



BiEPAG



Policy Study

**The Crisis of Democracy  
in the Western Balkans.  
An Anatomy of Stabilitocracy  
and the Limits of EU  
Democracy Promotion**

Edited by Marko Kmezić and Florian Bieber

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Balkans in Europe Policy Advisory Group

# The Crisis of Democracy in the Western Balkans. An Anatomy of Stabilitocracy and the Limits of EU Democracy Promotion

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This study is a collaborative effort of the Balkans in Europe Policy Advisory Group (BiEPAG) members. The authors of individual chapters are Natasha Wunsch, Vedran Džihic (Chapter 1), Jovana Marović, Srdjan Cvijić (Chapter 2), Tobias Flessenkemper, Marko Kmezić (Chapter 3), Alida Vračić, Bleriana Bino (Chapter 4), Marika Djolai, Corina Stratulat (Chapter 5), Florian Bieber and Marko Kmezić (Chapter 6).

# About BiEPAG

The Balkans in Europe Policy Advisory Group (BiEPAG) is a co-operation initiative of the European Fund for the Balkans (EFB) and Centre for the Southeast European Studies of the University of Graz (CSEES) with the aim to promote the European integration of the Western Balkans and the consolidation of democratic, open countries in the region. BiEPAG is composed by prominent policy researchers from the Western Balkans and wider Europe that have established themselves for their knowledge and understanding of the Western Balkans and the processes that shape the region. Current members of the BiEPAG are: Dimitar Bechev, Florian Bieber, Blerjana Bino, Srdjan Cvijić, Milica Delević, Nikola Dimitrov, Marika Djolai, Vedran Džihić, Tobias Flessenkemper, Dejan Jović, Marko Kmezić, Jovana Marović, Milan Nič, Corina Stratulat, Dane Taleski, Nikolaos Tzifakis, Alida Vračić, and Natasha Wunsch.

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# 1. Introduction

Democracy is increasingly under challenge on a global scale, with a crisis of democracy the prevailing narrative. The assumption of a linear and normative transition, which prevailed during the third wave of democratisation, has proven to be overly optimistic and misleading. Even though the countries of the Western Balkans embarked belatedly on the path towards democracy, the expectation of a straightforward transition from authoritarianism to liberal democracy still applied to them. Their recognition as candidates for EU membership at the 2000 Zagreb Summit made it likely that they would follow the path of “democracy through integration,” which initially had proven to be successful formula for the transformation in Central and Eastern Europe.<sup>1</sup> By providing specific incentives for domestic change, the EU would export democratic standards through its enlargement policy.

However, the recent rise of illiberal tendencies in several EU member states has called into question the EU’s transformative power and its ability to export democracy successfully through its enlargement policy. This is particularly obvious in the Western Balkans, where the EU is failing to live up to its promise to deliver democracy to those countries engaged in the process of joining the Union. Instead, regimes are flourishing that can be described by concepts such as “illiberal democracy” or “competitive authoritarianism”. They present themselves as a new kind of “normalcy”, able to incorporate the democratic formal procedures as well as, in part the rhetoric of democracy, while conserving an “un-democratic” regime core.

This study focuses on the six remaining accession candidates from the Western Balkans region (WB6). It operates under the assumption that the WB6 represent a transitional region with no clear goal or end-point in sight, a zone “in-between” – in between democracy and authoritarianism, market and state-controlled economy, capitalist wilderness and socialist legacy. As an “in-between” zone, the region reflects many of the global dilemmas and tensions surrounding democracy and its decline in a regional micro-

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1 Antoaneta Dimitrova and Geoffrey Pridham, “International Actors and Democracy Promotion in Central and Eastern Europe: The Integration Model and its Limits,” 11(5) *Democratization* (2004), 91-112.

perspective. Close scrutiny of the dynamics at play in the WB6 therefore serves to study the trends, patterns and paradoxes contained in the triangle of democracy, authoritarianism and capitalism, in a context where EU integration has so far represented the main process in place to consolidate democracy and provide the legal template for functional states governed by rule of law.

Understanding the dynamics and mechanisms of democratic decline in the Western Balkans is crucial to understanding the future of EU integration in the region, but also to realizing how the region could become a source of instability should more authoritarian regimes promise short-term quiet at the expense of long-term, sustainable stability. Autocrats are more likely to emulate, cooperate and seek support from other autocrats or to opportunistically play off different external actors. Beyond the region, understanding patterns of authoritarian governance in the Western Balkans thus sheds light upon the larger crisis of democracy and how the regional dynamics mirror larger trends.

The study begins by framing the empirical investigation in terms of the current academic debate on approaches to democracy and democratisation. It clarifies the terminology employed and highlights key contributions to the emerging debate on democratic deconsolidation and backsliding. The empirical chapters explore illiberal tendencies across all six countries of the WB region in four separate sectors: elections, checks and balances, media, and clientelism. The in-depth analysis of signs of democratic regression in the four areas will combine a comparative overview with specific examples of backsliding or of a deterioration of standards in certain countries. To conclude, these findings will form the basis for a detailed set of recommendations on how to counter illiberal tendencies in the enlargement region.

## 1.1 **Conceptual framework: From democratisation to democratic regression**

### **Democracy and democratisation**

Democracy is generally defined in procedural terms as a political system that allows citizens to choose their leaders and, through elections and other

forms of involvement in the political process, to shape policy outcomes and to affect the direction in which the state develops. There is an understanding that democracy is a theoretical ideal that is not fully achieved empirically by any country, making it more reasonable to think of the concept in terms of procedural minimal conditions (Dahl 1989) as opposed to evaluating the extent to which countries live up to the abstract ideal of full democracy.<sup>2</sup>

In line with this procedural definition, the “classical” assumptions of transformation theory and transitions to democracy research hold onto a picture of a linear and normatively prescribed direction of democratic transformation.<sup>3</sup> Democratisation is thought to progress in clearly distinguished phases from a democratic opening to gradual consolidation up until the final goal of Western-oriented liberal democracy. This corresponds to the view of democratisation as occurring in waves, with each wave reaching further, but also receding slightly, meaning that not every country achieves democratic consolidation in the first attempt.<sup>4</sup> There is disagreement in the literature as to the necessary sequence of democratisation: Carothers rejects “sequencing fallacy” as an excuse for retaining authoritarian leaders,<sup>5</sup> while Mansfield and Snyder claim that a precipitous transition can lead to unstable regimes and eventually hamper successful democratisation, which requires basic stability and rule of law.<sup>6</sup>

Democratisation is thought to rest on a certain number of predefined steps. Rustow’s influential model posits the national unity of those pertaining to the system, for example a clear and widely shared sense of belonging to a particular political community, as an initial requirement. Democratisation is then set off by a prolonged and inconclusive political struggle that results

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2 Robert Dahl, *Democracy and its Critics* (New Haven/London, Yale University Press, 1989).

3 Wolfgang Merkel, *Systemtransformation. Eine Einführung in die Theorie und Empirie der Transformationsforschung* (Opladen, Leske /Budrich, 1999).

4 Samuel P. Huntington, *The Third Wave. Democratization in the Late Twentieth Century* (Oklahoma, University of Oklahoma Press, 1991).

5 Thomas Carothers, “The End of the Transition Paradigm,” 13(1) *Journal of Democracy* (2002), 5-21.

6 Edward D. Mansfield and Jack Snyder, “Democratic Transitions, Institutional Strength, and War,” 56(2) *International Organization* (2002), 297-337.



in an initial opening and eventually, though not automatically, the conscious decision to introduce a certain measure of democratic procedures.<sup>7</sup> Scholars emphasise that democratisation is a fundamentally uncertain process that is typically preceded by liberalisation in the form of a redefinition and extension of rights for both individuals and groups. Initial liberalisation is thought to be determined by elite dispositions and calculations, which is quickly followed by generalised mobilisation or a “resurrection of civil society.”<sup>8</sup> Modernisation theory, in contrast, underlines the role of economic development, which brings education, urbanisation, and industrialisation, thereby favouring democratisation.<sup>9</sup>

### De-democratisation and backsliding

Given the elusive state of a full democracy, some scholars suggest that the concept should instead be envisaged as a process, with democratisation by no means a linear term, but instead potentially reversible, resulting in de-democratisation tendencies.<sup>10</sup> Certain factors are thought to favour a reverse wave of de-democratisation, many of which appear fulfilled today, in the form of the combined appearance of an economic crisis, a rise in populism, and snowballing from one country to another Huntington.<sup>11</sup>

The early debate on de-democratization was dominated by the concepts of “defective democracies” and “hybrid regimes,” which we want to avoid in this study. Indeed, the debate still largely operates with dichotomies, opposing liberal democracies on the one side to authoritarian regimes on the other. An important discussion was sparked by Thomas Carothers’ introduction of the term “feckless pluralism,” best described as pluralistic regime types outside of the “democracy vs. autocracy” logic that can be

7 Dankwart Rustow, “Transitions to Democracy. Toward a Dynamic Model,” 2(3) *Comparative Politics* (1970), 337-363.

8 Guillermo O’Donnell and Philippe C. Schmitter, *Transitions from Authoritarian Rule, Tentative Conclusions About Uncertain Democracies* (Baltimore/London, The Johns Hopkins University Press, 1986).

9 Martin Lipset Seymour, “Some Social Requisites of Democracy: Economic Development and Political Legitimacy,” 53(3) *American Political Science Review* (1959), 69-105.

10 Charles Tilly, *Democracy* (Cambridge, Cambridge University Press, 2007), at 24.

11 Huntington, *The Third Wave*, at 8-9.

politically quite stable and produce an output that is valuable for the citizens without necessarily following the logic of democratic rule.<sup>12</sup> Indeed, most action seems to take place in between these two poles, in what has been termed “grey zone regimes.”<sup>13</sup> Such grey zone regimes are characterised by a partial incorporation or imitation of liberal democratic procedures and formal institutions, which are however simultaneously undermined by an overall logic of limited pluralism and strong control of government and societies by political parties.<sup>14</sup> This sentiment is echoed by Keane, who describes a dichotomous view as an “unpersuasive platitude.”<sup>15</sup>

The recent literature has moved towards characterising new types of rules and the emergence of alternative regime forms to liberal democracy.<sup>16</sup> Levitsky and Way, who shaped the debate about competitive authoritarianism, hold that political systems can be defined as authoritarian despite the fact that elections are regularly held and free of fraud.<sup>17</sup> This is the case, for example, when the government abuses state resources, limits the opposition’s appearance in the media, harasses candidates and supporters of the opposition – in short, the “minimum criteria for democracy” are violated to an extent that they create an “uneven playing field between the ruling party and the opposition.”<sup>18</sup> In this perspective, authoritarian politicians deploy and at the same time instrumentalise important elements of an institutional architecture of liberal democracy in order to ensure greater legitimacy and broader societal support for their rule. As David Runciman argues, autocrats have demonstrated a high grade of flexibility, being even “better at picking up tips from their democratic rivals than the other way around.”<sup>19</sup>

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12 Carothers, *The End of the Transition Paradigm*.

13 Ivan Krastev, “Paradoxes of New Authoritarianism,” 22(2) *Journal of Democracy*, (2011).

14 Ibid.

15 John Keane, “The New Despotisms of the 21st Century: Imagining the End of Democracy,” Lecture, London (2014).

16 Michael Ignatieff, “New World Disorder,” *New York Review of Books*, September 25, 2014.

17 Steven Levitsky and Lucan Way, “The Rise of Competitive Authoritarianism,” 13(2) *Journal of Democracy* (2002), 51-65.

18 Ibid., 53.

19 David Runciman, *The Confidence Trap. A History of Democracy in Crisis*

The recent resurgence of democratic backsliding has fomented attempts to characterise the forms of regression that can be observed. According to Bermeo, democratic backsliding has shifted towards more subtle forms that can take one of three shapes: (1) promissory coups, whereby the military or other actors take over power while promising elections in the future; (2) executive aggrandisement as an extension of executive powers through legal and constitutional means; and (3) the strategic manipulation of elections during the pre-election period, as opposed to voting-day fraud.<sup>20</sup> Greskovits has claimed that de-democratisation in Central and Eastern Europe has two distinct dimensions, namely hollowing or “the declining popular involvement in democracy” and outright backsliding in the form of “a destabilisation or even a reversal in the direction of democratic development” that is often accompanied by the “radicalisation of sizeable groups of the population and a weakening loyalty of political elites to democratic principles.”<sup>21</sup>

### Democracy and legitimacy

One of the core arguments in favour of democracy over alternative regime forms has been the higher legitimacy of democratic governance. This connection no longer appears to be obvious. Migdal holds that legitimacy entails the acceptance, or approbation, of the state’s rules of the game, its social control, as true and right by the ruled.<sup>22</sup> Therefore, legitimacy is a potent factor accounting for the strength of the state. In that regard, the survival of any regime, democratically elected or authoritarian in nature, depends on whether it can generate and cultivate belief in its legitimacy. Yet, the longevity and stability of some authoritarian regimes prove wrong the assumption that democracies are generally more legitimate than hybrid regimes or autocracies. Schlumberger claims that authoritarian regimes may even enjoy some structural advantages over democracies when it comes to

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*from World War I to Present* (Princeton and Oxford, 2013), at 322.

- 20 Nancy Bermeo, “On Democratic Backsliding,” 27(1) *Journal of Democracy* (2016), 5-19.
- 21 Béla Greskovits, “The Hollowing and Backsliding of Democracy in East Central Europe,” 6(1) *Global Policy* (2015), 28-37, at 28.
- 22 Joel S. Migdal, *Strong Societies and Weak States: State-Society Relations and State Capabilities in the Third World* (Princeton, Princeton University Press, 1988), at 32-33.

generating support, as they do usually have more opportunities to control the media and civil society and monopolise political discourse.<sup>23</sup>

Gerschewski poses the question of legitimacy of new authoritarian regimes, highlighting legitimation besides repression and co-optation as one of the three pillars of stability in contemporary autocracies. He distinguishes between “specific support” and “diffuse support” with the former defined as the “quid pro quo for the fulfilment of demands” and a particular focus on performance orientation, and “diffuse support” instead referring to what the regime “actually is or represents”, thus being more general and long-term-oriented.<sup>24</sup> “Diffuse support” as defined by Gerschewski can stem from both the political ideologies that have been the main focus in classical totalitarian research, and also from religious, nationalistic, or traditional claims, from the charisma of autocratic leaders as well as from external threats that lead to domestic rally-around-the-flag effects.<sup>25</sup> Elections are generally held to be the main arena for producing legitimacy, but simultaneously are often the main area of contestation. According to Keane, there is a desire and almost a kind of fetish of regimes to prove that they actually have legitimacy in the eyes of the people whom they dominate.<sup>26</sup> Keane uses the term “despotism” instead of authoritarianism, and argues that despotism brings to perfection the “dark arts of manipulation”: the exclusion of candidates considered undesirable, sensational media events, vote buying and voter intimidation, gerrymandering, alteration of electoral lists, miscounting and disappearance of ballots.

## 1.2 From concepts to the analysis of WB6

The major debates about democracy, authoritarianism and the in-between zones pose a set of important questions in the context of the WB6. Solely from

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23 Oliver Schlumberger, “Opening Old Bottles in Search of New Wine: On Nondemocratic Legitimacy in the Middle East,” 19(3) *Middle East Critique* (2010), 233-250, at 236.

24 Johannes Gerschewski, “The Three Pillars of Stability: Legitimation, Repression, and Co-optation in Autocratic Regimes,” 20(1) *Democratization* (2003), 13-38, at 20.

25 Ibid.

26 Keane, *The New Despotisms*.

the results of democracy measurement indices like Freedom House's Nations in Transit or the Bertelsmann Transformation Index, it is obvious that elements of crisis or democratic regression have also emerged in the WB6 region following the global financial crisis, here even before democracy has become the "only game in town."<sup>27</sup> Already back in 2012, Freedom House's assessment of the democracies in Southeast Europe was very negative:

"Stagnation and decline have (...) become apparent in the parts of Southeastern Europe that lie outside the EU. Albania, Bosnia and Herzegovina, Croatia, Kosovo, and Macedonia have all suffered a decline in national democratic governance over the past five years, driven in part by the overlap between business and political interests and the nagging problem of organized crime."<sup>28</sup>

This trend has only grown stronger in the past few years, with growing evidence for democratic regression. This empirical reality has triggered a shift in the academic and policy literature on the region away from the linear and normative transitional assumption towards a closer scrutiny of de-democratisation processes and regressive (illiberal or authoritarian) tendencies. Fundamental democratic promises, including freedom, equality, the rule of law and free and equal participation in political processes are in serious jeopardy in the region. This is particularly true when it comes to participation. Citizens observe diminishing possibilities for their involvement in political processes, which results in growing disenchantment with politics and democracy and a rapid increase in scepticism towards democratic institutions and their representatives. These attitudes and behaviours of the citizens reinforced the loss of importance of the institutions of representative democracy – such as parliaments – over the past two decades. Nonetheless, elections are held and dominant parties manage to get the necessary popular support. Furthermore, the economic transformation processes starting from the 1990s featured an intertwining of economic and political power, deeply embedded in clientelistic practices and political and economic corruption.

27 Juan J. Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe* (Baltimore, The Johns Hopkins University Press, 1996).

28 Nations in Transit, 2012, at 2-3.

Regional experts also underline that the WB6 countries can be described as increasingly partocratic regimes or regimes with strong elite dominance. The political representatives in those cases try to generate legitimation and support through the increased use of social and national populist mobilisation. Populism relies on strong control over the media and often does not refrain from using hate speech and the strategy of blaming political opponents.

These significant functional weaknesses of democracies in the WB6 countries have become a growing concern among scholars and policy analysts devoted to the region. It is increasingly obvious that there is no linear path to democracy for the WB6 and that the EU integration context has not been able to effectively counter non-democratic tendencies including outright democratic rollbacks. In our study, we closely scrutinise the dynamics at play in the WB6 in terms of trends, patterns and paradoxes in the triangle of democracy, authoritarianism and capitalism. By looking in depth at elections, media, checks and balances and patterns of clientelism, we aim to a) offer evidence for new patterns of illiberal or authoritarian governmentality in the WB6, b) answer the question of legitimation tools used by regimes and c) provide policy advice on how to prevent further democratic backsliding in WB6 and revitalise the democratic processes in the countries.



## 2. Elections

The development of multi-party electoral systems in the Western Balkans has been marked by three stages. The first one is represented by a shift from undemocratic to multi-party systems during the 1990s. While in the 1990s, electoral fraud was common and standards were low, both due to the lack of will and limited capacity, the quality of election increased in the late 1990s, early 2000s under the watchful eye of the international community, but the presence of observers significantly decreased over the past decade. At first, the quality of elections advanced, as political will and electoral regulations improved. Yet, this positive trend was short-winded as subsequent elections were tainted by electoral malpractices marking the second stage of development. Progressively, electoral fraud was established as one of the tools of maintaining the incumbent political elites in power.

The regressive trend in generating a competitive environment has been followed by the latest third phase of renewed greater presence of international actors in assessing whether the level of abuses and irregularities jeopardized the election results or not. Moreover, due to the specific circumstances in parts of the WB, elections were even directly administered by international actors. Between 1996 and 2002 the OSCE in BiH and from 2000 to 2007 in Kosovo organized and delivered multiple elections. Later elections saw the transfer of responsibility for organization of the elections to local authorities.

The most significant impact on elections and electoral legislation in the WB countries is expected to come from the European Union, which links the conditions for the holding elections to progress in the EU integration process. Regulations and rules of the electoral process are central pillar of democracy and as such present an integral part of the Copenhagen (political) criteria for EU membership. Since all countries in the region aspire to join the EU, the membership perspective and related conditionality is a key driver of the reforms, including reforms related to the electoral legislation. Hence, the EU influences the improvement of electoral legislation but also applies pressure on local actors to establish and respect the atmosphere for the free and fair elections.



## 2.1 Improving the electoral legislation

Taking the example of Montenegro, improvement of the electoral legislation did not present only a condition for opening accession negotiations<sup>29</sup> but also a benchmark for reforms in the context of the chapter relating to the rule of law.<sup>30</sup> Recommendation of ensuring effective implementation of regulations on the control of the political entities financing was also recommendation from the screening process for Serbia, which has been later incorporated into the Action Plan for Chapter 23 on Judiciary and fundamental rights. In Albania, as the result of a renewed political violence triggered by a highly problematic 2009 election, the European Union and the United States exerted pressure on the government and made the orderly conduct of the 2013 parliamentary elections one of the most important conditions for granting the country the status of candidate for EU membership. As a result of the pressure, the Albanian parliament extensively amended the Electoral Code in 2012, introducing several structural improvements. Partially as a consequence of an orderly transfer of power in the 2013 elections, the EU granted Albania the candidate status in June 2014. Structural improvements of the electoral process, as well as their orderly conduct in June 2017 remain one of the preconditions for the opening of the EU accession negotiations for the country.

Yet, the improvement of electoral regulations does not always follow a linear trajectory. For example, some changes in Montenegro resulted in numerous controversies. Namely, the Constitutional Court ruled against legislative changes aiming to root out clientelist mechanisms to assure electoral support for the incumbents. In this way, amendments to the legislation prohibiting temporary employment and extraordinary public spending by local authorities in the electoral period (before and after the elections), were declared unconstitutional in 2014.<sup>31</sup>

29 Montenegro should “improve the legislative framework for elections in line with the recommendations of the OSCE-ODIHR and the Venice Commission”, in Commission Opinion on Montenegro’s Application for Membership of the European Union, adopted by European Commission COM (2010) 670 of 9 November 2010.

