hannah Brodersen

Where the ICTY is Still Alive

Explaining the ICTY's Impact on Domestic Criminal Justice Systems in the Former Yugoslavia

After having conducted proceedings concerning all 161 indictees, the ICTY finally ceased to exist in December 2017. Through its vast case law and court practice, the ICTY has developed international criminal law and procedure like no other court before. The Tribunal's footprints will leave a long-term impact on the domestic criminal justice systems of Bosnia and Herzegovina, Croatia, and Serbia. The ICTY significantly influenced transitional justice in all three countries by having triggered national war crimes proceedings. It helped establish domestic specialised war crimes institutions and catalysed their initial work through various support programmes. At the same time, the Tribunal also influenced criminal law reforms, both concerning substantive and procedural criminal law. Amongst other sources, its case law forms the basis for the codification of international crimes in the domestic criminal codes, and domestic criminal procedures were aligned to the ICTY's procedure and court practice. Domestic courts frequently follow the Tribunal's jurisprudence, both on substantive and on procedural legal issues. Its practices are also taken up in the realm of victims and witness protection and support. Importantly, the ICTY's impact has over the years transcended the realm of war crimes and spilled over into the overall criminal justice systems.

Tobias Flessenkemper

The EU and *Transitional Justice* in Former Yugoslavia

Slow Support, Spent Ambition, Lowered Expectations

The article discusses how the European Union approached – first slowly and hesitantly, then ambitiously and lately with lowered expectations – *transitional justice* in the countries of former Yugoslavia. Recently, in its 2016 Global Strategy, the EU moved further away from the issue by reframing international and transitional justice into concepts of *societal resilience*.

Starting with the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993, three loosely defined phases of EU engagement can be identified: 1) emerging support for transitional justice mechanisms between 1991 and 1999; 2) the period when the EU was aiming to shape the region and the transitional justice discourse, leading to spent ambition (1999-2014); and 3) lowered expectation inside and outside the EU from 2008 onwards.

Wolfgang Schomburg / Tobias Bütow

25 Years of the UN Tribunal for Yugoslavia

A Conversation about the Contribution of Justice to Peace

The International Criminal Tribunal for the former Yugoslavia (ICTY) has been part of numerous debates and misunderstandings since its creation 25 years ago. An interdisciplinary and intergenerational conversation with the first German UN judge in

criminal matters, Wolfgang Schomburg, who worked at the ICTY between 2001 and 2008, addresses the challenges, merits and legacy of this first transnational court after Nuremberg and Tokyo.

The insider-perspective of a decision maker, eyewitness and internationally renowned scholar of international criminal law meets the questions of historiography and political science, researching post-war societies and coming to terms with the past, thus enabling new perspectives beyond politicized debates. Discussing international norms of substantive criminal law, rules of procedure and evidence, victim protection, acquittals of alleged perpetrators, outreach and the future of international criminal law, the authors try to approach the interdisciplinary question how justice and truth finding endeavors can contribute to peace.