30 Action plan for the Chapter 23, Judiciary and Fundamental Rights, Podgorica, 2013.

31 Vijesti, “Ustavni sud: Zakon o finansiranju političkih partija nije u skladu sa

If properly regulated and administered elections would be of crucial importance to overcome ethnic tensions in multi-national societies. Yet, ethnic division of the society in Bosnia and Herzegovina is precisely the reason why reforms in this area were not implemented as envisaged.<sup>32</sup> Moreover, the principle of voter equality is still not fully guaranteed if one takes into account the different number of votes that the candidates have to receive in order to be elected in the assembly of the city of Mostar. Electoral legislation in Bosnia was amended in May and June 2016 in accordance with the OCSE/ODIHR and GRECO required standards but the discriminatory were not lifted in a direct contravention of the country's Constitutional Court's decision from 2010. As a result, Mostar's citizens are without elections from 2008 as Bosniak and Croat political parties have not been able to reach an agreement on electoral rules and regulations. Another example of discriminative constitutional and electoral legislation provisions is the Sejdić and Finci case. Namely, the 1995 Constitution of Bosnia and Herzegovina, annex 4 of the Dayton Agreement which ended the 1992–95 Bosnian War, included provisions which reserved posts in the tripartite Presidency of Bosnia and Herzegovina and the House of Peoples for ethnic Bosniaks, Bosnian Serbs and Bosnian Croats. Sejdic and Finci, of Roma and a Jewish ethnicity, contested these provisions in the European Court of Human Rights. The Grand Chamber of the ECHR ruled in their favour in December 2009.<sup>33</sup> This decision triggered a constitutional reform in Bosnia and Herzegovina that is still to bear fruit.

Violations of the 'one person one vote' principle occurred in Macedonia when the ruling VMRO DPMNE party increased the number of seats in the parliament for the Macedonian citizens living abroad. This amendment of the electoral regulation was considered as violation of the equality principle by the Venice Commission in 2011.<sup>34</sup>

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Ustavom," *Vijesti Online*, 30 May 2014, at <http://www.vijesti.me/vijesti/ustavni-sud-zakon-o-finansiranju-politickih-partija-nije-u-skladu-s-ustavom-214003> (Accessed 15/03/2017).

32 International election observation mission, Bosnia and Herzegovina General Elections, 12 October 2014, at <http://www.osce.org/odihr/elections/bi-h/125492?download=true> (Accessed 15/03/2017).

33 Case Sejdić and Finci v. Bosnia and Herzegovina, European Court of Human Rights, 22 December 2009.

34 Venice Commission and OSCE/ODIHR, Joint Opinion on the Revised

Despite the commitment of all WB countries to European Integration, ability of governments to deliver reforms in this field clashes with their desire to stay in power. Thus, attempts to assure a level playing field in the elections are usually limited to minimal concessions by incumbent political parties. Good examples are the experiments of governments of electoral trust tried in Macedonia and Montenegro. Although the ruling parties accepted short pre-electoral power-sharing agreements yielding to the opposition key levers of power, these arrangements were insufficient and did not lead to a meaningful improvement of the system.

## 2.2 Voters' registry – More (phantom) voters than citizens

Structural obstacles to free and fair elections are not only linked to the lack of respect for fundamental principles of democracy such as the one person one vote. The existence of a credible and electronically accessible electoral register is a precondition for free and fair elections. However, none of the Western Balkan countries meets acceptable standards. Irregularities in the voters' register are a first indicator for potential fraud. Problems with the voters' register in particular significant presence of so-called "phantom voters" (dead or emigrated voters) are a common occurrence across the region. For example, the last local elections in Bosnia (2016) were marked by such allegations since the number of voters was almost equal to the number of inhabitants. The right to vote at the last local elections had 3,345,486 voters,<sup>35</sup> while Bosnia and Herzegovina have 3,531,159 inhabitants according to the 2013 census of population.<sup>36</sup> Although this difference can be attributed to the population living abroad, during the elections in 2014 and 2016 electoral commission registered more voters than citizens in several cities such as Tuzla. Similarly, during last year's Serbian parliamentary

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Electoral Code of "The Former Yugoslav Republic of Macedonia" adopted by the Council for Democratic Elections of 13 October 2011, Opinion No. 640 / 2011.

35 Centralna Izborna Komisija, "Odluka o utvrđivanju broja birača u Bosni i Hercegovini", 4 May 2016.

36 Preliminary results of the 2013 Census of Population, Households and Dwellings in Bosnia and Herzegovina, 5 November 2013.

elections, town of Priboj had 1125 of more registered voters than citizens.<sup>37</sup> In total, according to the Republic Electoral Commission, Serbia had 6.7 million voters in 2016 parliamentary elections out of 7.1 million citizens. In Macedonia, similar unrealistic difference between the total number of population (approximately 2 million) and voters in the 2016 parliamentary elections (1.7 million voters) can be noted.

In Montenegro despite recent improvements in the voters' register (centralized and administrated by the Interior Ministry), the public and opposition parties still doubt its validity. According to media reports, more than 30000 of so-called "phantom voters" remain listed in the register countrywide.<sup>38</sup> A particular problem occurred during the last elections in 2016 was the announcement from the minister of interior in the government of the electoral trust (from the opposition DEMOS) that ID cards in Montenegro were not biometric.<sup>39</sup> This called into question the process of electronic identification of voters, mechanism applauded as one of the key improvements of the electoral framework ahead of the 2016 parliamentary elections.<sup>40</sup>

The May 2012 electoral process in Serbia was overshadowed by the accusations of electoral fraud made by then presidential candidate, now president, Tomislav Nikolic and the Serbian Progressive Party<sup>41</sup> leadership, who accused the then Democratic Party coalition government of having "instrumentalised" the voters' register. Although SNS accused several institutions of electoral fraud, filed criminal charges with the Prosecutor

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37 Danica Gudurić, "Broj birača u Priboju veći od broja stanovnika," *Radio Slobodna Evropa*, 15 April 2016, at <http://www.slobodnaevropa.org/a/broj-biraca-u-priboju-veci-od-broja-stanovnika/27676634.html> (Accessed 15/03/2017).

38 CIN-CG, "Birački spisak i dalje pogodan za zloupotrebe – Desetine hiljada fantomskih birača," *Centar za istraživačko novinarstvo Crne Gore*, 21 September 2016.

39 Article 80 of the Law on Election of MPs and Councilors stipulates that that the person shall be identified by "biometric ID card or passport."

40 Srdjan Cvijic et al, "Montenegro: Elections Aftermath and the European Commission's 2016 Country Progress Reports," Open Society Foundations, November 2016.

41 Hereinafter SNS – from the original *Srpska napredna stranka*.

General against unknown persons, organized protests throughout the country and announced a possible boycott of the second round of Presidential elections, Nikolić stayed in the elections and together with his party SNS won.<sup>42</sup> The fact that the SNS did not press for a judicial follow-up of the case (respect for the separation of power and independence of the judiciary otherwise unpracticed), and almost completely played down the affair in the aftermath of the elections, strengthened the belief that the allegations were politically motivated.<sup>43</sup> A similar problem on the voter's register was indicated by local NGOs during the elections in 2014 in the northern Kosovo, calling it as “catastrophically inaccurate”.<sup>44</sup>

### The price of democracy: Electoral abuse, fraud and vote buying

The atmosphere conducive to electoral fraud is one where the basic freedoms and rights are not satisfactorily guaranteed. Another important cause for the absence of level playing field in the elections is the control of state structures and the misuse of public resources by the ruling elites. These mechanisms provide the incumbents with different forms of influence on voters over a protracted period of time and render alteration of power difficult if not impossible.

Electoral abuses affect several fundamental facets of free and fair elections: transparency in the form of proactive disclosure of important information

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- 42 Electoral fraud allegations proved as a winning political strategy for it provided Nikolić with the platform that would simultaneously win him the votes of the right wing of the electorate (Serbian Radical Party and *Dveri* Movement equally making the electoral fraud allegations) and the silent nationally minded and moderate majority. Alternative options to the fraud rhetoric would have been Nikolić shifting his campaign rhetoric more to the right which would have inevitably cost him the votes of the silent majority comforted by his moderate and then pro-European electoral strategy.
- 43 Both Republic Electoral Commission and the State Prosecutors Office dismissed the complaints of electoral fraud as unsubstantiated. The State Prosecutor's office stated that the bag with election materials was stolen after the counting of votes at a particular polling station and that it could not have influenced the election results. See [OSCE/ODIHR Limited Election Observation Mission Final Report, Republic of Serbia Parliamentary and Early Presidential Elections](#), 6 and 20 May 2012, at 11, 18-19.
- 44 Balkans Policy Research Group, “Unfree and Unfair in Northern Kosovo,” February 2014.

relevant to the election process; protection voters and candidates' rights; control by all stakeholders and institutional efficiency. There are also other irregularities (for example: administrative shortcomings, delays in responding to complaints) that impair the overall conditions for free and fair elections, but may not necessarily be connected with the election outcomes. Electoral malpractices are usually linked with the unstable democracies such as those in the WB countries where elections are usually marked by following factors:

- a widespread concern over the accuracy of the voter register;
- police intimidation at opposition rallies, as well as intimidation of voters through a large and unwarranted police presence around polling stations;
- taking undue advantage of incumbency and blurring the distinction between state and party activities, that usually includes channelling state money to potential voters, party employment;
- illegal family and proxy voting;
- multiple voting;
- vote buying,
- discrepancies between the number of ballot papers in the boxes and numbers in the register of numerous polling stations.

As a result, the rating for elections stands low in various reports assessing level of democracy in the WB. For example, the Freedom House's ratings for 2016 range from 4.75 for Kosovo to 3.25 for Bosnia and Herzegovina and Serbia on a scale from 1 to 7, where 1 is the best, and 7 the lowest score.<sup>45</sup>

The buying and selling of votes is one of the issues that is constantly emphasized by the numerous reports, studies and research, but also in the context of complaints by representatives of NGOs, citizens and opposition parties during almost every elections. It is generally considered that the ruling elite use public resources for gaining support of voters. Clientelist mechanisms used are well developed and range from handing out cash, jobs, loans and other benefits for the governing parties' supporters. The

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45 Freedom House Report, "Nations in Transit Reports for 2016," *Freedom House*, 2016, at <https://freedomhouse.org/report/nations-transit/nations-transit-2016?gclid=CM7soM6ApNICFcsfGwodQbUAvG> (Accessed 15/03/2017).

distribution of key positions in the civil service to those who vote for the ruling party is a common practice that not only violates the conditions for fair and free elections, but also the principle of merit-based recruitment (see the chapter on Clientelism).

Other ad hoc strategies include the interception of voters on voter places, cancellation of ballots and replacing blank with the already stamped ballots. United Nations Office on Drugs and Crime's research from 2011 showed that "an average of 8 per cent of citizens were asked to vote for a certain candidate or political party in exchange for a concrete offer, such as money, goods or a favour" at the last parliamentary elections in the WB.<sup>46</sup>

However, a small number of complaints ever reach court, largely due to lack of evidence, but also the politicization of the judiciary. Even well documented cases never finished with a final verdict for those directly involved. Other mechanisms for establishing political responsibility for the electoral wrongdoings, such as parliamentary inquires, have proved to be ineffective.

Mechanisms for influencing the voters in pre-election period are various starting with ID cards buying by the ruling party's activists in order to prevent the vote of the citizens who are not in pre-election 'engineering' process defined as "safe". Parties use various mechanisms to secure votes: promising jobs in the public administration, pressure at the polling station, phone calls, etc. Specific form of securing votes has been demonstrated by the ruling DPS in Montenegro, providing mandate to the traditional coalition ally during the last parliamentary elections in October 2016. The logic of such electoral gerrymandering is a census for minorities of 0.3 versus regular 3%. So the Croatian Civil Initiative (HGI) gained votes in areas where Croats do not live, thus securing parliamentary seat enabling the ruling party to retain power.<sup>47</sup>

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46 UN, "Corruption in the Western Balkans: Bribery as Experienced by the Population," United Nations Office on Drugs and Crime, 2011, at 37.

47 Siniša Luković, "Izborni inženjering: Kako je DPS obezbjedio mandat za HGI," *Vijesti*, 19 October 2016, at <http://www.vijesti.me/izbori2016/izborni-inzenjering-kako-je-dps-obezbjedio-mandat-za-hgi-908053> (Accessed 15/03/2017).

Election irregularities are so widespread that, according to media reports, a vote can be sold even online.<sup>48</sup> During the local elections in 2016 in Bosnia NGO activists have recorded 51 of use of public resources in the election campaign and 118 cases of vote buying with 16 complaints for discrimination and hate spreading.<sup>49</sup> Minor and major issues were reported both before and during the election day, and the figures show that the atmosphere, the pressure and irregularities are worse than before the signing of the Dayton Agreement in 1995 which is a key milestone for the establishment of democratic elections in Bosnia. Trading with Polling Station Commission (PSC) positions is also “normal” practice as documented by the international observers in Bosnia in 2014. Due to the incidents in several polling stations the European Commission recently again draws attention of the local authorities to the need to investigate these cases.<sup>50</sup>

A special mechanism of vote-buying is so-called the “Bulgarian train” which is used in a way that a voter gets a pre-cast ballot before entering the polling station and than getting a money for a blank ballot after bringing it out of the poll. This method has come into focus after the election in Bosnia in 2010 where around 200,000 votes was purchased in this way, but the practice is common for the other WB countries.<sup>51</sup> Photographing ballots to prove a choice between lists is also usual as reported by the local civil associations during the last elections in Macedonia.<sup>52</sup>

Use of the social benefits has also been one of the foundations of vote buying. Following the introduction of Montenegrin social welfare information system

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48 Ron Synowitz, “In Bosnia, You Can Buy Anything Online, Even Votes,” *Radio Free Europe*, 1 October 2016, at <http://www.rferl.org/a/bosnia-elections-vote-buying/28025730.html> (Accessed 15/03/2017).

49 125 cases of citizens reporting irregularities – Pod Lupom, “Saopštenje: Preliminarna ocjena izbornog dana,” n.d., at <http://podlupom.org/v2/bs/clanak/saopstenje-preliminarna-ocjena-izbornog-dana/230> (Accessed 15/03/2017).

50 European Commission, “Bosnia and Herzegovina 2016 Country Report,” Brussels, November 2016.

51 Insajder, “Was the ‘Bulgarian Train’ Used to Rig Elections?,” 27 April 2016.

52 “Macedonia Elections 2016,” *Balkan Insight* 11 December 2016, at [https://www.google.at/webhp?sourceid=chrome-instant&i&ie=UTF-8#q=Balkan+Insight,+%E2%80%9CMacedonia+Elections+2016&\\*](https://www.google.at/webhp?sourceid=chrome-instant&i&ie=UTF-8#q=Balkan+Insight,+%E2%80%9CMacedonia+Elections+2016&*) (Accessed 15/03/2017).



in January 2015 almost 5,000 people in Montenegro lost their right to financial provision, because it was used illegally in a number of cases.<sup>53</sup> Twelve officers in three municipalities were suspended in 2015 due to abuse in the deciding on social benefits. A very limited number of state employees have access to a complete list of beneficiaries.<sup>54</sup> In this way, DPS has a wide room for maneuver by which citizens will be granted assistance. The hometown of the then Minister of Labor and Social Affairs in February 2016 received 40% of the total one-time assistance for that month. The OSCE report on Macedonia also especially emphasized “repeated and credible allegations of the major political parties promising or threatening to withhold social welfare benefits and vote-buying among economically disadvantaged and socially vulnerable groups, particularly the Roma and ethnic Turk communities”.<sup>55</sup>

Allegations of vote buying and alleged pressure on civil servants to vote for the government tainted the elections in Albania to an extent. During elections in 2013 OSCE/OIDHR mission highlighted the use of official vehicles for electoral purposes, but also vote buying and the persistent pressure on employees in the public administration to vote in a certain way.<sup>56</sup>

Occasional allegations of vote-buying and intimidation of employees in previous elections in Serbia (2012, 2014) were replaced in 2016 elections by what OSCE/ODIHR calls “widespread reports of the ruling parties exerting pressure on voters, particularly those employed in the public sector, and enticing voters through welfare initiatives...” are a clear sign of a progressive deterioration of the situation when it comes to the level playing field for free and fair elections in the country.<sup>57</sup>

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53 At the same time, amending the Rulebook governing the use of custodial care and assistance resulted in the increase of the number of beneficiaries of this right by over 50%, thus the number of recipients of some of the financial benefits was balanced.

54 Social beneficiaries include nearly a fifth of the electorate in Montenegro. The right to vote in elections in October had 528,817 citizens.

55 OSCE/ODIHR Election Observation Mission Final Report on The Former Yugoslav Republic of Macedonia presidential and Early Parliamentary Elections, 2014, at 14.

56 OSCE, Albania Parliamentary Elections, 23 June 2013: Final Report, 10 October 2013, at 2.

57 Having in mind that free, independent and pluralist media is another

During the presidential and parliamentary elections in Macedonia in 2014 the SDSM said that at least 26,000 listed voters should be deleted from the voters' list since they were either dead or had fictional residencies in the country. At the same time the DUI filed a complaint stated that about 500 voters were at the same time on the list for voting in the Macedonian Embassy in Albania, but also in some municipalities in Macedonia. These problems were particularly in the spotlight during the local elections where the ruling VMRO DPMNE allowed voting to Macedonians in Albania by assigning fictional addresses to them.<sup>58</sup>

Particular aspects of the use of public resources for campaign purposes are frequent and unwarranted visits of ministers and other high officials to municipalities where local elections are held.

### **Abuses of power remain unpunished**

GRECO and the European Commission documented the so-called “audio recording affair” in Montenegro which refers to transcripts of leaked audiotapes from the meeting of the ruling Democratic Party of Socialist’s Council in 2013 confirming mechanisms for vote buying mainly through employment in the public administration. The transcripts also revealed alleged efforts by the party leaders to mobilize voters in the state-owned enterprises and public bodies to vote for the DPS, even criticizing the leniency of certain directors towards opposition.<sup>1</sup> There has been no significant progress in the resolution of case despite the pressure. In Montenegro, the state is the

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precondition for a level playing field for free and fair elections, a decline in the press freedom scores in the period from 2011 to 2016 is indicative of the deterioration of the competitive nature of the electoral process. According to the Freedom House Freedom of Press Report, Serbia steadily declined from the score of 33 in 2011 to 45 in 2016 (0=BEST, 100=WORST), in Freedom House, “Serbia: Freedom of the Press,” *Freedom House*, 2016, at <https://freedomhouse.org/report/freedom-press/2016/serbia> (Accessed 15/03/2017); The Reporters Without Borders, World Press Freedom Index, shows a similar trend of a decline in media freedom “ever since Aleksandar Vucic ... became Prime Minister in May 2014,” in Europe Without Borders, “Serbia”, 2016, at <https://rsf.org/en/serbia> (Accessed 15/03/2017).

58 BIRN, “Macedonia Police Deny Tampering With Electoral Roll,” 20 March 2014.

main employer. Notwithstanding the fact that public administration has huge number of redundant staff, the Government has adopted a change to the systematization plans, before the appointment of opposition ministers in May 2016, in order to hire 2,000 new employees. Apart from the fact that no one is held accountable for such flagrant and documented use of public resources for the purpose of vote buying, the Parliament elected one of the protagonists of this affair, the former member of the Parliament who also at the same time was employed in the Employment Agency of Montenegro, as a member of the State Audit Institution's Senate, key supervisory institution. It is a paradox that the person involved in the abuse will be a key guarantor that similar abuse of power will be prevented in the future.

### 2.3 Institutional mechanisms - weak and politically influenced

The task of the electoral oversight institutions is to ensure proper implementation of legislation and provide effective control of the distribution of public resources. In short, control mechanisms need to be adequately implemented so that the election process can be conducted in a neutral and transparent manner. Also, acting upon the citizens and independent observers' complaints on irregularities and abuses is of particular importance, alongside with ensuring accountability for officials who abuse their position and public resources. The institutional clarity in the clear division of responsibilities assures the independence of the institutions as well as their capacity to properly observe electoral regulation. Hence, "all new democracies' path of democratic development is measured by indicators relating to the strength and viability of official institutions established in order to guarantee an all-inclusive political process".<sup>59</sup> However, the 20-year experience in the holding of multi-party elections in the Western Balkans did not improve key gaps from the beginning of the process: the lack of capacity (administrative, financial and technical) to implement the law and the existence of unacceptable high political pressure on the work of these

59 Krastev Ivan, "The Balkans: Democracy Without Choices," 13(3) *Journal of Democracy* (2002), 39-53, at 43.

institutions. This is why trust in the electoral oversight institutions is at a very low. As a consequence, electoral contestants also rarely use available dispute resolution mechanisms.

Institutional capacity within the State Electoral Commission (SEC) and the Agency for the Prevention Corruption in Montenegro is still limited. The Agency, established in January 2016, does not provide enough information about the controls. The only criminal charge that has been filed so far by this institution is against the opposition Democratic Front (DF). SEC, on the other hand, also functions without transparency with a lack of pro-activity, especially when it comes to the control of the voter register legality which was a central issue not only during the last campaign but the all previous.

In an unprecedented manner since the democratic changes in Serbia in 2000, the Republic Electoral Commission delayed the announcement of preliminary results in the early parliamentary elections 2016 which led many to believe that the actions of the institution were a reflection of political pressures of the ruling SNS wishing to publicly undermine a relative setback in comparison to the results obtained in previous early parliamentary elections held in 2014.<sup>60</sup> The integrity of the electoral process further deteriorated in the early parliamentary elections held in April 2016. As OSCE/ODIHR stated in its Final Mission Report, “biased media coverage, undue advantage of incumbency and a blurring of distinction between state and party activities unlevelled the playing field for contestants.”<sup>61</sup> Over 60 complaints requesting the annulment of results and calling for repeat voting

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60 In the 2014 elections SNS had 158 seats, in the 2016 elections they managed to secure 131. For further analysis of the elections see Vesna Rakić-Vodinelić, “Parlamentarni izbori 2016 – III,” *Peščanik*, 29 April 2016; Srdjan Cvijic, “Serbia election: EU Grasping at Straws,” *EU Observer*, 27 April 2016, at <https://euobserver.com/opinion/133226> (Accessed 05/03/2017); Florian Bieber and Marko Kmezić (2017) “Huge Victory for EU Parties in Serbia,” *Balkans in Europe Policy Blog*, 27 April 2017, at <http://www.suedosteuropa.uni-graz.at/biepag/node/213> (Accessed 05/03/2017); For an analysis of the transformation of the non-partisan electoral monitoring see Dejan Ilić, “Noć kada je umro CeSID,” *Peščanik*, 26 April 2016, at <http://pescanik.net/noc-kada-je-umro-cesid/> (Accessed 05/03/2017); Cvijic, *Serbia Election*; Bieber and Kmezić, *Huge Victory*.

61 See: Limited Election Observation Mission Final Report, Republic of Serbia Early Parliamentary Elections, 24 April 2016, at 1.

were filed after the elections. Moreover, the opposition political parties (across the political spectrum – with few exceptions) accused the Republic Electoral Commission of an improper and biased (pro SNS-governing coalition) when it came to the processing of results and handling of post-election complaints. The integrity of the electoral system was not improved either, but instead further undermined by alleged elections rigging both in the presidential and parliamentary elections in 2012 and in the early parliamentary elections of 2016.

## 2.4 Protests, boycotts and early elections

Elections, which should be a key source of legitimacy of democratically elected governments, are actually one of the reasons for the political crisis, frequent protests and a boycott of the Parliament. Crisis particularly culminated during 2016 after the announcement of early elections in Macedonia and Serbia and mass protests in Kosovo and Montenegro calling for early elections.

Macedonia has so far organized nine parliamentary elections since the establishment of a multi-party system, while the electoral system was changed four times. Elections are held on average less than three years, while the electoral legislation undergoes through significant changes to less than seven years. During this period, Macedonia has gone through several political crises due to serious violations of human rights and freedoms, lack of political consensus among the political parties and inter-ethnic political instability. Two key features marked the pre- and post-electoral practices: weak coalitions that have caused four early parliamentary elections and frequent changes of the electoral legislation.

In addition to early elections, the boycott and parliamentary proceedings is common in Macedonia. All opposition parties, with the exception of the Liberal Democratic Party (LDP), boycotted the Parliament prior to the elections in 2011. DUI boycotted the presidential elections in 2014. The opposition leaders from the Social Democratic Alliance of Macedonia (SDSM) refused to take their seats after the 2014 parliamentary elections. Immediately after the closing of polling stations, the party leader informed the media that there had been “threats and blackmail and massive buying

of voters”.<sup>62</sup> The crisis in Macedonia after the 2014 elections culminated with the wiretapping scandal revealed massive infringements on the right to private communications and a lack of control over the state intelligence and security agencies.<sup>63</sup> Based on the provisions of the Pržino agreement SDSM returned to parliament, the interim government was formed and elections scheduled. However, under the OSCE pressure based on allegations of fraud, elections in Macedonia were postponed twice in 2016.

Numerous corruption scandals and election irregularities that impaired conditions for a fair political fight affected the opposition’s attitude in Montenegro. Its leaders often indicate that Montenegro has not held democratic elections so far.<sup>64</sup> During 2015, the opposition Democratic Front organized a series of protests as the “only form of political battle”. The most recent case of the “psychological” pressure on voters is the alleged coups d’état on the Election Day in 2016 in Montenegro, which likely contributed to Djukanovic narrow victory. It was the continuation of labeling political opponents as pro-Russian and influencing the further polarization of society, which is already divided on key strategic issues such as joining the NATO. The event was accompanied by a number of clumsy statements from the authorities and the opposition, and even the Special State Prosecutor’s Office. Moreover, this event led to a full boycott of the Parliament by all the opposition parties who refuse to participate until the case is explained and elections again held. Moreover, the opposition boycotted the local elections held on 12 March 2017 in the municipality of Niksic, the second largest city in Montenegro. This decision was taken after the Democratic Front’s leaders immunity was removed by the Parliament because of the ongoing investigation for involvement in the alleged coup d’état. During the Election Day the National Agency for Electronic Communications completely shut

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62 Kole Casule, “Opposition Boycotts New Macedonian Parliament,” *Reuters*, 10 May 2014, at <http://uk.reuters.com/article/uk-macedonia-parliament-idUKKBN0DQoCX20140510> (Accessed 15/03/2017).

63 EPI, “The EU Revisits Macedonia: Chances for a New Approach?,” Institute of Social Sciences and Humanities, December 2015.

64 “Intervju Nebojša Medojević: Došao je trenutak odluke, građani CG će se ili izboriti za slobodu, ili ostati taoци DPS,” *Newsweek*, 27 September 2015, at <http://www.newsweek.rs/region/58424-intervju-nebojsa-medojevic-dosao-je-trenutak-odluke-gradjani-cg-ce-se-ili-izboriti-za-slobodu-ili-ostati-talac-dps.html> (Accessed 15/03/2017).

down the two social media mobile communication platforms (WhatsApp and Viber). The agency explained that the applications were allegedly being used to disseminate “undesirable publicity messages”, but under the pressure from the opposition and civil society restored it after a few hours. Blocking social media has been interpreted as interfering of the electoral process and raised serious concerns “in relation to alignment with European standards and case-law” as recognized by the European Commission.

In Serbia, the government in 2016 called for early elections, despite the fact that the ruling SNS coalition had an absolute majority in the parliament. Although the “justification” for such decision emphasized the need to maintain the momentum for the European integration process, it was actually used as yet another mechanism for strengthening the position of the ruling party and prolonging its stay in power.

Irregularities in the electoral process do not cause only diminishing citizens participation in the elections and political processes, but risk political violence as the January 2011 bloody events in Albania, or political instability in Kosovo, Montenegro or Macedonia. For all these reasons, a number of people decide to withdraw from elections or even decide on radical actions. To quote a former Kosovo publicist, politician and diplomat Veton Surroi, who once said about the Kosovo population (sentence applicable to the citizens of all Western Balkans countries) unable to freely express their vote, people will vote with their feet and migrate to Europe.<sup>65</sup>

The paper shows that, regardless of a certain improvements of the electoral legislation in all the WB countries, the consolidation of the election process is fragile due to a number of irregularities, violations of election laws, misuse of public resources for electoral purposes, which are common and this trend is “stable”. The election results are usually contested by direct participants while irregularities, to some extent, are recorded by the independent observers. Supervisory institutions as a rule lack the capacity and political independence for adequate control of the electoral process. The

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65 This is exactly what happened in the winter of 2014-2015 when thousands of Kosovo citizens joined the Middle Eastern refugees on the Balkans Migration route on their way to Europe.

political independence of the judicial institutions is missing since even the well-documented cases of electoral abuses remain unsolved.

Whether the WB countries will improve electoral practices depends on the international community's engagement. However, although the EU and the OSCE/ODIHR support reforms, the current approach is flawed for several reasons. Support is primarily focused on regulatory improvements and trainings, as well on donations to civil society organizations for the elections monitoring and voter education campaigns. The pressure on institutions to improve practices and prevent the abuses is not sufficient. Moreover, the European Union's country reports are not precise in specifying election irregularities, while usual assessments on improved conditions for elections do not correspond with the situation on the ground.





### 3. Checks and Balances

Meaningful “checks and balances” was not built into the constitutional framework of the Western Balkan countries until after 1991. With the introduction of multiparty elections, a system of separation of powers, previously only a formal one, started to take shape at the beginning of the 2000s. Distinct roles for the executive, legislative and judiciary gradually began to emerge in the region. While they still often remained controlled by narrow elite groups, regular parliamentary and presidential elections, as well as the establishment of judicial institutions, contributed to the emergence of the idea that power should not remain unchecked and may need to be balanced, in particular by the judiciary. The integration of the post-Yugoslav countries into the framework of the International Criminal Tribunal for the former Yugoslavia (ICTY) had a particular impact on the judiciary and the notion that political leaderships too may be held criminally accountable. Constitutional courts in countries with consociational arrangements, such as Bosnia and Herzegovina, Kosovo and Macedonia, became arbitrators of political conflicts. Membership in the Council of Europe and the jurisdiction of the European Court of Human Rights (ECtHR) placed further restrictions on governments and administrations. Over time, the European Commission for Democracy through Law (Venice Commission) provided analysis and advice on how to develop a system of checks and balances in the emerging parliamentary democracies in the region.

This chapter looks at the role of parliaments, the judiciary, independent bodies and their roles in providing checks and balances in the political systems of the region. The Balkan countries have all developed parliamentary political systems through constitutional reform or innovation, all riddled with similar difficulties of parliamentary oversight and control.<sup>66</sup> While parliaments have enjoyed comparatively little external support and have often been side-lined in the European integration process, the judiciary has been drawing significant external attention as well as practical support and, most importantly, undergoing serious reforms. The judiciary has

66 Bosnia and Herzegovina is the only country in the region with a semi-presidential system of government at state-level. The other levels of government in the county can be described as a parliamentary system.

seen the introduction of new appointment and staff selection systems based on the Franco-Italian judicial council model.<sup>67</sup> Independent bodies, such as Ombudsman institutions, entered the scene in the 1990s to build up fundamental and human rights protection while countries embarked on a judicial reform and prepared to become a part of the regional human rights protection system of the Council of Europe.<sup>68</sup> Those institutions were joined by a plethora of independent election commissions, financial audits, media regulatory bodies – all designed to provide checks and balances to the executive, yet, by now falling short of initial expectations in exercising these roles.

### 3.1 Parliaments

#### Parliaments in the European integration process

From 2000 onwards, the prospect of EU integration, ideas of modern democratic governance, constitutional politics characterised by checks and balances seemed universally accepted and endorsed by the newly elected governments of the Western Balkan states. However, concerns remained in how far they would remain sustainable in view of the high degree of elite continuity, not only in politics, but also in the rule of law and security sectors. Yet parliamentarism was on the rise, Albania changed its constitution in 1998 and by 2001 both Croatia and Serbia moved from presidential to parliamentary political systems.<sup>69</sup> Parliamentary elections were held regularly and opened up the space for creating active and more representative parliaments exercising oversight and control.

The space for parliamentary participation began shrinking almost as soon as the EU accession process was set in motion. Already the negotiations, signing

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67 Cf. Alina Mungiu-Pippidi, “A House of Cards? Building the Rule of Law in the Balkans;” in Jacques Rupnik (ed.), *The Western Balkans and the Hour of Europe*, Chaillot Paper No. 126 EU Institute for Security Studies (Paris, 2011), 145-162, at 153.

68 Countries joined between 1995 and 2007, first Albania and last Montenegro. Kosovo is not a member.

69 An overview on individual countries’ developments can be found in Anna Fruhstorfer and Michael Hein (eds.), *Constitutional Politics in Central and Eastern Europe; From Post-Socialist Transitions to the Reform of Political Systems* (Wiesbaden, Springer, 2016).

and ratification of the Stabilisation and Association Agreements (SAA) in the 2000s took place without any meaningful parliamentary participation. Starting with the formal application for membership, the EU process is largely in the hands of the executive – government and administration. The screening process is carried out by the administrations and the negotiations are run by governments, with almost no parliamentary consultations, bar those issues requiring more than mere legislative adjustments, such as international agreements, constitutional change or complex socio-economic changes. Hence, parliaments are finding it difficult to maintain oversight and control as their role is not central in the most important political process taking place in the region. Also, the EU institutions engaging in the region, for reasons of expediency, neither require nor actively encourage such parliamentary oversight. The engagement of the International Financial Institutions (IFI), such as the International Monetary Fund (IMF) and the World Bank, follows a similar pattern of requiring parliaments to accept programmes negotiated by governments. These structural effects of European integration and international governance on political systems are not unique to the Western Balkans and have been analysed elsewhere.<sup>70</sup>

However, these general effects of European integration are being exacerbated in the accession process by the conditionality specific to the Western Balkans. The countries of the region are invited by the EU to meet political conditions that often interfere with the internal political dynamics. The most illustrative example is the case of Bosnia and Herzegovina where, until 2014, progress in EU accession was conditional upon compliance with the EU's demand for a change in the political system. Other examples of country-specific political conditionality for future member states with impact on the “nature” of the potential member state are the normalisation process between Serbia and Kosovo or the recent international interventions aimed at addressing the crisis of Macedonia's political system. The handling of those processes internally and by the EU institutions is further strengthening the role and the hand of party political leaders at the expense of parliamentary participation

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70 For example Andreas Maurer, “National Parliaments in the European Architecture: From Latecomers' Adaptation Towards Permanent Institutional Change?,” in Andreas Maurer and Wolfgang Wessels (eds.), *National Parliaments on Their Way to Europe: Losers or Latecomers?* (Baden-Baden, Nomos Verlag, 2001), 27-76.

and democratic processes within political parties. These developments are happening in political systems with barely solidified institutions and a long tradition of highly contested constitutional politics, where constitutional agreements are not yet considered universally stable or a final basis of reference for everyone.

### Parliamentary oversight and control

Parliamentary traditions in Bosnia and Herzegovina, Montenegro and Serbia date back to the late 19<sup>th</sup> century. In Albania, Kosovo and Macedonia parliaments emerged in the early 20<sup>th</sup> century. Still, these institutions have remained weak. For parliamentarism to flourish, a commonly accepted understanding of the role of the opposition is essential. Yet the concept of a recognised and constructive opposition has hardly developed in the region. The majority and minority antagonism paralysing the Balkan parliaments has been a regular feature of politics. Through walkouts and parliamentary boycotts, which have happened in all countries of the region in the last fifteen years. The very capacity of the institution to check and hold accountable the executive is regularly hindered, including dramatic acts, such as the use of teargas in the parliament hall in Kosovo. It is important to note that different factors are hampering the ability of parliaments to fulfil their role as institutionalised arenas for political antagonism and compromise. In Albania, Kosovo, Montenegro and Serbia, a key factor is the polarisation and antagonism between the main political parties, in Macedonia the authoritarian turn of the ruling party has become the key driver of institutional gridlock, while in Bosnia and Herzegovina the state-level parliament remains blocked by conflicting ethno-nationalist agendas. Parliamentary elections have regularly been called early in the last years.<sup>71</sup> The quality of the election process is constantly decreasing without subsequent parliamentary scrutiny (see chapter 2 on elections). Hence, the overall capacity of parliaments in each of the six Western Balkan countries remains significantly limited also for these domestic reasons. In turn, the very instrumentalisation of the

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71 In ten years, there were four early parliamentary elections in Macedonia (two in 2016, one in 2014 and 2008, respectively), two in Montenegro (2009 and 2012) and two in Serbia (2008 and 2016). In Albania, Bosnia and Herzegovina and Kosovo the electoral calendars were observed. Cf. Office for Democratic Institutions and Human Rights: Elections, at <http://www.osce.org/odihr/elections> (Accessed 24/03/2017).

parliaments for fundamentally non-parliamentary methods of political struggle further devalues the concept of deliberative democracy. The concept that there can and should be legitimate **oversight and control of politics** exercised **by politicians** (that is, elected politicians, Members of Parliaments - MPs) for the common constitutional good has not fully taken root. Oversight and control is considered transactional, as a constant attempt to replace the current government rather than to hold it to account in order to replace it in future elections. In parallel with the EU accession process, the diminution of the parliament's role, changes to constitutional practices and rules dismantling checks and balances, which marginalise parliaments, can be observed throughout the region.<sup>72</sup> The kernel of any parliament are its elected members, the Members of Parliament (MPs). While MPs should be independent and accountable to the electorate, a study of the situation in Bosnia and Herzegovina posits: "the reality, of course, is not like that, since party discipline transforms parliamentarians into servants of their parties."<sup>73</sup> Under these conditions, the ability to develop an institutional approach to parliamentary oversight and control remains critically limited as the individual MP's actions will be measured against party loyalty. Independent political work of parliamentary groups (party political caucuses) is also largely absent. The instrument of individual or groups of MPs addressing questions to government (interpellation) remains underutilised. Questioning government as a member of the majority is often close to sycophancy, while interpellations by members of the opposition are not answered in substance. This situation is compounded by the missing capacity to research and formulate questions at the level of individual MPs and political groups.

Hence, the internal organisation of parliament is a good indicator for its preparedness to exercise oversight and control over the executive. The internal organisation of the parliament can be determined by its members, yet the continuous mismatch of parliamentary functions, responsibilities and

72 Sasa Dragojlo, "Rise in 'Urgently' Passed Laws Queried in Serbia." *Balkan Insight*, 12 October 2015, at <http://www.balkaninsight.com/en/article/urgent-procedure-laws-detrimental-for-serbia-s-rule-of-law-10-06-2015> (Accessed 24/03/2017).

73 Goran Marković et al., *Improvement of Democratic Performances of the Parliamentary Assembly of Bosnia and Herzegovina* (Sarajevo, Sarajevo Open Centre, 2012), at 19.

capacities would indicate the heavy-handed control of the political parties and – if in power – of the executive at the expense of institutional autonomy. Rules of procedure and business allocation plans, e.g. for committee work, are not well developed. As a result, the committee structure is often not well defined, leading to the *ad hocism* in deciding which parliamentary body should deal with certain issues. Institutionally this leads to a lack of maturational effects in the capacity development both at the level of individuals and, most importantly, structures.

### The role of the opposition

Another indicator of the institutional maturity in parliamentary democracies is the treatment of the parliamentary opposition by the majority. In longstanding European parliamentary systems key committees are often chaired by the opposition.<sup>74</sup> This approach has partly taken root in issues pertaining to European integration. Yet, the change of parliamentary practices is primarily the result of EU pressure to ensure that issues relating to the accession process reach a broad agreement and that achievements are not rolled back in case of changing majorities. Hence, the candidate countries, Albania, Montenegro and Serbia follow the EU advice (see Table 1). The introduction of the practice of opposition-chaired European integration committees through external pressure in itself confirms the attitude of both the executives and EU institutions *vis-à-vis* parliamentary autonomy. The appointment of opposition MPs is not aimed at strengthening the capacity of the parliament as an institution to oversee and control the EU integration process but at guaranteeing the broadest possible support for the EU in the parliament and country. In other words, it is aimed at co-opting the opposition into the dominant political process, rather than giving it an autonomous voice and role, including scrutiny and control of the effects of the European integration process on the country.

Furthermore, EU integration committees' competences in legislative and budgetary affairs are at best limited, if not absent. Significant capacity for control and oversight lies elsewhere, namely in the area of budgets and

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74 European Commission for Democracy Through Law: Report on the role of the Opposition in a Democratic Parliament, adopted by the Venice Commission at its 84th plenary session, 15-16 October 2010, document DL\_AD(2010)025, at 19.

expenditure-related policy fields (economy, social affairs, infrastructure). Firstly, control of parliaments is limited as the committee structure is not fully adequate to exercise these functions, including *ex-post* financial control. Again, the role of the opposition is important to build in checks and balances. In Germany, for instance, the budget committee is traditionally **not** chaired by an MP from the majority but from the opposition. This opens up the opportunity for an agenda-setting role of the opposition on government expenditure. Not only are the committees not well defined in the budget area, but also the idea of involving the opposition in the parliamentary oversight of those issues through chairing parliamentary committees is largely absent. The majority will prevent agenda-setting by opposition chairpersons. Against the backdrop of the antagonistic political landscape, parliamentary budget and expenditure autonomy is therefore curtailed early on in the decision-making and deliberation process. How crucial the impact of majority chairs is in interpreting the rules of procedure was recently witnessed by a global audience when the US Senate shut down criticism against a nominee by the incoming 45<sup>th</sup> US President.<sup>75</sup>

### Committee and support structures

In parliamentary systems of the continental type, like those prevalent in the Western Balkans, ideally, the committee structure of the parliament follows the remit of the Ministries with, as a rule of thumb, one committee dealing with one ministry. This allows for clearer checks and balances based on coherent business allocation plans.<sup>76</sup> Clear departmental delineations have shown to be most effective for oversight and control of government ministries and departmental budget accountability as well as legislative work. The parliaments of the Western Balkan countries offer an example for the structural difficulties of oversight and control. In general, parliaments will have more committees than there are government ministries as they need to regulate their internal business as well. Yet, the key substantive committees should aim in principle to mirror the government's structure. In

75 See Matt Flegenheimer, "Republican Senators Vote to Formally Silence Elizabeth Warren," *The New York Times*, 7 February 2017, at <https://www.nytimes.com/2017/02/07/us/politics/republican-senators-vote-to-formally-silence-elizabeth-warren.html> (Accessed 24/03/2017).

76 Cf. Hironori Yamamoto, *Tools for Parliamentary Oversight: A Comparative Study of 88 National Parliaments* (Geneva, Inter-Parliamentary Union, 2007), at 16.



the seven parliaments analysed, committee mandates cut across government departments, complicating the work of MPs and making accountability and working organisation fuzzy. To counterbalance the effects of the observed committee structure, which is not mirroring well the government, one can note the emergence of ever more committees for inquiry or special committees.<sup>77</sup> Inquiry committees are an important tool for parliaments. While in Albania case-specific committees can at least be set up, in Serbia an omnibus committee, standing and without specialisation, exists. This limits the responsiveness of inquiries from the outset. In Bosnia and Herzegovina, no inquiry committee have been in the Parliamentary Assembly at state level. In addition to the unsatisfactory organisation of committees, parliaments in the region have rarely been able to develop sufficient administrative capabilities and technical and research capacity to become a counter-weight to the executive. This concerns the members of parliament at individual level which mostly have limited access to support staff, the parliamentary political groups (as entities), secretariats and research services. A system of parliamentary assistants for MPs that would help them professionalise their work is all but absent. The committee secretariats, following the already inadequate committee structure, are poorly staffed and equipped with personnel missing the resources to develop the expertise to support MPs in their oversight and control role. This is also reflected in the absence of any meaningful legislative capacity and initiative of parliaments.

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77 An example for the structural difficulties of oversight and control by parliament is the situation in Albania. There are 17 government ministries and only eight permanent parliamentary committees which have to cover the activities of several ministries at once. In addition four sub-committees and three ad-hoc committees have been established, the mandates of which go across government departments. The committee structure has contributed to a proliferation of inquiry committees. At the end of 2016, seven inquiry and special committees are in place in the Albanian parliament, investigating a broad variety of appointment, privatisation and police-related issues. Cf. at <https://www.parlament.al/atribut/committees/> (Accessed 24/03/2017).

	<b>Political system</b>	<b>Ministries / Permanent committees</b>	<b>Chair, European integration committee</b>	<b>Chair, Committee / body responsible for budget</b>
Albania	Parliamentary, unitary state	17 / 8 not mirroring	<b>Opposition</b> Majlinda Bregu DP	<i>Majority</i> Erjon Brace PS
Bosnia and Herzegovina <sup>1</sup>	Semi-Presidential, bi-cameral parliament (con-)federal state	9 / 7 joint, 10 cameral committees) largely mirroring	<i>Majority</i> Nikola Lovri- nović HDZ BIH	<i>Majority</i> Kožul, Predrag HDZ BIH
Croatia	Parliamentary, unitary state	29 / 20 not mirroring	<i>Majority</i> Domagoj Ivan Milosevic, HDZ	<i>Majority</i> Grozdana Peric, HDZ
Kosovo	Parliamentary, unitary state with devolution	17 / 15 not mirroring	<i>Majority</i> Ismet Beqiri, LDK	<i>Majority</i> Naser Osmani, LDK
Macedonia <sup>2</sup>	Parliamentary, unitary state with devolution	21 / 18 partly mir- roring	<i>Majority</i> Ermira Mehme- ti, DUI	<b>Opposition</b> Marjanco Ni- kolov, SDSM
Montenegro	Parliamentary, unitary state	18 / 13 not mirroring	<i>Majority</i> Adrijan Vuksa- nović, HGI Opposition does not participate in the commit- tee's work	<i>Majority</i> Vujuca Lazović, SD Opposition does not participate in the committee's work
Serbia	Parliamentary, unitary state	17 / 20 not mirroring	<b>Opposition</b> Marinika Tepic LDP-LSV	<i>Majority</i> Aleksandra Tomic TOMIC Serbian Progres- sive Party

1) In the consociational political system of Bosnia and Herzegovina all leading political parties share offices at central government level and parliamentary functions, the role involvement of the opposition in the running of parliamentary business is therefore largely absent.

2) Data for the parliament 2014-2016.

**Table 1: Overview of parliaments in the Western Balkans - organisational aspects<sup>28</sup>**

## Decline or stagnation?

The role of parliaments in providing checks and balances to the executive and advancing the quality of democracy has not increased over the last ten years. Table 1 provides an overview of the aspects under review for this study and of the institutional limitations of current parliaments in the region. As discussed, the increasing integration of the countries in international and European structures of economic and political governance has limited the influence of parliaments further. The last decade has seen antagonistic discourses and increasing political clientelism, particularly blatant during the economic crisis, blocking the development of parliamentary institutions. They remained arenas of conflict, rather than compromise. The internal structures and autonomy of parliaments did not develop against this background. So far, the parliamentary systems in the region have not seen attempts of constitutional change like in Turkey or Hungary. Yet, after a decade of stagnation and lost opportunities for parliamentary democracy, the parliaments in the region seem unprepared to defend their institutional position against further illiberal and autocratic developments.

### 3.2 Judiciary

A functioning judiciary lies at the core of the idea of a modern state, as it is a fundamental principle and integral element of all liberal democracies and democracy building. It is also an essential precondition for the establishment of an effective system of governance based on the rule of law and of critical value in safeguarding the impartiality of judges from undue external influence(s).

In functioning parliamentary democracies with their inherent systems of checks and balances, this understanding of the rule of law through the realm of the reach of democracy is constrained by and in favour of judicial power. While elections give voters the opportunity to choose whether to keep the same government or to vote for an alternative, the judiciary imposes limits on the law-making and executive powers by holding them responsible. In a nutshell, the judiciary is supposed to impose restraints on government officials by requiring compliance with the existing laws, as their acts must

have positive legal authorisation and must not contravene a legal prohibition or restriction.

In this sense, judicial independence is an institutional response to specific legal, political, economic, cultural and historical influences, inducements, pressures, threats or interferences. To measure judicial independence, in reaction to concrete threats to judicial impartiality, legal academia has developed a number of benchmarks. These include, among others, substantive, personal, collective, internal, structural, and administrative safeguards of judicial independence.

### Judicial independence

To achieve judicial independence and self-government, all analysed countries have established a Judicial Council – an autonomous body dealing with key judicial organisational issues, specifically, the selection, promotion and, to a limited extent, dismissal of judges, and in some cases budget proposals. A general problem regarding judicial independence is the evident lack of appropriate procedures to make the decisions of the Judicial Councils binding, as well as the need for greater inclusiveness of these institutions in the process of drafting legislative reforms.<sup>79</sup> A possible threat to judicial independence is the lack of clearly established criteria for career advancement, and the lack of rules for appointing the courts' presidents, which leave room for political influence on the process.

However, a persistent problem is that formal guarantees of independence can easily be neglected or even manipulated either by external actors, or by the judges themselves. This is confirmed in numerous expert reports<sup>80</sup> suggesting that, despite an impressive legislative framework, Balkan courts are only independent and autonomous in law, while, in practice, the courts' functions are restricted by political influence, inefficiency, nepotism, cronyism, and corruption.

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79 See Marko Kmezić, *EU Rule of Law Promotion: Judiciary Reform in the Western Balkans* (New York, Routledge, 2016).

80 See for example Nations in Transit 2017 Democracy Index Country Reports at <https://freedomhouse.org/report/freedom-world/freedom-world-2017> (Accessed 24/03/2017); or Bertelsmann Transformation Index 2016 country reports, at <https://www.bti-project.org/en/home/> (Accessed 24/03/2017).

The impression about the questionable level of actual independence of the judiciary is reiterated in a survey conducted by the Fund for Open Society, which revealed that only 2% of Serbian citizens<sup>81</sup> considered the judiciary to be independent from political influence. The reason for the absence of judicial independence can be found in the “disorganisation, lack of knowledge, lack of integrity, and fear”<sup>82</sup> of the sitting judges. It is crucial to analyse the cause of the alleged ‘fear’ among members of the judiciary. According to local experts, it is precisely the political elites that exercise pressure on the judiciary.<sup>83</sup> In fact, the actions of local political elites are dominantly focused on their refusal to cede traditional impunity and vested interest. The conviction of the Croatian former Prime Minister Ivo Sanader for corruption<sup>84</sup> serves as a most striking example of the “harmful” effect of judicial reform for established elites. Hence, ruling elites follow up with regular delays of key reforms that would lead to a substantive improvement of the judiciary, particularly in the sphere of its independence. Most recently this has been evident in institutional obstructions of the work of the Macedonian Special Prosecutor.<sup>85</sup>

### Influence over the judiciary

Political influence is exercised mostly through the implementation of unprepared, unprofessional, politically motivated and premature judicial reforms and specifically through the politicised process of re-election of judges. This is perhaps best illustrated in Serbia by the High Judicial Council’s (HJC) controversial decision taken on 16 December 2009, when 1,531 judges were confirmed to a full-time post and another 876

81 Taken from the Business Anti-Corruption Portal, Serbian Judicial System, at <http://www.business-anti-corruption.com/country-profiles/europe-central-asia/serbia/corruption-levels/judicial-system.aspx> (Accessed 24/03/2017).

82 Kmezić, *EU Rule of Law Promotion*, at 136.

83 J. Vasilic, 2014. “The judiciary is not Independent Due to Government,” *NIN* 3336, 4 December 2014, at <http://novinarnica.info/article/pravosude-nije-nezavisno-zbog-vlasti> (Accessed 24/03/2017).

84 “Former Croatia PM Ivo Sanader Convicted of Corruption,” *BBC*, March 11 2014, at <http://www.bbc.com/news/world-europe-26533990> (Accessed 24/03/2017).

85 Sinisa Jakov Marusic, “Macedonia’s Special Prosecution Fends Off Joint Attacks,” *Balkan Insight*, 28 October 2016, at <http://www.balkaninsight.com/en/article/attacks-against-macedonia-s-special-prosecution-condemned-10-26-2016> (Accessed 24/03/2017).

elected for the first time. However, at the same time, the HJC dismissed 837 judges – almost one third of the judiciary - in a non-transparent and contradictory procedure, without providing any explanation for its action.<sup>86</sup> The local association of judges claimed the general election of judges was unconstitutional, while the underlying intention for this action was described as “politically motivated”<sup>87</sup> and as “another partisan purge.”<sup>88</sup> Similarly, controversial wire-tapping materials gathered in Macedonia<sup>89</sup> suggest that the government exercises complete control over the judiciary, both in the career advancement system and elected judicial institutions, and has misused it to persecute and intimidate its political opponents.

More worrisome still are recent cases of unpunished interference of politicians in the work of courts and prosecutors. These tactics mostly rely on a blunt transfer of instructions directed at the judiciary, made by the political elite, powerful individuals or social groups through instrumentalised media outlets under the pretext of “political will.” It has become common practice for government officials in the region to comment on trials, announce arrests, and set detention without a previous court decision.<sup>90</sup> Moreover, in violation of the constitutional principle of checks and balances, in practice, the whole power has shifted towards the executive branch of government, and, more precisely, to a handful of high-ranking political figures. This effectively brings into question the ability of the judiciary to hold the executive accountable. The ability of courts to hold the elites accountable can best be traced by following the stream of court proceedings against high-profile political figures, belonging to the current opposition and ruling coalition alike. With

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86 See Judge’s Association of Serbia. Short Overview of Judicial Developments in Serbia (Belgrade: 2013), at <http://www.sudije.rs/files/file/pdf/Short%20Review%20of%20Judicial%20Developments%20in%20Serbia.pdf> (Accessed 24/03/2017).

87 Author’s interview with a judge, Belgrade, January 2014.

88 Danijela Dolenc, *Democratic Institutions and Authoritarian Rule in South-east Europe* (Essex, ECPR Press, 2013), at 187.

89 For more information: “Interactive Overview of Macedonia’s Largest Wire-Tapping Scandal,” *Al Jazeera*, at <http://interactive.aljazeera.com/ajb/2015/makedonija-bombe/eng/index.html> (Accessed 24/03/2017).

90 The case of the businessman Miroslav Mišković is perhaps the best known, but not the only example of such practice. See “Produžavanje pritvora Miškoviću bilo neustavno,” *Vreme*, October 10 2013, at <http://www.vreme.com/cms/view.php?id=1143163> (Accessed 24/03/2017).

only few exceptions, these trials ended either in the acquittal of the indicted persons, or the dismissal of charges against them due to an obsolescence of the case. In Serbia, for example, despite numerous indictments for alleged criminal affairs, no member of either the former or present political or economic elite has thus far been held accountable by the judiciary. Finally, the recent comment of the assistant to the Serbian Minister of Justice, in which he refers to the judges as “a group of 2,000 irresponsible people”<sup>91</sup> clearly illustrates the efforts of the executive to limit judicial independence.

### 3.3 Independent state institutions

Beyond the classic tripartite division of power, the system of government in the Western Balkan countries is composed of other stakeholders as well. Apart from the constitutional courts, which fall outside the judiciary branch of government *stricto sensu*, all the countries under scrutiny also consider various independent regulatory bodies (independent state institutions), such as the Ombudsman, Anti-Corruption Agency, State Auditor, and a number of regulatory bodies, to be important constitutional stakeholders. These bodies play a particularly important role in societies undergoing democratic transition, where state institutions fail to adequately apply the system of mutual checks and balances.

For the purpose of this study only independent state institutions dealing with the protection of human rights and anti-discrimination, primarily the Protector of the Citizens (the Ombudsman), Anti-Corruption Agency and Commissioner for Data Protection, will be the focus of our analysis. These institutions offer evidence of difficulties encountered in the cooperation of independent bodies with other state institutions in the Balkans. Specifically, despite being the most developed of the independent state bodies, the impact and effectiveness of these bodies still remains limited, as they often face institutional and budgetary constraints, as well as direct threats as a consequence of their activity. These particular institutions are of interest to this study also because, besides their main task, which is to provide additional means for representation and protection of citizens and their rights, they

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91 Tamara Spaić, “Judiciary Reform or How to Make the Serbian Judiciary Worthy?,” *The New Century* 07, 2014, at 26.

supplement the system of checks and balances by facilitating efficient and effective control over the executive branch of power.

For the sake of clarification, we need to be assert here that not even the Ombudsman, who, of all independent state bodies, certainly comes closest to qualifying as a separate state body, has oversight authority over the legislative, the executive and the judiciary. This institution oversees the respect of the right of citizens; establishes violations resulting from acts, actions or omissions by administrative authorities; controls the legality and regularity of the procedures implemented by administrative bodies; launches initiatives for amending laws or other regulations; initiates procedures for establishing the constitutionality or legality of legal acts passed by bodies; and publicly recommends the dismissal of officials responsible for violation of citizens' right.

Therefore, to be able to effectively fulfil their role, besides their presumed functional independence, independent state institutions heavily rely on maintaining good professional cooperation and healthy relations with the parliament and other state bodies. But this has not always been the case in the Western Balkans over the recent years. In general, these relations have been marked by delays, or even a complete lack of follow-up by government and parliament in adopting proposed regulations and implementing recommendations submitted to them by the independent institutions.<sup>92</sup> In some legal systems, as is the case in Serbia, there is no explicit legal obligation on the part of the National Assembly to take those reports into consideration and at least take a stand on them.

Moreover, independent state institutions are often inadequately staffed and suffer from lack of financial resources. The latest European Commission Country Reports, published in November 2016 reveals that the Albanian Commissioner for the Right to Information and Data Protection, the Ombudsman, the Serbian Anti-Corruption Agency, the Anti-Corruption Council, the Commissioner for Information of Public Importance and Personal Data Protection and Ombudsman, Macedonia's Ombudsman,

92 See for example Tara Tepavac, "The Independent Bodies and the National Assembly of the Republic of Serbia: Collaboration or Ignorance?," *European Movement Serbia*, Belgrade, 2015.



Montenegro's Ombudsman, and Kosovo's Ombudsman and Anti-Corruption Council all lack the human and/or financial resources to function properly. In addition, the European Commission even called on the Office of the Ombudsman in Montenegro to further strengthen its knowledge of international and European human rights laws and standards.

Finally, of special concern are region-wide smear attacks against independent state institutions. A blatant example of this disturbing practice is the constant campaign against Saša Janković, Serbia's former Ombudsman. Following investigations of an incident involving the brother of Serbian Prime Minister Aleksandar Vučić,<sup>93</sup> alleged wrongdoing by the country's Military Security Agency (VBA),<sup>94</sup> and particularly of the lack of response of state institutions in the case of illegal demolition in Belgrade's Savamala district,<sup>95</sup> the Ombudsman was heavily targeted in an orchestrated campaign involving high-ranking members of the ruling Serbian Progressive Party, government officials and pro-government media.<sup>96</sup> Equally worrisome were the unsubstantiated claims suggesting that Janković was in some way involved in the death of a person who committed suicide in 1993, whereas pro-government media, being part of a larger campaign against the ombudsperson, referred to him as a "killer", "gun smuggler" and "suspect".<sup>97</sup> The UN High Commissioner for Human Rights expressed hope that "the government of Serbia will continue to exercise due diligence in connection with any possible pressure, threat, or forms of retaliation against Ombudsperson Janković and the institution, and will distance itself from the accusations made against him".<sup>98</sup> However, despite

93 "Gendarmes Indicted Over Incident Involving PM's Brother," *B92*, March 3 2015, at [http://www.b92.net/eng/news/crimes.php?yyyy=2015&mm=03&dd=03&nav\\_id=93352](http://www.b92.net/eng/news/crimes.php?yyyy=2015&mm=03&dd=03&nav_id=93352) (Accessed 24/03/2017).

94 Filip Avramovic, "Serbian Security Agency Out of Control, Ombudsman," *BalkanInsight*, 17 March 2016, at <http://www.balkaninsight.com/en/article/serbian-military-security-agency-getting-out-of-civil-control-03-17-2016> (Accessed 24/03/2017).

95 See Illustrative example (pages 49, 80, 84).

96 Dragan Janjić, "Smear Campaign Against the Serbian Ombudsman," *Osservatorio Balcani e Caucaso*, May 07 2015 (Accessed 24/03/2017).

97 D. Popović. "Why is Serbia's Ombudsman "Enemy of the State", "Killer", "Shame for Serbia"?", *InSerbia*, April 29 2015, at <https://inserbia.info/today/2015/04/why-is-serbias-ombudsman-enemy-of-the-state-killer-shame-for-serbia/> (Accessed 24/03/2017).

98 "UN Concerned Over Pressures on Ombudsman." *B92*, May 6 2015, at

this and protests voiced by local NGOs, the smear campaign against the Ombudsman aiming to denigrate both his function and his person did not stop until the very end of his mandate.

### **Savamala**

On the election night in Serbia, between 24 and 25 April 2016, several sites close to the Belgrade riverbank in the Savamala district's Hercegovačka Street were illegally demolished to pave way for the controversial Belgrade Waterfront project. The Belgrade Waterfront, labeled as a project of national importance by the Serbian government, is an approximately EUR 2.7 billion brownfield investment, aiming to transform this part of Belgrade into an upscale residential and shopping area on the riverbank. The project itself remains contested not only by local architectural associations concerned with the viability of the foreseen mega-construction, but also by citizens who question the lack of transparency in a controversial joint venture contract between the government of the Republic of Serbia and a private company from the United Arab Emirates.

Although the direct perpetrators of the demolition breached several constitutional rights, including the inviolability of physical and mental integrity, the right to freedom and security, and the peaceful enjoyment of a person's own property and other property rights acquired by the law, the response of Serbian authorities turned out to be even more problematic.

The flattening of several family-owned businesses and a restaurant in Hercegovačka Street took place in the middle of the night. According to witnesses, it was carried out by people armed with baseball bats, wearing masks and using unmarked cars and excavators, who locked eyewitnesses in a hangar and confiscated their mobile phones and ID cards. In the aftermath of the event, one of the witnesses died in hospital, with some of the opposition political parties demanding an urgent probe into his death, amidst reports of his medical mistreatment.

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[http://www.b92.net/eng/news/politics.php?yyyy=2015&mm=05&d=06&nav\\_id=94023](http://www.b92.net/eng/news/politics.php?yyyy=2015&mm=05&d=06&nav_id=94023) (Accessed 24/03/2017).

Perhaps the most shocking thing about this issue was the complete lack of response by the Belgrade police that purposely declined numerous calls made by the assaulted citizens to investigate the events in Hercegovačka Street. Consequently, in a report published by the Serbian Ombudsperson, Saša Janković, the police was accused of being complicit in the incident.<sup>99</sup>

The government-controlled media remained silent over the incident, thus failing to inform Serbian citizens about the night when a group of masked thugs, allegedly hired and controlled by the ruling party,<sup>100</sup> *de facto* suspended the state's sovereignty over a part of its territory.

This is why Serbia's Public Information Commissioner, Rodoljub Šabić, called on the Belgrade authorities to explain what happened. However, Belgrade Mayor Siniša Mali denied knowing anything about the incident, while the president of Belgrade's municipal assembly, Nikola Nikodijević, questioned whether it even happened.<sup>101</sup> On the same day, Commissioner Šabić received threatening messages for demanding that the case should be investigated.<sup>102</sup>

In a nutshell, the Savamala case demonstrates the state's failure to protect the constitutionally guaranteed rights of its citizens, the government's shady business deals, the media cover-up of the incident, threats against independent state institutions and the lack of an effective rule of law system in Serbia.

99 Protector of Citizens, Republic of Serbia, Report 13-32-2147/2016, Belgrade 9 May, 2016.

100 M. Živanović, "Belgrade Mayor Ordered Controversial Demolitions, Claims Ex-Wife, *Balkan Insight*, 2017 at <http://www.balkaninsight.com/en/article/ex-wife-accuses-the-mayor-of-belgrade-for-savamala-night-demolition-02-13-2017#sthash.i4WNWzA1.dpuf>.

101 Sasa Dragojlo, "Serbian Police Accused Over Masked Nocturnal Demolitions," *Balkan Insight*, May 10 2016, at <http://www.balkaninsight.com/en/article/serbian-police-involved-in-phantom-masked-nocturnal-demolition-05-10-2016#sthash.nv9RHSEr.dpuf> (Accessed 24/03/2017).

102 Ibid.

### 3.4 Conclusion

Parliaments have not developed sufficient capacities for checks and balances at several levels: individual MPs, political groups, secretariats and as an institution enjoying the legitimacy and trust of the general public. Political parties, or rather restricted circles therein, are the extra-institutional centres of powers. Through their power, *inter alia* to determine election lists, they control the autonomy of MPs. The individual integrity of MPs hence remains limited. Their accountability also rests more with those who voted for them than with the entire electorate. Beyond the problems of intra-party democracy, the difficulties of parliaments in exercising their role are a result of legitimate choices of political actors on how to develop their institutions.

The EU accession process has rather reduced the role of parliaments as they risked being into “voting machines” or rubber-stamping bodies at critical junctures of fulfilling political and economic conditions set and negotiated mostly outside of their chambers. Balkan parliaments’ ability to exercise *ex-ante* and *ex-post* oversight and control is underdeveloped, and the weak role and function of the opposition is both cause and effect of the state of play. Structural support of the EU through IPA is not designed to address those democratic deficits, but rather to help facilitate EU integration. The role of the opposition as chair of the respective EU integration committees remains tokenistic and is rather aimed at strengthening EU leverage than to empower the opposition in its role to develop political alternatives.

The problems of the judiciary are different yet comparable: the institutions are hampered from developing their full potential. The judiciary as an independent power upholding fundamental and human rights, the constitutional order and the rule of law suffers from outright interference in its operations, including underfinancing. While the EU integration process should exercise a positive influence on the system, multiple reforms and institutional innovation have rather exacerbated the problems. Yet, as the judiciary is constitutionally set up, it has the potential to develop resilience, even in the face of significant attacks, as in the case of the Special Prosecutor’s Office in Macedonia.

Independent bodies are most exposed to attacks from the outside. They are budgetary-dependent and they have been set up to provide non-political expertise and assessments for the benefit of the constitutional bodies. Their functioning and their very *raison d`être* depends on a political culture that welcomes and supports such independent expertise that provide checks and balances. Hence, in an adverse environment, independent bodies` ability to check on the government`s power remains elusive.





## 4. Media

After decades of transformation, the media landscape has been suffering from an overall worsening of freedoms in recent years and increased political and economic pressure. The combination of political influence and economic uncertainty greatly affected the media and initially increased its ability and resources to inform citizens critically. Ruling political and economic elites remain protected, whereas hate-speech and incitement of hatred towards others remains frequent.

The Western Balkans media landscape presents the features of *hybrid media systems* in new democracies as put forward by Voltmer.<sup>103</sup> The hybrid media setting in the region reflects a mixture of liberal ideas of a free and de-regulated press, liberalisation of the media market and the flourishing of various commercial audio-visual outlets together with the legacy of the communist past, post-conflict and contextual local factors such as the high level of politicisation, and the struggles towards democratisation. Public broadcasters throughout the Western Balkans, whose primary purpose is to serve the public and not commercial and/or political objectives, have increasingly become outlets for the ruling political parties. The weak public broadcasting funding model, which disables any independent functioning, coupled with an inadequate but necessary technological adjustment, are just some of the reasons for public broadcasters to become an easy target for the politics.<sup>104</sup> In hybrid media systems, the media are in perpetual transformation with uncertain media legislation, floating laws, fuzzy media ownerships, symbiotic media relations with politics and business, weak public interest in media developments, and small and fragmented media markets.<sup>105</sup> This chapter presents an analysis of the current state of

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103 Katrin Voltmer, “The Mass Media and the Dynamics of Political Communication in Processes of Democratization: an Introduction,” in Katrin Voltmer (ed.), *Mass Media and Political Communication in New Democracies* (London, Routledge, 2006), 1-18.

104 Davor Marko, “The Future of Public Service Broadcasting in the Western Balkans: The Need for a New paradigm,” *Centre for Social Research Analitika*, 2016, at <http://www.analitika.ba/en/publications/buducnost-javnih-servisa-na-zapadnom-balkanu-u-potrazi-za-novom-paradigmom>.

105 “Current developments and future perspectives of Public Service Broadcast-



affairs of media in the Western Balkans by zooming in on media freedom and quality.

Despite the fact that the Western Balkans is in the process of integrating into the European Union, in recent years, the region has experienced a worrying decline in media freedom and quality across. Following the transition to multi-party parliamentary democracies in the Western Balkans, there had been gradual improvements in many aspects of the media, including media policy and legislation, freedom of expression, media pluralism, and capacity building for professional journalism. The financial crisis in 2008 deepened uncertainties about the future of the media across the region that now had to reinvent their position and role in contemporary society.

The post-conflict and post-communist media systems had been extensively seen as part of the transition to democracy and then the integration processes to European Union. Waiving out direct state interference was part of the transition process, and media pluralism and professionalism made notable, though sporadic, strides. The legislation, regulations on media freedoms and standards were placed in line with European standards and with the support of various international organisations.<sup>106</sup> Placing this within the broader Europeanisation of the Western Balkans, the region seemed to be moving in the right direction. Although not explicitly mentioned in the EU Copenhagen criteria, freedom of expression and media freedom were also positioned as the key prerequisites on the path of becoming an EU member. The Western Balkan countries signed up to international and regional human rights law frameworks that required them to ensure freedom of expression, media freedom, and media pluralism.

With the beginning of the global economic crisis, according to the organisations closely following the media developments, in every one of the countries of the Western Balkans there began a steady retreat of media freedoms, as well

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ing in Western Balkans”, SCOPES Study (in publication).

106 Kristina Irion and Tarik Jusic, “International Assistance and Media Democratization in the Western Balkans: A Cross-National Comparison,” ANALIKTIKA Working Papers, April 2014, at <http://www.analitika.ba/en/publications/international-assistance-and-media-democratization-western-balkans-cross-national>. (Accessed 24/03/2017).

as resurfacing party power control over the media, that in some parts of the region fully restored the manoeuvres of the previous system in media control. In fact, while the actors are changing from the old to the new system, the state media apparatus is being rebuilt and the environment is again far from encouraging in regards to fully exercising media freedoms.

In the years to come, independent organisations, such as Human Rights Watch (HRW),<sup>107</sup> Reporters without Borders,<sup>108</sup> Freedom House,<sup>109</sup> Southeastern Europe Media Observatory<sup>110</sup> and others in the region itself such as the Balkan Investigative Reporting Network<sup>111</sup> and the Center for Civic Education,<sup>112</sup> as well as the European Commission in its country reports, have documented a profoundly alarming increase in reports of violations of media freedom on different levels, the most notable and damaging infractions stemming from the ever-more illiberal and authoritarian governments in office across the region. The BIEPAG report provides examples that there has been “a massive decrease of media freedom in the Balkan countries,”<sup>113</sup> a finding that often does not get enough attention, neither in the region, nor in the EU discourse. Dunja Mijatović, media freedom representative of Organization for Security and Cooperation in Europe (OSCE), went one step further in claiming that “the state of media freedom in the Balkans today is worse than it was after the wars of the 1990s”.<sup>114</sup>

107 “Western Balkans: Unchecked Attacks on Media,” *Human Rights Watch*, November 2016, at <https://www.hrw.org/news/2016/11/30/western-balkans-unchecked-attacks-media> (Accessed 24/03/2017).

108 2016 World Press Freedom Index, Reporters Without Borders, at <https://rsf.org/en/ranking>.

109 Zselyke Csaky, “Back Where We Started in the Balkans,” *Freedom House*, April 2016, at <https://freedomhouse.org/blog/back-where-we-started-balkans> (Accessed 24/03/2017).

110 See South Eastern European Media Observatory, at <http://mediaobservatory.net/>.

111 “Media attacks on BIRN,” at <http://birn.eu.com/en/page/birn-under-fire>.

112 “Self censorship as a Threat to Journalists in Montenegro,” *SEE Media Observatory*, November 2016, at <http://mediaobservatory.net/radar/soft-censorship-threat-journalism-montenegro>.

113 Florian Bieber and Marko Kmezić, “Media Freedom in the Western Balkans,” Balkans in Europe Policy Advisory Group, Background Paper, August 2015, at <http://www.biepag.eu/publications/media-freedom-in-the-western-balkans/> (Accessed 24/03/2017), at 5.

114 Zlatko Filipovic, “State of Balkan Media Worse Today Than After the War,” *Balkanist*, March 14 2015, at <http://balkanist.net/state-of-balkan-media->

Reporters Without Borders' 2016 World Press Freedom Index report<sup>115</sup> - which ranks press freedom in 180 countries using the criteria of pluralism, media independence, media environment and self-censorship, legislative environment, transparency, infrastructures and abuses - reported that the Western Balkans experienced the steepest decline in media freedom worldwide. Albania ranked 82 in 2016 with no progress from previous years. While BiH ranked 47 in 2010, it dropped to 68 in the latest study. Serbia improved its ranking from 85 in 2010 to 53 in 2014, but fell back to 59 in 2016. Montenegro slipped from 104 in 2010 to 106 in 2016.<sup>116</sup>

Acts of violence documented by different organisations have shown that new forms of influencing the media are both more diverse and more sophisticated, an informal proscription, differing from the old traditional methods (jailing of opposition-minded journalists).<sup>117</sup> In the regional context, striking findings of the environment in which the media operates, is best described as: physical violence and intimidation, indirect political pressure, illegal state subsidies for government and pro-government media, prosecution under criminal law, and financial pressure. The current state of affairs, in which self-censorship is often the norm, is best categorised as “soft censorship”. And in terms of quality, the state-aided nationalist media regularly resorts to inflammatory language and hate speech reminiscent of that employed during the armed conflicts. Meanwhile, independent media has been forced to lower its quality due to limited resources and soft censorship.

## 4.1 Soft-Censorship

### Physical violence and intimidation

While many of the forms of soft or informal censorship are more subtle and veiled than in past times, there still remain traces of the recourse to straight-up, old-fashioned physical violence in the Western Balkan countries. Over the past years, media outlets and journalists report physical

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worse-today-than-after-war/.

115 2016 World Press Freedom Index, Reporters Without Borders, at <https://rsf.org/en/ranking>

116 The index does not cover Kosovo.

117 The case of Tomislav Kežarovski in Macedonia Human Rights Watch, *Western Balkans*.

attacks with increasing frequency. Journalists that report on political and business elites are particularly vulnerable to political pressure, but not only them. Journalists dealing with war crimes, corruption, and religious fundamentalism are also frequently targeted. According to the latest report of the Human Rights Watch, deputy chief federal prosecutor Tihomir Jurko in the Federation of Bosnia and Herzegovina explained that crimes against journalist often end up in bulk of minor offence cases, providing for no system of protection at the prosecutorial level.<sup>118</sup> In the absence of such classified official statistics on crimes against journalists, they are replaced by regional NGOs and other sources that keep recording media freedom violations and reporting to international agencies.

In Montenegro, in early 2012, the independent and regime-critical daily newspaper *Vijesti* faced brutal attacks on their journalists. One journalist was attacked and badly beaten near her home. But the assault was just an opening volley against the publication that Prime Minister Milo Djukanovic had denounced as an “enemy of the motherland.” In the years that followed, newspapers offices were bombed, five vehicles belonging to the newspaper were set on fire, other journalists were attacked and the apartment of one journalist was ransacked. In not one of the incidents were the penetrators apprehended and sentenced. Daliborka Uljarevic, Executive Director of the Podgorica-based CGO, explains that soft censorship in Montenegro is exercised primarily through “politicised, discretionary and non-transparent distribution of public money and subsidies.” This not only distorts the media market, she argues, improving the bank accounts of some media and hurting others, but also influences the coverage of the political elites in power. While the parliament failed to adopt proposed amendments to laws pertaining to government financing of media, CGO claims that there is substantial evidence that public funds are used for manipulating media reporting.

In 2013 and 2014, journalists in Albania, Kosovo, Serbia and Bosnia and Herzegovina also experienced multiple incidents of violence. These assaults occurred almost exclusively against the staff or offices of critical media

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118 “A Difficult Profession Media Freedom Under Attack in the Western Balkans,” *Human Rights Watch*, July 2015, at <https://www.hrw.org/report/2015/07/15/difficult-profession/media-freedom-under-attack-western-balkans>.

outlets, and in almost all of the cases the perpetrators walked free. In the case of Albania, in 2015, a journalist received a threat from an alleged Islamic militant, and protection was provided to her.<sup>119</sup> While cases of physical violence against journalists in Albania are relatively rare, intimidation is exercised in other subtle manners such as through layoffs of journalists, funding cuts for investigative reporting, and discouragement of corruption investigations.<sup>120</sup> With the exception of Bosnian police roughing up journalists covering on the February 2014 riots, in none of the cases could state involvement be proven. Where physical violence happens, the potency of threats, including death threats, is all the more powerful – and much more difficult to ascertain and prosecute. Because they can come veiled (but crystal clear to those whom they are directed at), they are effective in intimidating media employees and prompting them to exert some degree of self-censorship.

In its report “A Difficult Profession: Media Freedom Under Attack”<sup>121</sup>, Human Rights Watch (HRW) reports:

“described cursory police investigations; downplaying of violent attacks and threats against journalists; and investigations that rarely led to identifying perpetrators. In several cases journalists said they have continued to experience physical violence and abuse after their initial attack, again, often with impunity for their assailants. Journalists reporting on war crimes or radical religious groups in Bosnia and Herzegovina, Kosovo, and Serbia said authorities downplayed the seriousness of online threats they had experienced.”<sup>122</sup>

The Western Balkan media landscapes thus represent a hostile environment for journalists to achieve their mission. Physical attacks or other forms

119 “OSCE Representative Condemns Attacks on Journalists in Albania,” *OSCE*, June 5 2015, at <http://www.osce.org/fom/162556> (Accessed 24/03/2017).

120 “Layoffs of Albanian Journalists Anger Opposition,” *SEENPM*, January 17 2017, at <http://seenpm.org/layoffs-albanian-journalists-anger-opposition/> (Accessed 24/03/2017).

121 Human Rights Watch, *Western Balkans*.

122 *Ibid.*

of intimidation of media outlets and journalists inevitably lead to self-censorship and thus undermine media freedom and quality. Even more worrying is the tendency to normalise the intimidation of media outlets and journalists, given that powerful business and/or political elites have gained an increasing degree of impunity for their actions against media freedom.

### Indirect political pressure

There are many ways for governments to lean on the independent media without it looking conspicuous, with indirect intimidation just one of them. In fact, most of the means of soft censorship are a matter of ‘indirect political pressure’. But it is also possible for politics to put pressure on editors and owners to employ certain personnel and use behind-the-scenes communication to influence editors to shift their priorities. Moreover, when abuses happen, “state officials have failed to condemn threats and hate speech made against journalists and NGO representatives, thereby confirming their support for these attacks” and exerting another form of subtle pressure through non-intervention.<sup>123</sup>

The political pressures that lead to self-censorship are facilitated by the fact that a great number of journalists continue to work in informal conditions, lacking both individual and collective work contracts. In addition to the indirect political pressures, verbal attacks and threats against journalists and the media by many politicians in the region are common and frequent. The labelling of journalists as foreign agents, state enemies or putting blame on the media and journalists for ‘dumping dirt on the government’ are but a few examples of the efforts by political actors to denigrate the media. These attacks on journalists coupled with intimidation and indirect political pressure on media outlets and journalists through calls for an open witch-hunt result in many media professionals simply dropping the profession.

In Bosnia and Herzegovina, for example, 28 local journalists from both entities told HRW that fending off attempts at political influence are an everyday aspect of their work. In the case of Albania, media owners often exert pressure to ensure that their editorial policies are in line with their political interests. For example in January 2016, the director of information

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123 Bieber and Kmezić, *Media Freedom in the Western Balkans*, at 20.

of *ABC News* and the Director of *MAPO Newspaper*, both very critical of the current governmental coalition, were fired by the media owners who were closely linked to the government. This allegedly occurred because they failed to comply with an imposed editorial policy of favouring the government in anticipation of the electoral campaign for the general parliamentary elections in June 2017. Also, investigative reporting against corruption of high level officials or elected politicians has been curtailed. For example, in 2016 journalist Alida Tota from *Report TV* was fired and Artan Rama's program *Publicis* on *Vizion Plus* was censored - both were covering the alleged wrong doing of the Mayor of Tirana.

Going after meaningful working environments, and some "safe heavens", that allow for more media freedom, most of the media professionals consider creating an online platforms or cooperating with the existing online media outlets as an alternative to the mainstream media. The online media are still deemed as an open, free and safe space for those who struggle with the traditional mainstream media. Due to ever-increasing pressure to report critically in the region, most individuals that still report in the sphere of investigative journalism also tend to opt for online outlets, hoping for less exposure, which often does not present a safe option either. Cyber attacks are just an example as outlined in the next section.

## Cyber attacks

The dynamics of the online media market and digital processes in the Western Balkans are difficult to evaluate due to the relative lack of credible and systematic data and research, which are only currently emerging. With the growth in Internet access, at least in urban areas, as well as access to tablets and smart phones and the overall digitalisation of society, online media platforms are multiple and growing in number. The positive side of the online media is that there is diversity of information and content provided to and even created by the public, representing a variety of interests and standpoints. As a consequence, online media in the region, as elsewhere, have the potential to contribute to democratisation through the participatory, open and multi-way communicative spaces.<sup>124</sup> Despite the opportunities

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124 Ilda Londo, "Mapping the Digital Media: Albania Country Report," *Open Society Foundations* (2012).

for participation and diversity offered by online media, concerns about the quality of information and impact still persist. What is more, these online media platforms are not safe havens when it comes to intimidation, indirect political pressures and soft censorship.

Particularly problematic in recent years is widespread use of cyber attacks on online portals, specifically designed to crash the system that then takes weeks to be fully restored. Distributed Denial of Service (DDoS) attacks make an online service unavailable by launching an enormous number of queries from multiple sources. In Bosnia and Herzegovina, in the aftermath of the catastrophic floods, several news sites started looking into the state management of the relief distributed to the flooded areas. Soon after, a series of cyber-attacks against critical outlets appears to have expanded. In Albania, even Facebook pages of individuals or groups highly critical of the government were reportedly attacked or crashed.

At the service of the authorities are also ‘trolls’ whose only job is to distort the media landscape, once questions have been raised. A virtual army of trolls, which flood the net using all kinds of social media, newspapers, forums, etc., make praising comments and opinions of certain political fractions. Their primary task is to divert the attention of the general public that is no longer able to maintain a thread of communication that is free from party politics propaganda. This results in a near complete absence of critical and qualified discourse. Composed of several different profiles with different names, trolls both launch and respond to all communication channels. The most recent example involves the investigative network BIRN in Macedonia that has been heavily targeted by the VMRO-DPMNE affiliates since the results of the latest elections in December 2016. The smear campaign against this news network took another spin after BIRN reported a physical attack on a journalist who was covering the VMRO DPMNE rally. Shortly after, BIRN was exposed to a series of targeted social network attacks. Journalists of BIRN who reported on this incident, have been labelled as traitors, by the political party trolls, with hidden identities, that flooded online stories with false accounts of the event.<sup>125</sup>

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125 BIRN, “Smear Campaign Targets BIRN Journalists in Macedonia,” *Balkan Insight*, March 01 2017, at <http://www.balkaninsight.com/en/article/smear-campaign-targets-birn-journalists-in-macedonia-03-01-2017> (Ac-



The relatively new phenomenon of “fake news”, or more precisely the news that has been fabricated and not backed up with sources, has geared its momentum in early 2017, when it has become clear it will inevitably change the media environment. Although easily traceable and exposed to falseness, the power of fake news to insert itself into the mainstream news and become viral has yet to be addressed.

### Use of Criminal Law

Although all of the Western Balkan countries now have media laws protecting journalists and media, it is often the case that governments resort to criminal law to beat down, scare, punish, and ultimately silence independent media. The laws to protect journalists are simply not implemented. In fact, some of the region’s critical media is sued on a regular basis, frequently by high-ranking local and national public officials. In some cases, they are forced to pay court-ordered damages and lawyer fees.<sup>126</sup> “Instead of hitting you on the head, they [the government] hit your wallet,” one Montenegrin newspaper editor told HRW. It is also the case that state authorities may undertake arbitrary financial inspections without warning and bogus checks of administrative documents.

One editor-in-chief in Serbia described receiving a surprise inspection, after the outlet started publishing a series of critical stories about political leaders of the local government in Niš, Serbia. “The inspector showed up without any notification. He wanted to see documents on fire protection only necessary for companies with more than 10 employees although we only have three. He also wanted to check whether we had a no smoking sign.”<sup>127</sup> Using legitimate means, like the inspection, media can be delayed in their work as such examinations can last for weeks. As reported by the Human Rights Watch, no outlets have been fined for breaching relevant regulations.<sup>128</sup>

Moreover, libel laws are often put in motion to blunt the edge of critical media. The 2016 BIEPAG report finds that there is:

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cessed 24/03/2017).

126 Londo, *Mapping the Digital Media*.

127 Human Rights Watch, *A Difficult Profession*.

128 Ibid.

“a trend that various actors, public figures in particular, often use libel laws as a means to discipline journalists, and even to jeopardize survival of media outlets, especially when seen in the context of generally low levels of trust in the courts across the Balkans and a widespread perception of the judiciary system as being politically controlled.”<sup>129</sup>

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In Serbia, for example, the weekly magazine *NIN* was taken to court in 2016 after reporting on buildings along the Savamala that were illegally demolished at the request of state officials. On June 16, *NIN* published a front-page article exploring the interior minister’s role in the so-called Savamala affair.<sup>130</sup> The minister, a high-ranking official of the ruling Serbian Progressive Party, privately sued *NIN*, demanding compensation for harming his professional reputation, but the case was, according to *Balkan Insight*, a test of the Serbian judiciary’s real independence.<sup>131</sup> Belgrade’s Higher Court delivered a verdict in 2016 that the magazine had to pay 300,000 dinars (2,437 euros) in compensation.<sup>132</sup>

All six countries in the Balkans aiming for EU membership made “no progress” in meeting the Freedom of Expression criteria for EU membership, according to the most recent country reports published by the Commission.<sup>133</sup> In the case of Albania, the report states “there was no progress in audio-visual policy and in freedom of expression”.<sup>134</sup> Even with a sound media policy in place, the implementation is weak and the symbiotic relationship between

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129 Bieber and Kmezić, *Media Freedom in the Western Balkans*, at 12-13.

130 Ibid.

131 Marko Kmezić, “Stefanovic Case will Test Serbian Judiciary’s Real Independence,” *Balkan Insight*, December 23 2016, at <http://www.balkaninsight.com/en/article/stefanovic-case-will-test-serbian-judiciary-s-real-independence-12-23-2016> (Accessed 24/03/2017).

132 “NIN da plati Stefanoviću 300.000 dinara,” *N1*, January 04 2017, at <http://rs.n1info.com/a218167/Vesti/Vesti/Presuda-u-lucaju-Stefanovic-NIN.html> (Accessed 24/03/2017).

133 Gjergj Erebara, “Commission Warns Balkan States on Freedom of Expression,” *Balkan Insight*, October 11 2016, at <http://www.balkaninsight.com/en/article/european-commission-slams-balkan-countries-no-progress-in-the-freedom-of-expression-11-10-2016> (Accessed 24/03/2017).

134 European Commission Report on Albania, 2016, at 21-23.

business, politics and media is hindering media freedom. Defamation remains a criminal offence, although prison sentences are not allowed. However, journalists are at risk of potentially large fines and damages. In 2015 and 2016, attempts were made by Members of Parliament and the Albanian Government to introduce laws that would directly impact media freedom and stretch to online media too.<sup>135</sup> Although these proposals have been withdrawn after the pressure from media and international actors, the attempts demonstrate a clear aim on the part of the government to exert more pressure on media freedom.

### Financial pressure: state and private advertisements and subsidies

There is more than one way that media is being controlled through the power of the purse strings. Court-ordered monetary punishments and legal fees are just two of the ways that political officials can push the media around by exerting financial pressure. A complex media environment in all Balkan countries “with a high number of media outlets and limited sources of funding, poses various challenges to the independence of the media. Despite decades of media reforms and significant international interventions in the media sector across the region, the majority of media outlets are still financially unstable and thus vulnerable to various financial pressures.”<sup>136</sup> Methods of media control are more sophisticated. Pressure on standard business models caused as a result of new technology, digitalisation, the impact of the Internet, mobile phones and social media has led to the situation where Serbian media increasingly rely on state funds and resources.

Distribution of the advertisement revenue, directly from the state or from the institutions friendly to the state, is big business. While some media might have alternative funding options such as EU funding specifically intended for investigative journalism, the majority of outlets need advertising to survive. Private advertisers deal with advertising agencies that are either owned by political parties’ affiliates or closely interlinked. Agencies are intermediaries who then decide which news outlets get advertising, which

135 See at <http://seenpm.org/albania-journalists-associations-oppose-provisions-affecting-media-draft-laws/>

136 Bieber and Kmezić, *Media Freedom in the Western Balkans*.

effectively means that the state is financing the censorship. By financing favourable media, it locks down money from the critical voices that, having no financial support, inevitably end in bankruptcy. In such an environment, editorial policies easily change. Having no replacement for the traditional and rather profound dependency on advertising, editorial boards are easy targets from which to exert pressure.

Other shortcomings persist, too. The absence of an efficient business model that allows for more journalistic freedom rooted in economic stability and independence has far-reaching consequences. Prone to pressures, journalists without permanent jobs and very low wages cannot be expected to replace the malfunctioning system. Criticising political leaders in the region can result in losing one's job. Often, courageous journalists are marked as traitors, being paid or bribed, either by the 'West' or some internal enemy, and their lives and the lives of their families are directly endangered. A pro-government tabloid, *Informer*, recently came out with a front-page headline reading, "America and the EU paying liars and racketeers" and accused the investigative media organisations KRIK, CINS (Centre for the Investigative Journalism) and BIRN, as well as the daily *Kurir*, of being financed by Western countries in order to destabilise the country. At the same time, the EU remains very tolerant towards the way media in the region have been treated. Media freedoms are not part of the priority package and as long as countries like Serbia deliver some progress in relations with Kosovo, media will always stay in the background.

The small size of the market hinders the media's financial sustainability and, as a result, media ownership and transparency of media funding are controversial issues in the Western Balkan media landscape. Issues such as the media's cross-subsidization from other businesses of their owners, the owners' relations to politics, allegations of politically allocated state advertising, and the influence of big commercial advertisers have all led to doubts on media standards and editorial independence.<sup>137</sup> For instance, in Albania, as argued by various media experts:

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137 Ilda Londo, "Media Integrity Matters: Reclaiming Public Service Values in Media and Journalism," *Southeast European Media Observatory* (2013), at 53.

“Most media are supported by other businesses of the media’s main shareholders, or through clientelism with government and political parties, which display a strong tendency to use these media as a tool to promote and protect their interests.”<sup>138</sup>

In this sense, the media market is also characterised by what Zielonka and Mancini call *fuzzy ownership*.<sup>139</sup> For instance, use of the media by their owners to gain political capital is a common phenomenon. In some cases, owners are not known or ownership structures are unclear and not transparent. Also, the model of ownership is that of media owners with interest in other businesses, no media expertise, limited transparency of funding, and with the aim of political engagement or using media as a tool to court political actors and exchange mutual benefits. In this vein, the major challenge of media in WB is clientelism, which directly influences media professionalism, its freedom and independence and the quality of information provided to the public and thus media quality.<sup>140</sup>

## 4.2 Media quality

The quality of media has also suffered since the onset of the financial crisis, in part a result of the return of authoritarianism and illiberal ruling parties and figures. On the one hand, there is more hate speech and inflammatory language in the media and on the other hand, the soft censorship and other pressures as analysed above have weakened the quality of the independent media.

The ownership structure of media in the Western Balkans is yet another impediment to media freedom and a truly free, critical media. Over the past few years, political elites have, strengthened the pressure over media and press freedoms, aiming ultimately at having a stronger control of society. In

138 As quoted in Ilda Londo, “Limited assistance for Limited Impact: International Media Assistance in Albania,” Regional Research Promotion Programme Working Paper 2, (2013), at 1-63.

139 Paolo Mancini and Jan Zielonka, “Introduction - Structure and Performance of the News Media in Central and Eastern Europe,” 17(4) *The International Journal of Press/Politics* (2012), 379-387.

140 For more refer to this publication Chapter on Clientelism in the Western Balkans.

addition, external media assistance dried up, and foreign owners of media in the region largely withdrew their investments, as profits were meagre and declining with the economic crisis. This has accentuated the influence of political and economic interest groups within the countries.

Nowadays, the majority of media outlets in the Western Balkans are considered to be closely connected with the centres of political and economic power. It is no secret that political parties own media spread across the region. Most often these are newspapers, but not only. Individuals who own news outlets and aspire to political functions design political agendas, and promote their cases very efficiently in those media sources. *Dnevni Avaz*, a Bosnian daily newspaper, is one of the most well-known examples, owned by a businessperson, who entered politics, joined the ruling coalition, formally but not in practice distancing from an outlet.

In Albania, professional journalism as a key pillar of media quality is also not developed at the desirable levels, and the impact of civil society for a public interest in media is very weak. Very few media have a code of ethics in practice and self-regulatory mechanisms are largely unfamiliar to media management and staff. The lack of self-regulatory mechanisms echoes the lack of public interest in media. In addition, media professional associations and trade unions have only recently been established and are yet to be consolidated and to serve as actors of their own in the media landscape.<sup>141</sup> Although the relatively low level of professionalization of journalism hinders the overall quality of the media, it is very challenging to maintain high standards of professionalism.

Journalists and media staff work in inadequate conditions. Increasingly low salaries, and inadequate employment contracts, that are not secured in the first place, and that the life-work or gender balance are not covered by specific policies or practices, do not provide for full commitments toward quality journalism.<sup>142</sup> Other factors negatively influencing the professionalism

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141 For example, the Union of Albanian Journalists, led by Aleksander Cipa and the Female Journalists Association, led by Eni Vasili.

142 For more on working conditions of journalists in Albania see Blerjana Bino, "Gender Mainstreaming in Albania Media Organizations," UNESCO and Union of Albanian Journalists (2013).

of journalism are the threats to and harassment of journalists, financial instability, ownership concentration of the media, market pressure, lack of editorial policies and absence of well-established ethical codes.<sup>143</sup> There is also a disparity between the degree of professionalism in the media at the national and local levels, the latter receiving less research and policy attention.

Media quality remains to a large extent a mission impossible for public service broadcasters in the region, which are highly politicised and fail to provide impartial news and quality programming. The recurring patterns of public service media in the Western Balkans that negatively affect the quality of media are: high levels of political parallelism through the appointment of supervisory and governing bodies;<sup>144</sup> transfers of public resources from the government to party clients through public broadcasters - well-paid positions, journalists and editor appointment, dedicated funding for certain programmes and production, advertising etc.; news framing and pro-government bias in news coverage; non-transparent and mismanagement of public funds and underfunding;<sup>145</sup> low audience ratings compared to national commercial media outlets and thus failing to fulfil the remit of public service media.<sup>146</sup> The transformation of public broadcasters in the region into genuine public service media is an on-going and complex process, linked to media and political contexts in the Western Balkans. Moreover, the process is impacted by the redefinition of public service media at the European level. However, the EU as the guarantor of democratisation in the Western Balkans is under unprecedented economic, financial, and democratic crises with the combined challenges of technocracy and populism,<sup>147</sup> which in turn deepens uncertainties in the region.

143 Adela Halo et al., “A Blind Eye on the News: Self-censorship in the Albanian Media,” *Balkan Investigative Reporting Network*, Albania (2015).

144 Example the political deadlock for the appointment of the Director General of Albanian Radio and Television for more than two years see <https://www.ebu.ch/news/2016/05/ebu-news-entry>.

145 With the exception of Albania and Croatia, which have adequate funding through a funding model based on license fees paid with electricity bill.

146 SCOPES, *Current Developments and Future Perspectives*.

147 Jacques Rupnik and Jan Zielonka, “Introduction: The State of Democracy 20 years on: Domestic and External Factors,” 27(1) *East European Politics & Societies* (2013), at 2.

### 4.3 Conclusions

The transformation of the media landscape in the Western Balkan is an open-ended process that can never be fully consolidated, similar to democratisation itself. In highly complex media landscapes with symbiotic relations between media, politics and businesses, the ultimate weaknesses of media in the region are financial insecurity and political intimidation – hindering both media freedom and quality.

In order to resist the ever-growing financial and political pressures, the Western Balkan media need to redefine their funding model and re-invent their organisational working practices so that they will ensure more financial security. This will directly feed into the empowerment of journalists adhering to high quality media and professionalism. Media can respond to phenomena such as political populist communication, return of authoritarianism “fake news”, inflammatory discourses and hate speech, through quality of content and programming, responding quickly to current socio-cultural transformations and maintaining a public interest in media developments. A public interest implies a strong commitment to quality journalism and media integrity - journalism that puts the audiences and public interests ahead of the agendas of political and economic elites.





## 5. Clientelism

Given the many challenges facing the Western Balkan countries, this chapter aims to understand whether and what kind of role clientelism plays in the crisis of democracy in the region. The goal is to explain why clientelism is so dominant in Western Balkan societies and how it undermines the main pillars of democracy such as the rule of law and protection of civil liberties. In the chapter, we argue that the persistence of clientelistic practices originates in the historically present practices of informality that have been adapted to the current political environment. Since 2000, with the establishment of more defined political power structures, both electoral promises and public policies were more focused on protecting individual and small group interests, while the broader society's aspirations were pushed to the background. As it is hard to portray the Western Balkans' political context outside the framework of EU accession, any assessment of the nature of the informal networks in these countries must be viewed also through the prism of their aspiration to join the EU. For all the improvements that have been made since 2004 to the tools, methods and approaches to enlargement, illiberal practices and authoritarian tendencies abound, much to the dismay of the EU and the citizens of the Balkan aspirants. Political clientelism is one of the most difficult problems in the Western Balkans and its persistence has been constantly challenging democratic principles in the new states.

It is common to hear people from the Western Balkans share stories about having to use personal networks to obtain a job. Most commonly, the path to employment in these countries does not depend on one's knowledge, education, experience or skills, but rather on whether people know someone who is in a position to 'plant' them somewhere. Jobs and other commodities are usually obtained through social networks or political party affiliations. In some countries, there is a specific expression for personal networks that have a potential to produce gain, like *štetla* in Bosnia and Herzegovina (BiH).

Western Balkan societies are strongly based on personal networks that result in inequalities and uneven distribution of opportunities through nepotism, clientelism and patrimonialism. These practices create negative and destructive dynamics within social relations that disempower many citizens

and can prevent individuals or groups from interacting with each other on a personal, everyday level, leading to isolation and the breaking down of the social fabric. In ethnically diverse societies, with large ethnically defined groups, such as Bosnia and Herzegovina and Macedonia, the existence of personal and family networks also creates a perception that the majority ethnic group has the upper hand and control over social, economic and political resources. This phenomenon is not restricted to majority groups, as ethnic minorities are equally prone to clientelistic practices, such as when the leadership of the ruling minority party distributes certain opportunities to personal networks of members and supporters.

This chapter will provide an overview of clientelistic practices and their negative impact on the Western Balkan democracies with a clear emphasis on the asymmetrical and hierarchical nature of the social relationship between a patron and a client, and its reciprocal character. Given the many challenges facing the Western Balkan countries, the aim is to understand the manner and extent to which clientelism contributes to the crisis of democracy in the region.

## 5.1 What is clientelism?

Clientelism is a cross-cutting phenomenon that harms state-citizen relations, including voter participation and formal institutions, both in terms of their effectiveness and accountability; it also weakens trust and confidence in political and private institutions, as well as the freedom of the media. Clientelism has many faces and even though its manifestations are often easily identifiable by ordinary people, theoretically it lacks clarity and tends to be mixed up with concepts and practices such as corruption, nepotism and patrimonialism. These other notions also represent a type of informal exchange that is a) often used interchangeably with clientelism and b) widespread in the Western Balkans. They are equally detrimental to formal institutions, albeit different in nature and outcome to clientelism. Corruption and nepotism are often used as proxies in the study of clientelism but they come with serious methodological limitations, because this approach fails to grasp the nature of the clientelistic phenomenon and its socio-cultural background.<sup>148</sup> A specific focus of the chapter will be on political clientelism

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148 Wolfgang Muno, "Conceptualizing and Measuring Clientelism," paper

as an explicit political strategy and a type of political exchange that is typical in the Western Balkan societies.<sup>149</sup>

Clientelism is a system of direct exchange between individuals or small groups that is processual in character<sup>150</sup> and can thrive in both autocracies and democracies, as well as in different cultural contexts as one finds in the Western Balkans.<sup>151</sup> Even political clientelism and patronage were generally understood as cultural in nature, where the way interpersonal relationships are established and maintained was assigned to societal norms and cultural practices that were mirrored onto the political sphere.<sup>152</sup> This approach required further attention to explain clientelism.

Clientelism is usually defined as an informal hierarchy, a network that operates within or coexists with formal institutions and that is focused on the patron's exercise of influence.<sup>153</sup> As such, it is most commonly used to describe failure and shortcomings of an institutional setting or to denote a system in which "socially shared rules, usually unwritten [...] are created, communicated, and enforced outside of officially sanctioned channels."<sup>154</sup> It also characterises "social relations where personal loyalty to a patron prevails over democratic decision-making, professional duties and ethical

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presented at the workshop "Neopatrimonialism in Various World Regions", GIGA German Institute of Global and Area Studies, Hamburg, 23 August 2010.

149 Allen Hicken, "Clientelism", *The Annual Review of Political Science* (2011), 289-310, especially at 292.

150 In fact, until political scientists became interested in it, anthropological and historical studies were often exclusively preoccupied with the nature of the relationships and the phenomena itself.

151 Hicken (2011), *op. cit.*

152 Simona Piattoni, "Clientelism in Historical and Comparative Perspective", in Simona Piattoni (ed.), *Clientelism, Interests, and Democratic Representation: The European Experience in Historical and Comparative Perspective* (Cambridge University Press, 2001), 1-30.

153 Alex Weingrod, "Patrons, Patronage, and Political Parties," 10(4) *Comparative Studies in Society and History* (1968), 377-400.

154 Gretchen Helmke and Steven Levitsky, "Informal Institutions and Comparative Politics: a Research Agenda", Working Paper 307, Helen Kellogg Institute, Notre Dame University (2003), at 725.

behaviour.<sup>155</sup> Despite the fact that it relies on unequal power relations, where one party is on the distributing and the other on the receiving end, it has a ‘reciprocal’ character and represents a personal and enduring affective relationship from which both sides essentially derive some sort of benefit. Clientelism is at odds with the ‘ideal type’ of a bureaucratic system that is based on norms of rationality, anonymity and universalism.<sup>156</sup> The fact that both the patron and client derive an advantage from the relationship and the informal nature of the networks, represents the main obstacle in tackling clientelism.

## 5.2 The idiosyncrasies of the Western Balkan context

Traditions of clientelism and informality, but also graft practices, were well established in Yugoslavia, and they were further transformed and strengthened by the disorder resulting from the violent breakup of the country. Often, the root causes of clientelism are searched in the past. While this may be justified to some extent, it is important to recognise that the nature of clientelism also changes with a societal transformation<sup>157</sup> and even though some of its practices may echo the Communist or even pre-Communist format and style, the new political elites in the new states have developed their own networks that allow them to maintain power. The context of state-building and wars that characterised the Balkans’ socio-economic and democratic transformation effectively allowed the post-communist governments in these countries to enjoy a broad scope in their exercise of power. In fact, talking about Serbia, Sorensen argues that the social transformation brought about by the Balkan wars led to the development of an illiberal economy.<sup>158</sup> The same argument is valid not just for Serbia but for other Western Balkan countries, as many of them, despite

155 Alexander Kotchegura, *Civil Service Reform in Post-Communist Countries. The Case of the Russian Federation and the Czech Republic* (Leiden, Leiden University Press, 2008).

156 Rene Lemarchand and Keith Legg, “Political Clientelism and Development: a Preliminary analysis,” 4(2) *Comparative Politics* (1972), 149-178.

157 Rene Lemarchand and Keith Legg, “Political Clientelism and Development: a Preliminary analysis,” 4(2) *Comparative Politics* (1972), 149-178.

158 Jens Stilhoff Sorensen, “War as Social Transformation: Wealth, Class, Power and an Illiberal Economy in Serbia,” 6(4) *Civil Wars* (2003), 55-82.

the long and seemingly diverse post-communist transition, maintained similar formal institutions in place.<sup>159</sup>

Even though deeply-rooted informal structures and institutions in Serbia dated from the pre-socialist era and a slow process of modernisation, they were reinforced by the socialist system's nurturing of personal ties.<sup>160</sup> Adam Riley<sup>161</sup> uses the term "refeudalisation" to describe the state of political affairs in the Western Balkans, where the power is held by informal networks. Each of the new states saw the emergence of political elites who resorted to nationalist mobilisation and established themselves financially and institutionally through heavy reliance on the war economies. The politics of nationalist consensus in the Western Balkans yielded thus a critical vacuum in which political parties concentrated power in the executive, fused economic and political clout in the process of privatisation, while simultaneously redistributing existing material assets and benefits preferentially.<sup>162</sup>

As a result, what was supposed to be the democratic transformation of the former Yugoslav republics and neighbouring countries became a struggle to maintain informal institutions as a type of public goods that could be exchanged for voters' support. The current state of affairs is not that dissimilar to the patterns of distribution that existed during the socialist era. Persistent clientelism and patronage, together with corrupt and criminal practices as "informal realities" of the countries going through transition, are main causes for the sluggishness and perpetual failure of the transformation process in the region.<sup>163</sup> Hence, it is important to shift attention away from the

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159 However, as number of authors showed, informal networks should not be seen as exclusively historically determined and linked to the past.

160 Marija Babovic and Slobodan Cvejic, "Briefing on Party Patronage and Clientelism in Serbia," SeConS Development Initiative Group (2006).

161 Adam Riley, "Refeudalisation' in the Balkans and the Danger to the EU," *Prospect Magazine* 2013, at <http://www.prospectmagazine.co.uk/other/refeudalisation-in-the-balkans-and-the-danger-to-the-eu-alan-riley-croatia-serbia-corruption> (Accessed 26/02/2017).

162 Nenad Zakošek, "Pravna država i demokracija u post-socijalizmu," 4 *Politička misao* (1997), 78-85; Danijela Dolenec, "Democratisation in the Balkans: the Limits of Elite-Driven Reform," 12(1) *Taiwan Journal of Democracy* (2006), 125-144.

163 Timothy Edmunds, "Illiberal Resilience in Serbia," 20(1) *Journal of Democracy* (2009), 128-142.

formal institutions that are the main focus of the EU's conditionality in the Balkans and zoom instead into the informal sphere of relations and action. This also means that, despite its best efforts, the EU still does not seem to have the recipe on how to address the systemic character of clientelism in the region, dismantle informal channels of political influence, incentivise key reform stakeholders, and build effective democracies in the Western Balkans. The problem is compounded by the fact that clientelism persists in the member states as well, and the EU also lacks an effective mechanism to deal with the issue in these countries. What accounts for the resilience of clientelism in the case of the Western Balkans?

### 5.3 How clientelism plays out in the Western Balkans

In very simple terms, political clientelism refers to giving material goods or benefits in return for political support<sup>164</sup>; it is distributive in nature with a *quid pro quo* aspect.<sup>165</sup> Put differently, everyone participating in the transaction think they benefit, but this often remains an unfulfilled promise on the patron's part. The clients, often destitute, persist in maintaining the relationship in the hope that a benefit may come about in the next cycle, if it failed to materialise the first time around. The types of exchange vary, most commonly including public goods<sup>166</sup> for political support, a practice commonly described as patronage.<sup>167</sup> The aim here is to expand the discussion and shift the focus away from *who* the main actors are to analysing *what* is being exchanged. This, it is argued, will lead to a better grasp of the relationship between clientelism and democracy, as well as the clients' and patrons' interests and motivations.<sup>168</sup>

164 Slobodan Cvejić, "On Inevitability of Political Clientelism in Contemporary Serbia," 58(2) *Sociologija* (2016), 239-252.

165 Susan Carol Stokes, *The Oxford Handbook of Comparative Politics* (Oxford University Press, 2007).

166 Public goods typically include defence, environmental goods, official statistics, information (different forms), invention, authorship, infrastructure (like roads) and some government public spending.

167 Muno, *Conceptualizing and Measuring Clientelism*, at 9.

168 James C Scott, "Corruption, Machine Politics, and Political Change," 63(4) *American political science review* (1969), 1142-1158; also James C. Scott, "Patron-client Politics and Political Change in Southeast Asia," 66 (1) *Ameri-*

The main actors of clientelism in the Western Balkans are people who hold or aspire to positions of political power. They might have acquired this status thanks to the political party in which they have membership, owing to the party's control of the given position. Alternatively, they might be professionals who need the party membership in order to achieve promotion, such as to managerial and decision-making posts. From power positions, the patrons, either politicians, civil servants or professionals, are then able to distribute goods, services and favours to clients, or else to exert unduly influence on institutions to shape policies, the legal environment and the wider economy in line with their own interests. Clientelism can then also entail the politicisation of state jobs and the practice of favouritism to distribute government contracts, concessions or market advantages in exchange for political support. In very simple terms, the clients are all others who are not in a position of power and who rely on favours from the patrons or perceive their socio-economic reality as one in which goods and services are completely out of their reach through normal democratic means.

The next question then is what is being exchanged. The list of clientelistic practices is long and what is being exchanged goes far beyond jobs, licenses, services and misuse of public administration. In some cases, as outlined above, these are specific goods, while in others it is access to healthcare, education or employment, particularly jobs in state institutions, which guarantee long-term economic stability. Since 2000, the politicisation of public administration, for example, runs deep: in the majority of the Western Balkan countries, the number of state employees has increased by more than 50 per cent since the beginning of transition and each change of government (or else government coalition composition) tends to bring a wholesale and expensive replacement of everyone holding management positions in the public sector.<sup>169</sup> Employment along party lines, coupled with the extension of social assistance and other entitlements to groups that do not necessarily fulfil the legal criteria, foster dependency on the 'patron' state and discourages contention on the side of the 'client' population. If

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*can Political Science Review* (1972), 91-113.

169 Dragan Tevdovski, "The Damned Triangle of Inequality, Neo-Liberalism and Patronage in Western Balkans: is There Any Way Out?," in Ernst Stetter et al (eds.) *The Social Dimension of EU Enlargement*, (FEPS and SOLIDAR, 2014), 49-79, at 66.



anything, it persuades those seeking or occupying a state position, those relying on state pensions or other state benefits, or those waiting on the local government official in charge of granting licences or distributing vouchers, to cast their vote in the next elections in such a manner as to maintain the political *status quo* that delivers such privileges.

Politicisation can amount to a major cause of incompetence and inefficiency of public bodies.<sup>170</sup> It does not only entail public sector recruitment on the basis of cronyism, nepotism and other informal and non-meritocratic criteria but it also reinforces the unwarranted idea that people holding public sector jobs belong to a higher-status group with respect to the rest of the society. Catch phrases like from “plan to clan” or from “nomenklatura to kleptocratura” emerge then as depictions of the new power morphology in the post-communist Balkans.<sup>171</sup> Moreover, this leads to situations in which the state administration functions well only when palms are greased by those needing to obtain what others would consider normal treatment in democratic contexts, where all citizens are expected to be equal before the law.

### **Macedonia – Secured vote has no price**

Macedonia came into the limelight in 2016 when citizens very publicly took to the streets to protest against the government of Nikola Gruevski. The protests were prompted by the decision of President Ivanov to pardon politicians charged with war crimes or under investigation for involvement in a wiretapping scandal. However, the reasons for the current political instability in Macedonia are much deeper and longstanding. The local elections of 2013 and 2014, for example, clearly showed deeply entrenched practices of clientelism that largely enabled the incumbent government led by the Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity (VMRO-DPMNE) to win power. It seems

170 See Transparency International’s Corruption Perception Index (2016), at [https://www.transparency.org/whatwedo/publication/corruption\\_perceptions\\_index\\_2016](https://www.transparency.org/whatwedo/publication/corruption_perceptions_index_2016) (Accessed on 26/03/2017).

171 William L. Miller et al., “A Culture of Corruption? Coping with Government in Post-Communist Europe,” (Budapest, CEU Press, 2001).

that no means were out of bounds, and solutions for any type of citizen's problems were offered for the promise of political support – providing building material for the house, scrapping child's bad school grades, legalising a new, illicitly built or anything else.<sup>172</sup> This is combined with exerting pressure through repelling state subsidies for those who are politically neutral or members of opposition parties. Coercion or blackmailing of voters into giving their electoral support was widespread as well, for instance, village members were directly told they would not get access to subsidies or, in contrast, agricultural producers who were members of VPMRO-DPMNE, received 300 acres of land for supporting the governing coalition.<sup>173</sup> Such practices clearly play to personal benefits or losses of the citizens but they also create grievances related to how communal resources are managed – in this case what is seen as wasteful disposition of valuable municipal land. Over time, a combination of personal and collective injustices on the part of the patrons built up into the mass protest against the government.

Another well-known example that illustrates both corrupt practices and clientelism aimed at securing voter support is the case of “Sun City” – a holiday complex, whose construction was supposed to start in 2007 in the municipality of Sopište. The start of the project was marred by illegal tendering procedures in which the government allocated building land to an Israeli company, without receiving evidence that it actually had the capacity to complete the work.<sup>174</sup> Several years later, in 2011, the Israeli building corporation abandoned the project, forcing the government to look for another investor.<sup>175</sup> All of a sudden, in 2014, the Macedonian government

172 Zorana Gadzovska Spasovska, “Za siguren glas ne se prašuva za cena,” *Radio Slobodna Evropa*, March 16 2013, at <http://www.slobodnaevropa.mk/a/24929603.html> (Accessed 26/03/2017).

173 Ibid.

174 Transparentnost Makedonija, ‘Sun City’ case report, 2016, at [http://www.transparentnost-mk.org.mk/slucai\\_dokumenti.aspx?id=3](http://www.transparentnost-mk.org.mk/slucai_dokumenti.aspx?id=3) (Accessed 28/02/2017).

175 “Israeli Investor Abandons Residential Project in Macedonian Capital”, *See News*, July 28 2011, at <https://seenews.com/news/israeli-investor-abandons-residential-project-in-macedonian-capital-189644> (Accessed

invested 260 million euro<sup>176</sup> into building 22km of a tar road that leads to “Sun City”, even though the project and the famous ‘city’ have not moved much further from being a sketch on the paper. Building this infrastructure has been used to attract political support of Sopište residents for VMRO-DPMNE in the local elections of 2013. What makes the Macedonian case of flagrant clientelism really stand out is that since 2015 it led to the serious destabilisation of a country that only a decade ago was forging towards the EU, which now poses a serious security threat to the region as well. It also shows how important it is for the EU and other international actors to focus on both understanding the root causes of clientelism and developing approaches as to how to divert it into more formal practices.

#### 5.4 Shortfalls in dealing with clientelism

Indeed, this type of asymmetric relations, which tend to cost the ‘client’ (here citizens) more than the ‘patron’, should be understood against the complexity of the Western Balkan societies, in which informal institutions of power and unequal power relations between different groups still linger on vigorously from the communist era and continue to produce different outcomes than what one would expect by observing formal, democratic rules and principles.<sup>177</sup> The paradox is that in spite of the fact that the public at large might be burdened and revolted by the system, people continue to use these informal networks and practices, which they perceive as inescapable and indispensable. As this chapter argues, the main reason is that clientelism is the only way to secure access to resources or services, and clients resort to using clientelistic practices because formal entitlements, even when they exist, are completely unreliable.

In the Western Balkans, laws can also be competing, overlapping or absent, especially when it comes to regulating conflicts of interest, and a single,

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176 “Construction of ‘Soncev Grad’ Infrastructure”, *Independent.mk*, February 24 2014, at <http://www.independent.mk/articles/1958/Construction+of+%22Soncev+Grad%22+Infrastructure>, (Accessed 26/03/2017).

177 On “status societies” Kenneth Jowitt, *Social Change in Romania: 1860-1940* (Cambridge, Cambridge University Press, 1993).

legally binding code of conduct for the whole public sector, detailing norms, instructions and penalties for every situation is also lacking.<sup>178</sup> To make matters worse, existing legislation is not diligently implemented and law enforcement agencies (like courts and police) are often under heavy political pressure and utterly inefficient. The challenges faced by the Balkan countries in maintaining the rule of law and the independence of the judiciary are a primary focus of the EU's conditionality for the Balkans. They are well documented in the European Commission's annual country reports and set the bar high for their governments' democratic standards. The partisanship of media (see Chapter 4 of this publication) or blatant infringements of the freedom of expression and media, the weak parliamentary scrutiny, feeble or unconstructive political opposition or else outright lack of alternation in power (like in Montenegro or Macedonia), as well as the other many problems linked, for instance, to the financial sustainability and operational capacity of civil society organisations throughout the region only exacerbate the difficulty of ensuring law-abiding elite behaviour that ultimately makes democracy meaningful in substantive terms.

But the strength (or lack thereof) of popular pressure from below in the Balkans invariably reflects also these countries' overall level of socio-economic development and, in particular, growing levels of unemployment and thus inequality.<sup>179</sup> Rising deprivation and social inequalities work against individual emancipation, fostering instead a popular culture that builds on 'bread-and-butter' materialistic and security preoccupations, and feeds on

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178 See, for instance, the European Commission's reports on the candidate and prospective candidate countries of the Western Balkans at [https://ec.europa.eu/neighbourhood-enlargement/news\\_corner/key-documents\\_en?field\\_file\\_theme\\_tid\[0\]=82&field\\_file\\_theme\\_tid\[1\]=97&field\\_file\\_theme\\_tid\[2\]=98&field\\_file\\_theme\\_tid\[3\]=99&field\\_file\\_theme\\_tid\[4\]=85](https://ec.europa.eu/neighbourhood-enlargement/news_corner/key-documents_en?field_file_theme_tid[0]=82&field_file_theme_tid[1]=97&field_file_theme_tid[2]=98&field_file_theme_tid[3]=99&field_file_theme_tid[4]=85) (Accessed 28/02/2017).

179 In some cases, clientelism can provide stability in situations of exalted inequality (e.g. Maquet, 1961 on Rwanda in, Jacques Jérôme Pierre Maquet, *The Premise of Inequality in Ruanda: a Study of Political Relations in a Central African Kingdom* (International African Institute, 1961), while more recent studies that focus on economic inequality find that it leads to a rise in clientelism (e.g. James A. Robinson and Thierry Verdier, "The Political Economy of Clientelism," 115(2) *The Scandinavian Journal of Economics* (2013), 260-291.

ignorance, obedience, and distrust at the expense of self-expression values.<sup>180</sup> Research indicates that self-expression values are not only beneficial for the prospects of elite-challenging actions but they also have significant civic consequences in strengthening democratic institutions.<sup>181</sup> Rather than empowering subjects capable of demanding respect for formally-enacted democratic liberties, such conditions only create a fertile ground for nationalist appeals that sustain the predatory elites' sway in how they exercise power. The viability of recent political activism witnessed, for example, in Bosnia and Herzegovina (the 2014 plenums), Montenegro, Kosovo and Macedonia (all in 2016) is thus questioned by the persistence of harsh living conditions and, in some cases, the trauma of past conflict experienced.

### **Bosnian *štela* – A necessity and reality of everyday life**

Bosnia and Herzegovina, as other countries in the Western Balkan region, has not escaped the practice of clientelism, which citizens refer to as *štela*, and it plays a crucial role in maintaining societal ties and in the modern political life of Bosnia and Herzegovina. *štela* are personal networks that almost operate as a coping strategy for the majority of citizens, particularly at the local level, in helping them gain access to resources. Because of the extremely complicated institutional, governance and administrative framework that was put in place as a result of the Dayton Peace Agreement (DPA), Bosnia and Herzegovina is more vulnerable than other countries in the region to clientelistic practices and informal networks branched out at multiple administrative and governance levels. As argued earlier, understanding the origin of the informal institutions, their cultural and historical background is extremely important particularly for grasping how societal transformations change client-patron

180 Rosa Balfour and Corina Stratulat, "The Democratic Transformation of the Balkans," *EPC Issue Paper 66*, Brussels, European Policy Centre (2011).

181 Seymour Martin Lipset, "Some Social Requisites of Democracy: Economic Development and Political Legitimacy," 53(1) *American Political Science Review* (1959), 69-105; Otto Kirchheimer, "Confining Conditions and Revolutionary Breakthroughs," 59(4) *American Political Science Review* (1965), 964-974; Ronald Inglehart and Christian Welzel, *Modernisation, Cultural Change and Democracy: the Human Development Sequence* (New York, Cambridge University Press, 2005).

relations.<sup>182</sup> On the other hand, the analysis needs to be framed in the light of a poor economy and permanent instability, which puts Bosnia and Herzegovina in first place in the region with 50 per cent of its citizens<sup>183</sup> saying they want to leave the country.

The initial post-war distribution of power between the three main nationalist political parties that claim to represent the three major ethnic groups, Muslim, Serbs and Croats, created a fertile ground in which it is easy for the leaders and their cronies to abuse public office. Even though the political field diversified and new political parties emerged, it only increased the number of claimants and expended the tools and mechanisms of clientelistic practices. At the same time, embeddedness in local clientelistic networks and informal economies continue to provide and strengthen an environment in which informality in operation and access prevails, particularly in the economic sphere.<sup>184</sup> In this environment/context, it is easier for the power structures to distribute funds to support and favour curriculums of the patrons, from national to the municipality level. This approach often leads to discrimination of minority ethnic groups and, at the same time, encourages local voters to support nationalist parties. The key problem is that ordinary people are struggling to even start believing that access to jobs, services and institutions is possible without using personal networks.

In Bosnia and Herzegovina, the majority of people believe that having personal connections is always, or at least sometimes, useful for getting visas, jobs, health services and other benefits. This is particularly highly emphasised when it comes to obtaining jobs (85.7 per cent) and getting into school or university (80 per cent).<sup>185</sup> The latter is very worrisome if we observe the latest census figures on education, which show overall that, of just over 3.5 million citizens of Bosnia and Herzegovina, around 3 million are older than

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182 Helmke and Levitsky, *Informal Institutions*.

183 Balkan Barometer 2016, Regional Cooperation Council (RCC), at <http://www.rcc.int/pubs/39/balkan-barometer-2016-infographics-pocket-edition> (Accessed 26/03/2017).

184 Boris Divjak and Michael Pugh, "The Political Economy of Corruption in Bosnia and Herzegovina," 15(3) *International Peacekeeping* (2008), 373-386.

185 UNDP Bosnia and Herzegovina, National Human Development Report, "The Ties That Bind: Social Capital in Bosnia and Herzegovina," UNDP (2009).

15 years, approximately 12 per cent are illiterate or functionally literate, while 18 per cent have only primary school, bringing the figure to a staggering 30 per cent combined. Levels of education are correlated to voting patterns, access to services (health, social care) and employment, as well as to citizens' participation in political and public life, which makes it really problematic that access to education is significantly regulated by clientelistic practices.

The most common mechanisms of political clientelism are the financing of political parties, distribution of leading executive and managerial positions in state-owned companies, bypassing legal procedures in public tenders, employing political party supporters (although this represents a major challenge with a lack of positions in the current economic climate), and lobbying for favourable legal and administrative frameworks that would protect or be less punitive towards the existing informal networks. The complexity of the legal system and divided jurisdictions are favourable to such approaches. According to the UNDP report,<sup>186</sup> in almost all parts of Bosnia and Herzegovina, between 90 and 100 per cent of citizens believe that *štela* is useful, and this opinion is equally common among the employed and unemployed. If the social networks are observed outside family and friend circles, money starts to play an important role either as a direct payment or in the form of gifts, which is also linked to historically embedded norms. And many people are prepared to pay bribes or provide gifts, even if they disagree with the practice.

“I lost my job and when I asked people at the employment service, ‘Now what? Can I apply for a pension based on my age and years of work?’ ‘You can try’, [they said]. But the man openly told me: ‘You will need a few thousand marks, and it will not be paid back’... He openly told me I could try, but that I would not get anything. Personal connections are generally useful.... but unless you can pay money, you have to have a strong family connection. It is not a secret. We have some companies in town... people already call them family companies. As soon as they graduate they get jobs, while other

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186 *Ibid.* if in the final layout this falls on a different page than the reference, it has to be spelled out in full

people can apply a million times and will never get the job. They can be good, regular students, but connections are still more important.

(Female, unemployed, Sarajevo)” (UNDP, 2009:80).<sup>187</sup>

This is just one illustration of a much broader trend, which is that people in Bosnia and Herzegovina, and the region more generally, gravitate towards public sector jobs. In Southeastern Europe, 7 per cent of people state they would rather work in public sector jobs, predominantly listing job security as the main reason (54 per cent)<sup>188</sup>. This can easily explain why those in the patron positions on the offering end have enough demand and motivation from the clients to maintain clientelistic practice. In post-war Bosnia and Herzegovina, informality of clientelistic practices should not just be seen as an antidote of the “formal” but as a vehicle of communication that people use to navigate development in internationally supervised local communities.<sup>189</sup>

## 5.5 Conclusion

Clientelism is not a Balkan peculiarity; EU member states are also confronted with the phenomenon. The difference is that clientelism is more the norm rather than the exception in the Balkan societies, and its roots lie in the distribution of power itself. The communist legacy of the countries in the region might have set the steppingstones of clientelism, but clientelistic relations mutated and adapted to the new democratic context following the breakup of Yugoslavia. Neither the creation of democratic institutions nor the ever-stricter membership conditionality imposed by the EU on the Balkan aspirant countries has prevented the perpetuation of clientelism. Quite the contrary, democratic institutions and practices, like elections, have come to be used for clientelistic purposes, inadvertently helping – rather than deterring – the existence of clientelism in the political system. The reforms undertaken by the Balkan countries in their transition period and

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187 UNDP, *The Ties That Bind*, p. 80.

188 Balkan Barometer 2016, Regional Cooperation Council (RCC) at <http://www.rcc.int/pubs/39/balkan-barometer-2016-infographics-pocket-edition>.

189 Karla Koutkova, “Informality as an Interpretive Filter: Translating Ubleha in Local Community Development in Bosnia,” 24(3) *Journal of Contemporary Central and Eastern Europe* (2016), 223-237.



in the framework of their EU integration process, almost seem to have a blind spot to clientelistic networks or else struggle in terms of the formula applied to tackle the phenomenon. The ‘patrons’ arguably stand to lose more than win from abandoning clientelistic practices, while the European perspective does not seem to offer a strong enough incentive for politicians, bureaucrats or magistrates in the region to change their behaviour.

The consequences are neither unimportant nor uncomplicated for the consolidation of democracy in the Balkans. Clientelism undermines the rule of law and citizens’ equal rights before it. Patrons and clients might voluntarily agree to enter a clientelistic relationship with the aim of deriving some interest, respectively, but the exchange is not (always) predictable, guaranteed to deliver any benefit at all for the client, and the citizens who do not have access or refuse to partake in such networks are deprived of services and treatment which would be considered normal in other, functioning democracies. If the polity works on the basis of rules that are arbitrary, non-universal and unreliable as a means of correcting mistakes and policies or changing governments, democracy becomes a mere *façade*. And the problem is not just that clientelism weakens formal democratic institutions but also that it flips on its head the very principle of democracy, that of the power resting with the people, not the elites. When the state becomes captured by a patron and the electorates are reduced to powerless clients, the democratic foundation is shaking. Clientelism distorts election results significantly, undermines rule of law and is inherently based on informality, illegality and inequality, thus undermining democracy.





## 6. Conclusions

Democracy in the Western Balkans has been backsliding for a decade. There is no single turning point for the entire region, but the downward spiral began a decade, accelerated with the economic crisis in 2008 and multiple crises within the EU that distracted the Union from enlargement.<sup>190</sup>

The regression happened in plain sight, but lacked the fanfare or high profile watershed: There have been no controversial new constitutions, as in Hungary, or major constitutional revisions as in Turkey next month.

Autocrats in the Western Balkans rule through informal power-structures, state capture by ruling parties, patronage and control of the media. Lacking the size and clout of Turkey or EU membership as Hungary, autocrats had to fly below the radar, allowing them to combine EU accession with stronger domestic control. Thus, the decline did not happen by stealth, but was ignored or downplayed by the EU and the USA for too long.

Not all countries of the Western Balkans are equal and also the features of flawed democracy vary. Some suffer from complex destructive institutions, like Bosnia, which incentivize destructive behavior by the ruling elites, others from high levels of inter-party polarization, such as Albania. The degree to which incumbents disregard institutions and democratic rules also varies, from Macedonia, where the dominant party between 2006 and 2016, the VMRO-DPMNE has been engaged in blatant electoral manipulation and extensive patronage to Albania where alternation of power has been possible and frequent.

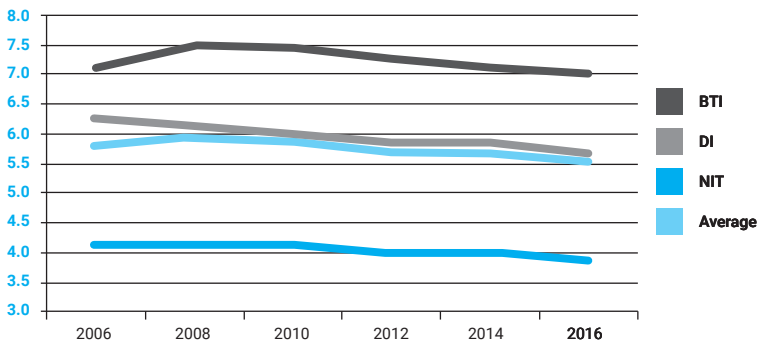
External efforts at resolving the open questions of statehood has also favored heavy-handed fixers, who are willing to disregard domestic opinion, as has been the case in the normalization process between Serbia and Kosovo.

Among the key measures of democracy, the Bertelsmann Transformation Index places the countries in the categories of defective or strongly defective

190 Key dates include the coming to power of Milorad Dodik in 2006 in the RS, the NATO summit 2008 when Greece rejected Macedonian membership over the name dispute.

democracies, with the lowest ranked country Kosovo holding a similar spot as Paraguay or Georgia and Montenegro as best ranked country, just below Brazil.<sup>191</sup>

The Economist Democracy Index in 2016 considers all countries in the region (except, oddly enough Serbia which fares better as “just” a flawed democracy) as hybrid regimes, Albania between Guatemala and Ecuador, Macedonia in the company of Uganda and Bosnia just before Lebanon, but after Thailand.<sup>192</sup> The indices are not without their flaws, but they consistently show a disappointing picture of democracy in the region and negative trend in recent years.



**Decline in Democracy in Western Balkans<sup>193</sup>**

Over the past decade, all major indices of democracy indicate that the Western Balkans have moved away from becoming consolidated democracies. This decline is part of global trend, visible also among EU member states. As Freedom House noted in its 2016 Nations in Transit Report, the Balkans are back where they were in 2004 (or never moved much forward at all during the period).<sup>194</sup> Neither of the countries is considered a consolidated

191 Bertelsmann Transformation Index 2016.

192 The Economist Intelligence Unit, “Democracy Index 2016: Revenge of the “Deplorables,”” *The Economist*, 2016.

193 Figures for Western Balkans from NIT (Nations in Transit Freedom House have been converted from 1-7 scale to fit scale), DI (Democracy Index, Economist Intelligence Unit) and BTI (Bertelsmann Transformation Index). 8-6 on DI signifies flawed democracy, 4-6 Hybrid Regime, for BTI, below 8.5 defective democracy, below 7, seriously defective democracy.

194 Nate Schenkkan, “Nations in Transit 2016: Europe and Eurasia Brace for Impact,” *Freedom House*, 2016.

democracy and most are either considered qualified as hybrid regimes or flawed democracies. As these measures of democracy consider the institutions, the legal framework and democratic infrastructure, they tend to low-ball the autocratic and informal practices of governments. This is especially the case as they often include mechanisms that are only known to insiders, unless, as in Macedonia, audio-recordings provide insight into undemocratic practices.

Thus, the countries of the Western Balkans have lost more than a decade in terms of democratization. This wasted time is even more dramatic considering the ever-closer ties of nearly all the countries of the region with the EU during that period. Moving closer towards the EU, negotiating accession, receiving endless reports and recommendations – none of these steps delivered the promised progress towards democracy (and higher living standards). The process of EU approximation has become unrelated to progress in democratization. Despite the particular emphasis on democracy and human rights in the Western Balkans the methodology and tools of the EU have not brought the anticipated progress. Democratic institutions, in particular parliaments, remained marginal for day-to-day politics. The EU preferred a leader-oriented approach for its engagement in the region.

The Western Balkan pattern of democratic decline is both institutional and personal. Institutions never were able to develop the independence and strength to weather autocratic leaders and more democratic governments failed to foster independent institutions. Parliamentary democracy barely took root. Democratic institutions are mere tools for political elites who not unlike previous cadre politics alternate between posts in executive, legislative and other functions.

This weakness has been taken advantage of by autocrats. Many have been supported and hailed as reformers by the West in their early rise to power, such as Milorad Dodik as the hope against nationalist politicians in Republika Srpska, Nikola Gruevski as an economic reformer and pragmatist, Aleksandar Vučić as the moderated former nationalist who decisively moved towards the EU and democracy and Milo Djukanović who broke with Milošević at the right time. These hopes have been dashed as all of them have used the Western support to take power, but also drew

on the authoritarian rulebook to keep it. Their parties across the region have been able to rely on associations with European party families for support, even if these have displayed serious disregard for democratic rules, such as the association of the Macedonian VMRO-DPMNE or the Serbian Progressive Party with the European Peoples' Party (EPP) and the Montenegrin Democratic Party of Socialists (DPS) with the Party of European Socialists (PES).

They are all still relatively young, Gruevski is 46, Dodik is 58, and so they are likely to remain relevant players for the foreseeable future. However, even if they were to lose office, the institutions have been seriously compromised and any future rulers will be tempted to use the warm worn chairs of authoritarianism.

At least since the election of Trump to the US presidency, the “Russian threat” has been a key feature in Euro-Atlantic debates, from elections in Western Europe to geopolitical meddling in the Balkans. While there has been undisputed increased Russian meddling in the Western Balkans, sometimes at the request of governments (Serbia, Republika Srpska), sometimes allegedly directed against governments (Montenegro), the key lies with democracy. Russia is playing a weak hand strongly because the EU has been weak. It has underplayed its strength in the region as the main investor, generator of reform and partner. Autocrats use Russia both as a partner and as a *bête noire* to shore up their support. Russia, together with Turkey, also provides a model, a self-confident proto-type of authoritarian rule within seemingly democratic structures, attractive for aspiring autocrats in the Western Balkans. Turkey and Russia also explicitly play on cultural similarities and other soft tools to counter the more demanding relations of the countries with the EU.

Beyond the “Russian threat”, other geopolitical crises have been a welcome distraction for autocrats. The refugee crisis and the Western Balkan route have been a convenient opportunity to become indispensable partners in stopping the inflow of refugees and the latent fear of renewed tensions, carefully stroked by political elites results in support for “stability”. Thus, nationalist parties, such as the Radical Party in Serbia, serve as useful threats of alternatives to the incumbents.

In Kosovo, the United States has in the past engineered coalitions to prevent the radical Self-Determination movement from taking office, and in Montenegro, the ruling Democratic Party of Socialists has used NATO membership to remain an indispensable “factor of stability”.

The result has been the rise of a regional “stabilitocracy”, weak democracies with autocratically minded leaders, who govern through informal, patronage networks and claim to provide pro-Western stability in the region. As this study details, the status of democracy is weak, and declining. The safeguards, such as independent media and strong institutions, are failing, and clientelism binds many citizens to ruling elites through cooptation and coercion.

The EU and many of its members have been tolerating this dynamic, some out of persuasion, some out of inertia and some out of laziness. However, the status quo does not provide stability or ensure pro-European governments. As Federica Mogherini noted after her visit to the Western Balkans in early March 2017, the “situation [in the Western Balkans]... is tense, it is exposed to challenges, both internally and regionally, also globally, but it is a region that has in itself the capacity to react to that provided that the credibility of the European integration process is there.”<sup>195</sup>

Continuing the status quo raises several risks, beyond the further decline of democracy:

1. The more entrenched autocratic governments become, the less institutional mechanisms are likely to be sufficient to unseat them. In combination with entrenchment, the costs and risks of loosing office for autocrats are much greater, both in terms of the loss of access to the clientelistic networks state capture provides, but also regarding the risk of legal cases brought against them. Thus a change of government becomes harder, more risky and potentially destabilizing.

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195 “Mogherini Expects Clear, Strong EU Support for Western Balkans,” *European Western Balkans*, 6 March 2017, at <https://europeanwesternbalkans.com/2017/03/06/mogherini-expects-clear-strong-eu-support-for-w-balkans/> (Accessed 15/03/2017).



2. The rise of geopolitics is promoted by autocrats who are not in the process of EU integration or reform due to any commitment to the underlying norms and values, but exclusively for strategic reasons. They will switch elsewhere, if the offer is better. Furthermore, they will seek to play off competing external actors. Thus, the increasingly antagonistic global configuration benefits them to extract maximum resources from multiple actors. This will bring more geopolitical wrangling to the Balkans, not less.

3. The threat of renewed ethnic conflict keeps lingering in the Western Balkans and appears to give the benefit of the doubt to stability. Yet, it is autocrats who consistently stoke the flames of conflict. From the comical, such as the Serbian government sending a train without prior notification to Kosovo with provocative markings “Kosovo is Serb” (and stopping it on time) to more dangerous efforts by the Macedonian ruling party to transform the challenge to its undemocratic rule into an ethnic conflict, such ethnic tensions are deliberately instigated to distract from autocratic practices.

4. Losing support for the EU is a likely risk if the symbiosis of stabilitocracy and the EU and its members continue. Support for EU membership is grounded on three premises in the region: the hope for a more stable, predictable and ‘boring’ life; the control of elites by rules and norms beyond their control and finally the prospect of escaping the role of being at the European periphery. The EU integration with local autocrats in power suggest to many citizens that the EU will not hold them to account and as long as they deliver on issues of interest to member states (closing borders, keeping the region peaceful), they are welcome partners. The EU integration process might thus lose its core constituency, undermining the image of the EU in the region, and especially among its natural allies.

The status-quo is thus not just unsustainable, but it entails considerable risks. The belief that the EU integration process will gradually improve the state of democracy and make the countries stable future member states has to be put to rest.

A more critical and decisive engagement, in contrast, holds much promise. The EU with its economic might, the promise of stable democracy (at least relatively), countries government by rule of law and the long time aspiration

of citizens of Western Balkans is too modest about the considerable clout it holds.

Autocrats might be able to secure elections through their control of the timing, the patronage of many voters and control of the media, but many citizens are deeply dissatisfied with their governments.

The countries of the Western Balkans are flawed democracies with democrats. If Weimar Germany was a democracy without democrats, the Western Balkans still have a majority committed to democracy. Yet, citizens are deeply skeptical about the institutions of democracy and display authoritarian tendencies.<sup>196</sup> The number of those distrusting government, parliament and parties exceeds those trusting them in Albania, Macedonia, Serbia and Montenegro, a stable trend since Eurobarometer has been asking in the countries.<sup>197</sup> Citizens are alienated from politics and vote for personal, tangible benefits or out of fear.<sup>198</sup> The space for alternatives political actors, be it parties, social movements, is therefore significant.

Furthermore, surprisingly large numbers remain committed to EU membership. Citizens might like other countries, but they only want to join the EU. There is no attractive alternative to the EU, despite its membership not offering immediate prosperity, or even long-term convergence. Yet, citizens are also deeply pessimistic. Some 26 percent of citizens believe that their country will never join the EU. Ironically the greatest optimists about membership within a few years are in Kosovo.<sup>199</sup> Both excessive optimism, as in Kosovo, as well as dire pessimism as in Serbia and Bosnia are potentially debilitating. EU accession has been the most instrumental

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196 See for example for Serbia Demostat, “Istraživanje Javnog Mnenja Srbije, Oktobar 2016,” 18 January 2017, at <http://demostat.rs/2017/01/18/istra-zivanje-javnog-mnenja-srbije-oktobar-2016-2-2/> (Accessed 15/03/2017).

197 In November 2016, trust in parties in the countries was between 11% (Serbia) and 28% (Albania). Eurobarometer, November 2016.

198 In Macedonia a staggering 38% are not political active because they do not want to be publically exposed. Having no impact or not wanting to risk exposure account for 72% of those not being political active. Regional Cooperation Council, “Public Opinion Survey: Balkan Barometer 2016”, Regional Cooperation Council Secretariat, Sarajevo, 2016.

199 Regional Cooperation Council, *Balkan Barometer*.

in advancing democracy and rule of law, when membership is credible and realistic.

The region is to a large extent already integrated into the EU, through its citizens, the economic relations with the EU and other ties. These links provide for a stronger leverage and more incentives to follow the institutional models and rules of the EU. The shape of the future EU is in flux, but to join and fully benefit membership will not get easier. The Western Balkans might have been moving closer towards the EU, despite the autocratic behavior of many of their elites. Full membership with autocrats in charge is unrealistic as the EU and its member state will not want to imported unreliable and uncommitted democrats to their midst.

### Policy recommendations

The state of democracy and freedom has been backsliding or stagnating in the countries of the Western Balkans over the past decade, as this study has shown. Yet, formally, the countries have all progressed on their paths to EU membership, and the EU has remained rather silent on these developments, even when confronted with concrete evidence, as in the case of the wiretapping scandal in Macedonia or the Savamala incident in Serbia. In the future, the EU needs to sharpen its focus on monitoring the aspiring members on their paths to stable and prosperous democracies governed by the rule of law. If it does not, the risks for the region, and for the EU by extension, are considerable.

**NAME AND SHAME.** Noting shortfalls reminds citizens of the core reason for joining the EU: a stable and prosperous democracy based on the rule of law. Therefore, democracy backsliding must be regularly addressed in the annual reports, as well as by the EU Delegations in the region. Parliamentary delegations should meet regularly with their counterparts in Brussels, Strasbourg or in the respective countries, with Parliament's Committee on Foreign Affairs and with the standing rapporteurs for (potential) candidate countries. Finally, EU officials and MEPs should regularly engage in direct communication with citizens, as this will allow them to name and shame those elites who do not follow up on their declaratory support for EU integration. The public nature of the November 2014 letter of the German-British initiative for Bosnia and Herzegovina very adequately illustrates such

a practice.<sup>200</sup> Based on the experience of the Priebe report for Macedonia, independent experts should provide high-profile assessments of key areas of reform on behalf of the EU across the Western Balkans.

**MAKE ACCESSION NEGOTIATIONS MORE TRANSPARENT.** Presently, the EU accession negotiations are conducted between the EU and the governments of the region, neglecting the role of other actors. National Parliaments and civil society remain largely side-lined. Even in Montenegro, which adopted a more inclusive approach to civil society participation in the negotiations, NGOs do not have access to reports prepared by different Directorates General and agencies of the European Commission, as well as by EU expert missions to the country. Parliaments of the countries in the region do not have full access to such documents either. Hence the negotiations process remains non-transparent and undemocratic. Due to the vaguely defined goals in the Action Plans within the framework of the negotiating chapters, governments are at liberty to manipulate perceptions of achieved results in communication with other stakeholders and the general public. In this regard, it is important to release reports of the TAIEX (Technical Assistance and Information Exchange) experts, Peer Review mission reports, reports prepared within Twinning Projects, as well as expert opinions on draft legislation of candidate countries in the Western Balkans.

**GATHER EXPERT OPINION ON A REGULAR BASIS.** The European Fundamental Rights Agency could expand its scope of work to cover all the (potential) candidate countries by means of regular assessment on specific legal and political measures concerning democracy promotion. It is very important that the EU continues to use local expertise in this matter. Collaboration with credible civil society organizations from the region should be further institutionalised via regular channels of communication, for example through commissioning regular ‘shadow’ reports on the state of democracy.

**DEMOCRACY IS NOT NEGOTIABLE.** Past (progress) reports, i.e. for Serbia and Macedonia, have undermined the credibility of the EU in pushing for democratisation by failing to mention apparent authoritarian practices. The

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200 Auswärtiges Amt, Foreign and Commonwealth Office. *German-British initiative for Bosnia and Herzegovina*, November 4 2014, at [http://infographic-ics.economist.com/20141108\\_Letter/Letter.pdf](http://infographic-ics.economist.com/20141108_Letter/Letter.pdf). (Accessed 24/03/2017).

state of democracy should not be short-changed for other reasons (such as cooperative behaviour in handling the migrant crisis).

**EMPOWER DEMOCRATIC FORCES IN THE REGION.** Western Balkan governments are at liberty to influence both reforms and EU integration through a set of clientelistic networks and/or methods of more or less open pressure. It is essential to transform these networks so as to increase the influence of civil society on policy making (i.e. NGOs, civil society organizations, independent investigative journalists, etc.). In addition, efforts should be made to support constructive grassroots initiatives and independent media in the region. Civil society empowerment should strengthen their expertise, capacities and technical organisation, and should provide for regional networking (regional Ombudsperson network, regional media outlets such as the *N1 TV* which broadcasts simultaneously in Serbia, Croatia and Bosnia and Herzegovina, etc.) and international networking possibilities. Furthermore, the EU should maintain its support for the inclusion of responsible civil society actors, in an effort to put pressure on the government to do its job better, both before and during negotiations.

**IDENTIFY AND CHALLENGE INFORMAL PRACTICES.** The informality of domestic authoritarian practices makes them an elusive target of the EU's democratic conditionality. As can be seen in cases of Bulgaria and Romania, if these practices are not addressed at an early stage of the EU integration process, they are likely to survive even beyond accession. Therefore, actions related to the establishment of consolidated democracies must be coupled with tangible measures aimed at preventing a conflict of interest when performing public functions, protecting whistle-blowers, establishing E-government, and increasing transparency, responsiveness and the efficiency of all branches of government via the right of access to information and public procurement regulation. The EU could best assist in facilitating these measures by securing a significant part of the IPA II budget for appropriate actions, and also by working with local civil society organisations in identifying and tackling problems.

**CREATE CLEAR CRITERIA AND INDICATORS FOR DEMOCRACY CONDITIONALITY.** In the past, the EU progress reports have often not seen the forest for the trees, focusing on individual aspects that jointly

do not provide good insight into the state of democracy. The apparent thinness of the *Acquis Communautaire* in the field of democracy promotion contrasts with the centrality of this issue in the accession negotiations process. For a smoother process of the pre-accession reforms, both the candidate countries and their citizens should know when and how they are considered to be progressing. In this regard, the EU has to distil particular criteria and indicators on the basis of which the progress of the candidate countries will be graded.

**INSIST ON THE INDEPENDENCE OF KEY STATE INSTITUTIONS.** The top-down institutional approach employed by the EU, empowered by the “golden” carrot of full membership, has generated unique, broad-based and long-term support for democratic reform and progress towards EU membership in the Western Balkans. However, while EU conditionality has an important role in prompting reforms, a sustainable reform process also requires certain domestic conditions to prevail – most notably the reduction of the number of veto players and the elimination of institutional obstruction exhibited in clientelistic relationships among the domestic ruling elites and institutions prone to corruption. If the institutions operating within the functioning triangle of police, public prosecutor and the judiciary are not independent in their work, the clientelistic and/or veto chain cannot be broken. Therefore, the EU must more systematically review the independence of these institutions (i.e. Ombudsperson, Commission for Protection of Competition, Securities Commission, Republic Agency for Electronic Communications, Commissioner for Information of Public Importance and Personal Data Protection, Commissioner for Protection of Equality, Judicial Academy), going beyond assessment of the recruitment or remuneration.

**MAKE EUROPEAN PARTY FAMILIES WORK.** European party families have extensive networks in the Western Balkans and maintain relationships with parties in the region. A joint approach of the main parties (EPP, POES, ALDE) towards their Western Balkan partners, including greater pressure for supporting democratic standards and strong enforcement mechanisms, is necessary.

**BOOST THE TRANSFORMATIVE EFFECT OF ENLARGEMENT.** The transformative effect of the current EU approach for the Balkans appears

to be insufficient. In a nutshell, conditionality works well if membership criteria are clear, if the same criteria are applied equally to all applicants, if they are strictly but fairly monitored, if the findings are transparently communicated, and if there is no doubt that the reward will come once conditions are met. Currently, all this is not the case.

**BE HONEST ABOUT ENLARGEMENT.** Nearly 15 years after the Summit in Thessaloniki, apart from Croatia, the promise of enlargement remains unfulfilled in the Western Balkans. Despite some positive signals, most notably the continuation of the ‘Berlin Process’, Western Balkans 6 meetings, and the Western Balkans Connectivity Agenda, the political messages coming from Brussels point to the conclusion that European integration of the region will not be accelerated. The longer the process is protracted, the greater the risk that the commitment of the region’s political elites to implement the reforms that the EU has demanded fades out. A drawn-out process will also negatively impact support for European integration among the general population. In addition, prolonged waiting time risks increasing the instability and the return of hostilities to the EU frontiers. It is time to boost the credibility of the EU’s membership promise to the Western Balkan countries.

Therefore, we believe it is important to Open Chapters 23 and 24 for all Western Balkan countries as soon as possible. The new EU strategy on democracy conditionality envisages that Chapter 23 on Judiciary and Fundamental Rights and Chapter 24 on Justice, Freedom and Security should be opened early in the negotiations and be the last to be closed. The current approach focusing on the “Structured Dialogue” as a mechanism for engagement of countries that are not yet negotiating EU membership has thus far had only modest success in Albania, Bosnia and Herzegovina, Macedonia and Kosovo. Instead, the EU should **START UP THE SCREENING PROCESS AND SUBSEQUENTLY OPEN CHAPTERS 23 AND 24 WITH ALL THE WESTERN BALKAN COUNTRIES**. The benefits of this approach are threefold. First of all, it replicates the success of the visa liberalisation process by opening simultaneous negotiations with all the countries of the region, as this will develop competitive dynamics where no country wants to be left behind. This will in turn encourage faster reforms, particularly among accession laggards. Second, it will increase the density of ties and

linkages between the EU and the domestic elites in the Western Balkans. Hence, the veto potential of obstructing elites will be weakened. Third, it will give the biggest possible leverage to the EU to influence the establishment of functioning democracies, based on respect of the rule of law, in its immediate neighbourhood.



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# About the European Fund for the Balkans

The European Fund for the Balkans is a joint initiative of European foundations that envisions, runs and supports initiatives aimed at strengthening democracy, fostering European integration and affirming the role of the Western Balkans in addressing Europe's emerging challenges.

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# About the Centre for Southeast European Studies, University of Graz

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